The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

An Electronic Version of the Seven Volumes of
The Complete Anti-Federalist

The University of Chicago Press
Chicago and London

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VOLUME 1

What the Anti-Federalists Were *For*

With the Articles of Confederation and The Constitution of the United States, Keyed to the Principal Anti-Federalist Discussions

The University of Chicago Press

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Contents

VOLUME ONE

Foreword by Joseph Cropsey xv
Preface by Murray Dry xvii
Prefatory Notes by Herbert J. Storing xix

What the Anti-Federalists Were *For*

1 Introduction 3
2 Conservatives 7
3 The Small Republic 15
4 Union 24
5 The Federalist Reply 38
6 The Aristocratic Tendency of the Constitution 48
7 Complex Government 53
8 Bill of Rights 64
9 Conclusion 71

Works Frequently Cited 77

Notes 79

The Articles of Confederation, Keyed to the Principal Anti-Federalist Discussions 101

The Constitution of the United States, Keyed to the Principal Anti-Federalist Discussions 110

Contents of Other Volumes

VOLUME TWO

PART I

Objections of Non-Signers of the Constitution

Introduction
2.1 Elbridge Gerry's Objections to Signing the National Constitution (*Massachusetts Centinel* 3 November 1787)
2.2 George Mason's Objections to the Constitution of Government Formed by the Convention (1787)
2.3 Robert Yates and John Lansing, Reasons of Dissent (*New York Journal* 14 January 1788)
2.4 Luther Martin, The Genuine Information Delivered to the Legislature of the State of Maryland (1788)
2.5 Letter from Edmund Randolph Giving His Reasons for Refusing His Signature to the Proposed Federal Constitution (10 October 1787)

PART 2

Major Series of Essays at the Outset

2.6 Letters of Cato (*New York Journal* September 1787–January 1788)
2.7 Letters of Centinel (Philadelphia *Independent Gazetteer* and Philadelphia *Freeman's Journal* October 1787–April 1788)
2.8 Observations Leading to a Fair Examination of the System of Government Proposed by the Late Convention, Letters from The Federal Farmer (1787 and 1788)
2.9 Essays of Brutus (*New York Journal* October 1787–April 1788)

VOLUME THREE

Pennsylvania

Introduction
3.1 Speech of William Findley in the Pennsylvania Assembly (28 September 1787)
3.2 Address of the Minority of the Pennsylvania House of Representatives (4 October 1787)
3.3 Essays of An Old Whig (Philadelphia *Independent Gazetteer* October 1787–February 1788)
3.4 Essay by Montezuma (Philadelphia *Independent Gazetteer* 17 October 1787)
3.5 Essay of A Democratic Federalist (*Pennsylvania Herald* 17 October 1787)
3.6 A Review of the Constitution Proposed by the Late Convention, by A Federal Republican (1787)
3.7 Address of John Humble (Philadelphia *Independent Gazetteer* 29 October 1787)
3.8 Letter by An Officer of the Late Continental Army (Philadelphia *Independent Gazetteer* 6 November 1787)
3.9 Essays of Philadelphiensis (Philadelphia *Independent Gazetteer* November 1787–April 1788)
3.10 Essay by Alfred (Philadelphia *Independent Gazetteer* 13 December 1787)
3.11 The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to their Constituents (*Pennsylvania Packet and Daily Advertiser* 18 December 1787)
3.12 Essays by William Penn (Philadelphia *Independent Gazetteer* January 1788)
3.13 Essay by Deliberator (Philadelphia *Freeman's Journal* 20 February 1788)
3.14 The Fallacies of the Freeman Detected by A Farmer (Philadelphia *Freeman's Journal* April 1788)
3.15 Essay by None of the Well-Born Conspirators (Philadelphia *Freeman's Journal* 23 April 1788)
3.16 The Government of Nature Delineated, or An Exact Picture of the New Federal Constitution, by Aristocrotis (Carlisle 1788)

Contents of Other Volumes

Volume Four

Massachusetts and New England

Introduction
4.1 Anon., "A confederation, for purposes merely national . . ." (*Massachusetts Gazette* 9 October 1787)
4.2 A Letter from a Gentleman in a Neighbouring State, to a Gentleman in this City (*Connecticut Journal* October 1787)
4.3 Essays of John DeWitt (Boston *American Herald* October–December 1787)
4.4 Essays by Vox Populi (*Massachusetts Gazette* October–November 1787)
4.5 William Symmes, Letter to Capt. Peter Osgood, Jr. (15 November 1787) and Speech in Massachusetts Convention (22 January 1788)
4.6 Letters of Agrippa (*Massachusetts Gazette* November 1787–February 1788)
4.7 Essay by A Federalist (*Boston Gazette* 26 November 1787)
4.8 Essay by One of the Common People (*Boston Gazette* 3 December 1787)
4.9 Essays by Candidus (Boston *Independent Chronicle* December 1787–January 1788)
4.10 Essay by Cornelius (*Hampshire Chronicle* December 1787)
4.11 Essay by Poplicola (*Boston Gazette* 24 December 1787)
4.12 Essays by Helvidius Priscus (Boston *Independent Chronicle* and *Massachusetts Gazette* December 1787–February 1788)
4.13 Letters of A Republican Federalist (*Massachusetts Centinel* December 1787–February 1788)
4.14 Essay by Samuel (Boston *Independent Chronicle* 10 January 1788)
4.15 Essays by Hampden (*Massachusetts Centinel* January–February 1788)
4.16 Letter from A Customer (Portland, Maine, *Cumberland Gazette* March 1788)
4.17 Essays by A Farmer (New Hampshire *Freeman's Oracle* January–June 1788)
4.18 Charles Turner, Speeches in the Massachusetts Ratifying Convention (17 January and 6 February 1788)
4.19 Letter from The Yeomanry of Massachusetts (*Massachusetts Gazette* 25 January 1788)
4.20 Essay by An American (Boston *American Herald* 28 January 1788)
4.21 Letter from A Bostonian (Boston *American Herald* 4 February 1788)
4.22 Address by A Watchman (*Worcester Magazine* February 1788)

4.23 A Friend to the Rights of the People, Anti-Foederalist, No. I; and A Friend to the Republic, Anti-Foederalist, No. II (New Hampshire *Freeman's Oracle* February 1788)
4.24 Letter by David (*Massachusetts Gazette* 7 March 1788)
4.25 Essay by A Newport Man (*Newport Mercury* March 1788)
4.26 Consider Arms, Malichi Maynard, and Samuel Field, Reasons for Dissent (*Hampshire Gazette* April 1788)
4.27 Essay by Phileleutheros (*Hampshire Gazette* May 1788)
4.28 Observations on the New Constitution, and on the Federal and State Conventions, by A Columbian Patriot (Boston 1788)

VOLUME FIVE

PART 1

Maryland

Introduction
5.1 Essays by A Farmer (*Maryland Gazette* February–April 1788)
5.2 Essay by A Farmer and Planter (*Maryland Journal* April 1788)
5.3 Samuel Chase, Notes of Speeches Delivered to the Maryland Ratifying Convention (April 1788)
5.4 Address of a Minority of the Maryland Ratifying Convention (Baltimore *Maryland Gazette* May 1788)
5.5 Address by John Francis Mercer (April or May 1788)

PART 2

Virginia and the South

Introduction
5.6 Letter of Richard Henry Lee to Governor Edmund Randolph (16 October 1787)
5.7 Address by Cato Uticensis (*Virginia Independent Chronicle* 17 October 1787)
5.8 A Proposal for Reviving Christian Conviction (*Virginia Independent Chronicle* October 1787)
5.9 Essay by A Georgian (*Gazette of the State of Georgia* 15 November 1787)
5.10 Essays by Cato (*State Gazette of South Carolina* November–December 1787)

5.11 Essay by Tamony (*Virginia Independent Chronicle* 9 January 1788)
5.12 Speeches of Rawlins Lowndes in the South Carolina Legislature (January 1788)
5.13 Essays by Republicus (Lexington *Kentucky Gazette* February and March 1788)
5.14 Essays by The Impartial Examiner (*Virginia Independent Chronicle* February–June 1788)
5.15 Reply to Cassius by Brutus (*Virginia Independent Chronicle* 14 May 1788)
5.16 Speeches of Patrick Henry in the Virginia State Ratifying Convention (June 1788)
5.17 Speech of George Mason in the Virginia State Ratifying Convention (4 June 1788)
5.18 Address by Denatus (*Virginia Independent Chronicle* 11 June 1788)
5.19 Letter from A Delegate Who Has Catched Cold (*Virginia Independent Chronicle* June 1788)
5.20 Sentiments of Many (*Virginia Independent Chronicle* 18 June 1788)
5.21 James Monroe, Some Observations on the Constitution (1788)

Volume Six

PART I

New York

Introduction
6.1 Essays by Cincinnatus (*New York Journal* November–December 1787)
6.2 Objections by A Son of Liberty (*New York Journal* 8 November 1787)
6.3 Essay by Brutus, Jr. (*New York Journal* 8 November 1787)
6.4 A Reply to Publius by An Observor (*New York Journal* 19 November 1787)
6.5 Reply to Medium by A Citizen (*New York Journal* 24 November 1787)
6.6 Letters from A Countryman from Dutchess County (*New York Journal* November 1787–February 1788)
6.7 Letters from A Countryman (*New York Journal* December 1787–January 1788)
6.8 Essays by Sidney (*Albany Gazette* February–March 1788)
6.9 Address by Sydney (*New York Journal* June 1788)
6.10 Address of the Albany Antifederal Committee (Jer. Van Rensselaer, Chairman) (*New York Journal* 26 April 1788)

6.11 An Address by A Plebeian (New York 1788)
6.12 Speeches by Melancton Smith, Delivered in the Course of Debate by the Convention of the State of New York on the Adoption of the Federal Constitution (June 1788)
6.13 Notes of Speeches Given by George Clinton before the New York State Ratifying Convention (June–July 1788)

PART 2

Conclusion

6.14 Mercy Warren, History of the Rise, Progress and Termination of the American Revolution (Boston 1805), chapter 31, with excerpts from chapter 30

VOLUME SEVEN

Index

Foreword

The preoccupation of Herbert Storing's professional life was the genesis and meaning of the American regime. From the late fifties to the late seventies, during the whole of his distinguished career as a teacher at the University of Chicago, he led a generation of graduate students and, toward the end, some hundreds of undergraduates, through the courses that constituted a field which he developed and made his own—the American founding. At some time rather early in his career, he conceived the plan of collecting the less well-known or less accessible documents on both sides of the debate over the ratification of the Constitution, for he understood well that beneath the grandest practical conclusions lie the most massive antitheses, grinding one another in gigantic contention. Storing could not find means to gather and edit what he called, and wrote about as, the "other" Federalist writings—those less famous than the *Federalist Papers* themselves; but he did achieve the edited Anti-Federalist collection that appears here in print. He sent the manuscript of it to the University of Chicago Press in the summer of 1977, and then, on September 9th of that season, he died suddenly in the 49th year of his age.

He had lavished his labor on this work with a tenacity, devotion, and intelligence that could not be described outside the bounds of a general eulogy for which this is not the place. He died with this major effort mercifully complete. The tasks of seeing it through the press devolved on others, especially on Professor Murray Dry, who acceded to the requests of Mrs. Herbert Storing and of Storing's closest friends, who recognized in Professor Dry an experienced surrogate for his teacher. Deprived of the satisfaction of seeing his work in its perfected form, Herbert Storing will be memorialized in it while the study of the American Constitution engages the attention of scholars and leads them to the door of their faithful and learned benefactor.

Joseph Cropsey

Chicago, 1979

Preface

In November 1963, Herbert J. Storing wrote to the University of Chicago Press, proposing an edition of Anti-Federalist writings. In 1977, he delivered *The Complete Anti-Federalist* to the Press. When Storing died, in September 1977, the copy editing had barely begun. In the spring of 1978, I was asked to assist the Press in bringing my former teacher's substantially completed manuscript to publication. I agreed to fill in all the cross references, check all the quotations and source citations, and read the proofs.

All the Anti-Federalist texts had been verified by Storing and have therefore not been further edited, except for the silent correction of a few printer's errors that Storing himself had not noted. In series of letters or essays, the numbering has been standardized, plain roman numerals replacing the "Cato, No. IV," "Philadelphiensis, No. 2," etc., of the originals. Earlier printers' (or authors') errors in the numbering are discussed in Storing's notes, and the numbering of items in series has been corrected accordingly in the present edition. Dates that appear immediately below roman numerals, centered, are those of first publication and thus, like the numerals themselves, belong to the editorial apparatus; dates that appear immediately above letter openings, to the right, presumably denote the time of writing and may be considered part of the texts proper. Some of the longer names of Anti-Federalist writers have been shortened in the introductory material and notes, for consistency and easy reference. Obvious pseudonyms, such as Brutus or Agrippa, have not been distinguished typographically; other, less obvious ones, such as "William Penn," are enclosed in quotation marks at first mention.

In his Prefatory Notes, Storing said he planned to provide "an excellent general index" and a special index to the provisions of the Constitution. We have attempted to honor his desire. Volume 7 of this edition provides a complete index to volumes 1–6. And in this first volume we have reproduced not only the Constitution and first ten Amendments but also the Articles of Confederation (from the texts in *Documents Illustrative of the Formation of the Union of the American States*, edited by Charles C. Tansill, Washington, D.C., 1927), both keyed to the principal Anti-Federalist discussions. Here we have adapted the system used by Clinton Rossiter in his edition of *The Federalist Papers* (New York 1961).

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of para-

graphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.16.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 below. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary. In the index, for reasons of space, references to notes use two numbers plus note number (see volume 7, headnote to index).

Friends, research assistants, and professional colleagues assisted Storing in the preparation of this work, and undoubtedly he would have given every one due recognition. The following individuals served as research assistants for Storing during the period 1963 to 1977: Sylvia Snowiss, Ann Charney, Murray Dry, Roberta Dunn, Ralph Rossum, Joseph Bessette, and Kathleen Yonto. Storing sought and received assistance in identifying certain unnamed Anti-Federalist sources from his "Learned Friends." To others who helped Storing acquire his documents or track down information, but who are unknown to me, thanks must be expressed collectively. John F. Robinson provided the index and the cross references for the Constitution; Elizabeth Freeman provided the cross references for the Articles of Confederation; and David Lauten and Elizabeth Stouder spent a summer assisting me with cross references and footnotes. In Chicago, Ralph Lerner gave generously of his time, in advising and proofreading, and Joseph Cropsey, who contributed the Foreword, was frequently consulted on editorial matters. In conclusion, I am proud to have been able to make a contribution, however small, to this monumental work of my teacher and friend, from whom I learned so much.

Murray Dry

Middlebury, Vermont, 1981

Prefatory Notes

The aim of this collection is to make available for the first time all of the substantial Anti-Federal writings in their complete original form and in an accurate text, together with appropriate annotation. The book is introduced by a lengthy analysis of the political thought of the Anti-Federalists, providing for the first time, in my judgment, a full and adequate account of the main lines, the principles, and the grounds of the Anti-Federal position. The collection of Anti-Federal writings that follows is informed by this concern with political thought, but it is designed to serve other kinds of interests in the Anti-Federalists as well.

This is meant to be an authoritative edition. It includes all Anti-Federalist pamphlets that I have been able to find, all substantial newspaper essays and series of essays, some of the most important speeches by Anti-Federalists in ratifying conventions (though there is no claim of or need for comprehensiveness here), and some manuscript notes. About two-thirds of the items have never been printed since their original publication in 1787 and 1788, including a number of pieces that are of major importance in the Anti-Federal corpus. None of these writings is now available except in abridged form in the two or three short collections now in print. There are very long-term plans for a government publication of all the materials relating to the ratification of the Constitution. This project, under the present editorship of Merrill Jensen, will begin by publishing the "official records and proceedings" and will presumably then go on to publish newspaper essays, etc. This publication will be very important in future, but it can scarcely be expected to be available to this generation of scholars, and it will not, I think, in any case supersede the present collection for the student of the Anti-Federalists. The present collection is particularly timely. It will appear just in the wake of the celebration of the bicentennial of the Revolution; and more importantly it will make available these hitherto largely neglected writings to the scholarly activities that will be stimulated by the bicentennial of the adoption of the Constitution.

The items are organized along lines that reflect, as well as possible, the broad sequence of the debate over the Constitution. First come several statements by non-signers of the proposed Constitution; then several major series of essays, begun early and carried through the ratification controversy (volume 2). Pennsylvania is the first major state to take up and discuss the Constitution (volume 3). The focus then shifts to Massachusetts and New England (volume 4); then to Maryland, and on to Virginia and the

South (volume 5); finally back to the North and New York (volume 6). The essays within each volume, or within each part of a volume, are arranged in rough chronological order, though of course they overlap, as do the series in the different parts.

Each item is preceded by an introduction, providing publication data and a summary of the contents, meant to assist the reader in finding the parts of the writings of interest to him. I have included information on the author where known or an account of the available evidence of authorship of pseudonymous pieces. In several cases I have been able, for the first time, to identify the author or I have been able to add significantly to previous knowledge. The original text is followed regarding spelling and punctuation, except for clear typographical errors, which are corrected without notice. Unintelligible passages are corrected or queried in brackets or notes. An effort has been made to identify sources of quotations and other references. Annotations also include cross references to other Anti-Federalist writings and to Federalist writings on major themes. I plan to provide an excellent general index and an index to the provisions of the United States Constitution, so that a reader can easily identify Anti-Federal criticisms of specific portions of the Constitution.

I have, of course, given a good deal of thought to the great length of this collection, though it was always understood that it would be more than one volume. I would have preferred it shorter; but there is, I think, no way to accomplish that that does not strike at the heart of the basic conception of this enterprise from the beginning: that all of the substantial Anti-Federal pieces should be made available in their entirety and in an accurate text. Some of the most important series of essays, such as Centinel, and the Letters from The Federal Farmer, and Brutus, and A [Maryland] Farmer, are very long. There is no possibility of omitting these or of abridging them without destroying a prime value of the collection. Some cuts could be made among shorter pieces, but the gain in space would not compensate for the loss in variety and comprehensiveness. I have rejected two further possibilities for some cutting, neither of them very significant quantitatively, but I would be glad for readers' reactions. First, my introductory outlines of the essays might be cut down or eliminated; but I think they are needed in a collection like this to provide assistance to the readers in finding their way through the material. Second, the last item, the long chapter from Mercy Warren's *History . . . of the American Revolution,* might be abridged. I did an abridgment, but I abandoned it because the full account seems to me a superb conclusion of the volume, providing the last statement, historically and intellectually, of Anti-Federalism.

Herbert J. Storing

ca. 1975

What the Anti-Federalists Were *For*

I
Introduction

The Constitution of the United States was viewed by the founding generation as distinctive, even unique, in the extent to which it was the product of deliberation. Most previous foundings seemed to have been the result of chance or the edict of one all-powerful man. But the United States Constitution was framed by a numerous and diverse body of statesmen, sitting for over three months; it was widely, fully, and vigorously debated in the country at large; and it was adopted by (all things considered) a remarkably open and representative procedure. Viewed in this light, those who opposed the Constitution must be seen as playing an indispensable if subordinate part in the founding process. They contributed to the dialogue of the American founding. To take only the most obvious case, the Constitution that came out of the deliberations of 1787 and 1788 was not the same Constitution that went in; for it was accepted subject to the understanding that it would be amended immediately to provide for a bill of rights. Moreover, the founding of a nation does not end with the making of a constitution. The Constitution *did* settle many questions, and it established a lasting structure of rules and principles—we do not adopt the current cant that fundamental law is shapeless stuff to be formed at will by future generations. But it did not settle *everything;* it did not finish the task of making the American polity. The political life of the community continues to be a dialogue, in which the Anti-Federalist concerns and principles still play an important part.

The Anti-Federalists are entitled, then, to be counted among the Founding Fathers, in what is admittedly a somewhat paradoxical sense, and to share in the honor and the study devoted to the founding. In general, however, they have not enjoyed such a position. Champions of a negative and losing cause, they have found only a cramped place in the shadow of the great constitutional accomplishment of 1787. They have often been presented as narrow-minded local politicians, unwilling to face the utter inadequacy of the Articles of Confederation or incapable of seeing beyond the boundaries of their own states or localities. They have been described as men without principle, willing to use any argument to drag down the Constitution, yet willing, many of them, when the Constitution was adopted, to change their colors and become enthusiastic Federalists.[1] It is true that with the rise of the Beardian critique of the Constitution and its framers, the Anti-Federalists have been viewed with a more friendly eye. Merrill Jensen

has taught us to take seriously the possibility that the Anti-Federalists were right about the need for only modest changes in the Articles of Confederation and about the departure of the Constitution from the principles of the Revolution. He has inspired a full historical account of the Anti-Federal movement, and he has pointed to the need to take up the serious study of Anti-Federal thought. At the same time, the harsh edges of Beardian analysis have been worn away, and we are now in a position to consider afresh the class differences involved in the constitutional controversy, freed of many of the Beardian excesses.[2] Yet valuable as all of this has been, the corrected Beardian eye betrays still its original squint. It tends to see simple democratic agrarians among the Anti-Federalists as it tends to see self-seeking commercial oligarchs among the Federalists.[3] There is some basis for these views, but the picture is thin and distorted. Indeed, one of the few substantial accounts of Anti-Federal thought is a persuasive refutation of the Beardian thesis as applied to the Anti-Federalists and an attempt to show that the Anti-Federalists were in fact "men of little faith" in American national self-government.[4] Gordon Wood has added greatly to our understanding of the Anti-Federalists in his rich and encyclopedic account of the American founding and the way the Americans gradually blundered into a new political theory. Deep and lucid as his insights often are, however, Wood is finally less interested in understanding the Anti-Federalists (or the Federalists) as they understood themselves than in exposing the deeper social forces from which the whole sphere of "ideology," to use Bailyn's term, is derivative. Thus a debate that was for the Anti-Federalists fundamentally political becomes for Wood fundamentally sociological.[5]

There has been no sustained, comprehensive attempt to examine the thought, the principles, the argument of the Anti-Federalists, as they were understood by the Anti-Federalists themselves and by the other men of that time. Such an examination will be undertaken here. The aim will not be a history of the Anti-Federal movement or an analysis of its economic, sociological, or psychological underpinnings. We shall try to avoid presupposing some external set of questions or framework of analysis. Rather, we shall try to proceed from inside Anti-Federal thought, seeing the questions as they saw them, following the arguments as they made them. We shall explore the different levels of Anti-Federal theorizing, working our way critically through and if necessary beyond them, but always with the idea that the Anti-Federalists may have something to teach. Because the American founding took the form of a debate or dialogue, Anti-Federal thought is best examined within the movement and different levels of that dialogue. For this reason it will be necessary to take some note of the Federalist as well as the Anti-Federalist side of the debate, but the purpose is to present only so much of what the Anti-Federalists were against as is necessary to understand what they were for.

In beginning with the question of what the Anti-Federalists were *for,* we are not, it must be admitted, adhering to the aim of presenting the Anti-

Federalist argument as it presented itself. The Anti-Federalists were primarily *against* the Constitution. We do remain true to our aim in a deeper and more significant sense, however, because the Anti-Federalists themselves understood their negative conclusions about the Constitution to be derived from a positive political theory or set of political principles.*[6] The aim, then, will be to give a sympathetic, critical, and full account of the fundamental Anti-Federal position.

Was there, however, a single Anti-Federal position? In the most obvious sense there surely was not. The Federalists claimed that the opposers of the Constitution could not agree among themselves, that they shared no common principles, that their arguments canceled each other out. This is an exaggeration, for there was more agreement about many points of opposition to the Constitution than might appear at first glance.[7] Yet it is not possible to read far among the Anti-Federal writings without being struck by an extraordinary heterogeneity. It would be difficult to find a single point about which *all* of the Anti-Federalists agreed. They did not, finally, even agree unanimously in opposing the adoption of the Constitution. Many favored adoption if amendments could be secured; and others finally accepted the Constitution, even without a guarantee of amendment, as the best of the available choices. There is in fact no hard and fast way of even identifying "Anti-Federalists." Some men, notably Edmund Randolph, were Federalist and Anti-Federalist at different times. Moderate or lukewarm adherents to either side were often almost indistinguishable from one another. Moreover, the specific points of disagreement and the reasons given by the Anti-Federalists were various and even contradictory. This is not to say that the Federalists were in much better condition. There is an impression of greater unity here because the Federalists were (in general) unified in supporting the Constitution, although some Federal reservations are scarcely distinguishable from Anti-Federal objections. That impression has been strengthened by the Federalists' victory and by the massive impact on later generations of *The Federalist* papers, which have tended to occupy the Federalist stage and lend their unity to the whole group supporting the Constitution.*[8] There were in fact diverse and contradictory opinions among the Federalists just as there were among their opponents.

If the Federalists and Anti-Federalists were divided among themselves, they were, at a deeper level, united with one another. Their disagreements were not based on different premises about the nature of man or the ends of political life. They were not the deep cleavages of contending regimes. They were the much less sharp and clear-cut differences within the family, as it were, of men agreed that the purpose of government is the regulation and thereby the protection of individual rights and that the best instrument for this purpose is some form of limited, republican government. It is their common ground that explains, to a large extent, the relatively unclear line

*References to substantive notes are accompanied by an asterisk.

between the two camps and the diversity within each of them. This is not to say that the differences are negligible, as those would argue who claim that there is no basic political controversy or political theorizing in the United States.[9] The differences are limited, but they are nevertheless substantial and well formed. The nation was born in consensus but it lives in controversy, and the main lines of that controversy are well-worn paths leading back to the founding debate.

In searching for the underlying unity in the Anti-Federal position we are not tabulating the frequency of different arguments. We are looking not for what is *common* so much as for what is *fundamental.* We might well find the foundations laid in a very few writings, even a single one. Thus, on the Federalist side, a James Madison is more important in this kind of quest than a Tench Coxe, not because he is more typical or more influential in a direct sense but because he sees farther or better. He can *explain* more. The same is true on the Anti-Federal side of The Federal Farmer, Brutus, and such little known writers as A [Maryland] Farmer and The Impartial Examiner. Not all of these men were widely read, and some of them made arguments that were uncommon; but they explored or at least exposed the theoretical ground that most other Anti-Federalists took for granted.

Proceeding in this way, clearing our path through the superficial tangle, dealing as well as we can with the patches of obscurity and looseness we find in even the best Anti-Federal thinkers, we shall discover a set of principles that is a good deal clearer and more coherent, and also more relevant to an understanding of the American founding and the American polity, than has usually been supposed. But we shall also find, at the very heart of the Anti-Federal position, a dilemma or a tension. This is the critical weakness of Anti-Federalist thought and at the same time its strength and even its glory. For the Anti-Federalists could neither fully reject nor fully accept the leading principles of the Constitution. They were indeed open to Hamilton's scornful charge of trying to reconcile contradictions.[10] This is the element of truth in Cecelia Kenyon's characterization of them as men of little faith. They did not fail to *see* the opportunity for American nationhood that the Federalists seized so gloriously, but they could not join in grasping it. They doubted; they held back; they urged second thoughts. This was, however, not a mere failure of will or lack of courage. They had *reasons,* and the reasons have weight. They thought—and it cannot easily be denied—that this great national opportunity was profoundly problematical, that it could be neither grasped nor let alone without risking everything. The Anti-Federalists were committed to both union and the states; to both the great American republic and the small, self-governing community; to both commerce and civic virtue; to both private gain and public good. At its best, Anti-Federal thought explores these tensions and points to the need for any significant American political thought to confront them; for they were not resolved by the Constitution but are inherent in the principles and traditions of American political life.

2
Conservatives

One of the striking and, to many readers, surprising aspects of the debate over the Constitution is the conservative posture of the opposition. The Anti-Federalists did not deny the need for some change, but they were on the whole defenders of the status quo. They deplored departures of the Constitution from "the good old way" or "the antient and established usage of the commonwealth." They shook their heads at "the phrenzy of innovation" sweeping the country: "The framing entirely new systems, is a work that requires vast attention; and it is much easier to guard an old one." They warned that constant change would leave Americans "always young in government."[1] Some expressed the primitive conservative view that whatever is old is good. Others revealed profound (but seldom explored) misgivings about the modern political principles on which the Constitution was so wholeheartedly based.*[2] Ordinarily, however, their conservatism was neither so shallow nor so deep. In the main, they saw in the Framers' easy thrusting aside of old forms and principles threats to four cherished values: to law, to political stability, to the principles of the Declaration of Independence, and to federalism.

The Anti-Federalists often objected even to entering into debate on the Constitution because of legal irregularities in the proceedings of the Philadelphia Convention. They argued that that Convention had been authorized "for the sole and express purpose of revising the Articles of Confederation," and had no right to propose any radical change in the government of the Union.[3] While not invincible, this argument is very powerful; but it became less pertinent every day simply because the Constitution was in fact before the people and its merits under discussion. The threshold had been crossed, and the Anti-Federalists had little choice but to follow the Federalists over it. But there were other legal objections. The Convention proposed that Congress and the state legislatures should be bypassed in favor of special ratifying conventions and that the Constitution should come into effect when nine states ratified. For neither of these proposals was there any legal basis. They ran counter to Congress's commission to the Convention, and they violated the mode of amendment established in the Articles of Confederation.

The proposals of the Framers were self-defeating in their casual disregard of the forms of legality: "the same reasons which you *now* urge for destroying our *present* federal government, may be urged for *abolishing the*

system which you now propose to adopt; and as the *method prescribed* by the *articles* of confederation is *now totally disregarded* by you, as *little regard* may be shewn by you to the *rules prescribed* for the amendment of the *new system*. . . ." "Charters," Rawlins Lowndes warned, "ought to be considered as sacred things. . . ." The Anti-Federalists saw in the proceedings and proposals of the Philadelphia Convention a threat to that "publick faith and confidence," which "bind[s] and cement[s] the community" and "establish[es] them as a body politick."[4] Of course the Anti-Federalists agreed that the people have a right to alter their governments; but they insisted that any revolution (including the one most of them had proudly aided) must be secured by an initially fragile political stability. They criticized the Federalists, in typical conservative fashion, for threatening this precious stability. "The late revolution having effaced in a great measure all former habits, and the present institutions are so recent, that there exists not that great reluctance to innovation, so remarkable in old communities, and which accords with reason, for the most comprehensive mind cannot foresee the full operation of material changes on civil polity. . . ." Hasty and blind adoption of government will lead to hasty and blind alterations, "and changes must ensue, one after another, till the peaceable and better part of the community will grow weary with changes, tumults and disorders, and be disposed to accept any government, however despotic, that shall promise stability and firmness."[5]

Far from straying from the principles of the American Revolution, as some of the Federalists accused them of doing,[6] the Anti-Federalists saw themselves as the true defenders of those principles. "I am fearful," said Patrick Henry, "I have lived long enough to become an old fashioned fellow: Perhaps an invincible attachment to the dearest rights of man, may, in these refined enlightened days, be deemed *old fashioned:* If so, I am contented to be so: I say, the time has been, when every pore of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American."[7] The Anti-Federalists argued, as some historians have argued since, that the Articles of Confederation were the constitutional embodiment of the principles on which the Revolution was based:

> Sir, I venerate the spirit with which every thing was done at the trying time in which the Confederation was formed. America had then a sufficiency of this virtue to resolve to resist perhaps the first nation in the universe, even unto bloodshed. What was her aim? Equal liberty and safety. What ideas had she of this equal liberty? Read them in her Articles of Confederation.[8]

The innovators were impatient to change this "most excellent constitution," which was "sent like a blessing from heaven," for a constitution "essentially differing from the principles of the revolution, and from freedom," and thus destructive of the whole basis of the American community. "Instead of repairing the old and venerable fabrick, which sheltered the

United States, from the dreadful and cruel storms of a tyrannical British ministry, they built a stately palace after their own fancies. . . ."[9]

The principal characteristic of that "venerable fabrick" was its federalism: the Articles of Confederation established a league of sovereign and independent states whose representatives met in congress to deal with a limited range of common concerns in a system that relied heavily on voluntary cooperation. Federalism means that the states are primary, that they are equal, and that they possess the main weight of political power. The defense of the federal character of the American union was the most prominent article of Anti-Federalist conservative doctrine. While some of the other concerns were intrinsically more fundamental, the question of federalism was central and thus merits fuller discussion here, as it did in that debate.

To begin with an apparently small terminological problem, if the Constitution was opposed because it was anti-federal how did the opponents come to be called Anti-Federalists? They usually denied, in fact, that the name was either apt or just, and seldom used it themselves. They were, they often claimed, the true federalists. Some of them seemed to think that their proper name had been filched, while their backs were turned, as it were, by the pro-Constitution party, which refused to give it back; and versions of this explanation have been repeated by historians.[10] Unquestionably the Federalists saw the advantage of a label that would suggest that those who opposed the Constitution also opposed such a manifestly good thing as federalism. But what has not been sufficiently understood is that the term "federal" had acquired a specific ambiguity that enabled the Federalists not merely to take but to keep the name.

One of the perennial issues under the Articles of Confederation involved the degree to which the general government—or the instrumentality of the federation per se—was to be supported or its capacity to act strengthened. In this context one was "federal" or "anti-federal" according to his willingness or unwillingness to strengthen or support the institutions of the federation. This was James Wilson's meaning when he spoke of the "fœderal disposition and character" of Pennsylvania. It was Patrick Henry's meaning when he said that, in rejecting the Constitution, New Hampshire and Rhode Island "have refused to become federal." It was the meaning of the New York Assembly when in responding coolly to the recommendations of the Annapolis Convention it nevertheless insisted on its "truly federal" disposition.[11] This usage had thoroughly penetrated political discussion in the United States. In the straightforward explanation of Anti-Federalist George Bryan, "The name of Federalists, or Federal men, grew up at New York and in the eastern states, some time before the calling of the Convention, to denominate such as were attached to the general support of the United States, in opposition to those who preferred local and particular advantages.

. . ." Later, according to Bryan, "this name was taken possession of by those who were in favor of the new federal government, as they called it, and opposers were called Anti-Federalists."[12] Recognizing the pre-1787 usage, Jackson Turner Main tries, like Bryan, to preserve the spirit of Federalist larceny by suggesting that during the several years before 1787 "the men who wanted a strong national government, who might more properly be called 'nationalists,' began to appropriate the term 'federal' for themselves" and to apply the term "antifederal" to those hostile to the measures of Congress and thus presumably unpatriotic.*[13] But there was nothing exceptional or improper in the use of the term "federal" in this way; the shift in meaning was less an "appropriation" than a natural extension of the language, which the Federalists fully exploited.

The point of substance is that the Federalists had a legitimate *claim* to their name and therefore to their name for their opponents. Whether they had a better claim than their opponents cannot be answered on the basis of mere linguistic usage but only by considering the arguments. When, during the years of the Confederation, one was called a "federal man," his attachment to the principles of federalism was not at issue; that was taken for granted, and the point was that he was a man who (given this federal system) favored strengthening the "federal" or general authority. The ambiguity arose because strengthening the federal *authority* could be carried so far as to undermine the federal *principle;* and that was precisely what the Anti-Federalists claimed their opponents were doing.[14] Thus The Impartial Examiner argued that, despite the "sound of names" on which the advocates of the Constitution "build their fame," it is the opponents who act "on the broader scale of true *fœderal principles.*" They desire "a continuance of each distinct sovereignty—and are anxious for such a degree of energy in the general government, as will cement the union in the strongest manner."[15] It was possible (or so the Anti-Federalists believed) to be a federalist in the sense of favoring a strong agency of the federation and, at the same time, to be a federalist in the sense of adhering to the principle of a league of independent states.[16] In the name of federalism in the former sense, it was claimed, the proponents of the Constitution had abandoned federalism in the latter (and fundamental) sense.

The Anti-Federalists stood, then, for federalism in opposition to what they called the consolidating tendency and intention of the Constitution—the tendency to establish one complete national government, which would destroy or undermine the states.[17] They feared the implications of language like Washington's reference, in transmitting the Constitution to Congress, to the need for "the consolidation of our Union."[18] They saw ominous intentions in Publius' opinion that "a NATION, without a NATIONAL GOVERNMENT, is, in my view, an awful spectacle."[19] They resented and denied suggestions that "we must forget our local habits and attachments" and "be reduced to one faith and one government."[20] They saw in the new Con-

stitution a government with authority extending "to every case that is of the least importance"[21] and capable of acting (preeminently in the crucial case of taxation) at discretion and independently of any agency but its own. Instead of thus destroying the federal character of the Union, "the leading feature of every amendment" of the Articles of Confederation ought to be, as Yates and Lansing expressed it, "the preservation of the individual states, in their uncontrouled constitutional rights, and . . . in reserving these, a mode might have been devised of granting to the confederacy, the monies arising from a general system of revenue; the power of regulating commerce, and enforcing the observance of foreign treaties, and other necessary matters of less moment."[22]

A few of the Anti-Federalists were not sure, it is true, that consolidation would be so bad, if it were really feasible. James Monroe went so far as to say that "to collect the citizens of America, who have fought and bled together, by whose joint and common efforts they have been raised to the comparatively happy and exalted theatre on which they now stand; to lay aside all those jarring interests and discordant principles, which state legislatures if they do not create, certainly foment and increase, arrange them under one government and make them one people, is an idea not only elevated and sublime, but equally benevolent and humane."[23] And, on the other hand, most of the Federalists agreed or professed to agree that consolidation was undesirable. Fisher Ames, defending the Constitution in Massachusetts, spoke the language of many Federalists when he insisted that "too much provision cannot be made against a consolidation. The state governments represent the wishes, and feelings, and local interests of the people. They are the safeguard and ornament of the Constitution; they will protract the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights."*[24] Indeed, expressions of rather strict federal principles were not uncommon on the Federalist side, although they were often perfunctory or shallow.

Perhaps the most conciliatory Federalist defense of federalism, and not accidentally one of the least satisfactory in principle, was contained in a line of argument put forward by James Wilson and some others to the effect that, just as individuals have to give up some of their natural rights to civil government to secure peaceful enjoyment of civil rights, so states must give up some of theirs to federal government in order to secure peaceful enjoyment of federal liberties.[25] But the analogy of civil liberty and federal liberty concedes the basic Anti-Federal contentions, and Wilson did not consistently adhere to it.[26] As each individual has one vote in civil society, for example, so each state ought, on this analogy, to have one vote in federal society. As the preservation of the rights of individuals is the object of civil society, so the preservation of the rights of states (not individuals) ought to be the object of federal society.[27] But these are Anti-Federal conclusions. Thus, when Agrippa assessed the proposed Constitution from the point of

view of the interests of Massachusetts, he did so on *principled* ground, the same ground that properly leads any man to consider the civil society of which he is or may become a member, not exclusively but first and last, from the point of view of his interest in his life, liberty, and property.[28] Wilson, on the other hand, argued for the priority of the general interest of the Union over the particular interests of the states. And this position is not defensible—as Wilson's own argument sufficiently demonstrates—on the basis of the federal liberty–civil liberty analogy.*[29]

The more characteristic Federalist position was to deny that the choice lay between confederation and consolidation and to contend that in fact the Constitution provided a new form, partly national and partly federal. This was Publius' argument in *The Federalist*, no. 39. It was Madison's argument in the Virginia ratifying convention. And it was the usual argument of James Wilson himself, who emphasized the strictly limited powers of the general government and the essential part to be played in it by the states.[30] The Anti-Federalists objected that all such arguments foundered on the impossibility of dual sovereignty. "It is a solecism in politics for two co-ordinate sovereignties to exist together. . . ." A mixture may exist for a time, but it will inevitably tend in one direction or the other, subjecting the country in the meantime to "all the horrors of a divided sovereignty."[31] Luther Martin agreed with Madison that the new Constitution presented a novel mixture of federal and national elements; but he found it "just so much federal in appearance as to give its advocates in some measure, an opportunity of passing it as such upon the unsuspecting multitude, before they had time and opportunity to examine it, and yet so predominantly national as to put it in the power of its movers, whenever the machine shall be set agoing, to strike out every part that has the appearance of being federal, and to render it wholly and entirely a national government."[32]

The first words of the preamble sufficiently declare the anti-federal (in the strict sense) character of the Constitution, Patrick Henry thought; and his objection thundered over the Virginia convention sitting in Richmond:

> [W]hat right had they to say, *We, the People*? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask, who authorised them to speak the language of, *We, the People*, instead of *We, the States*? States are the characteristics, and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.[33]

The clearest minds among the Federalists agreed that states are the soul of a confederacy. That is what is wrong with confederacies: "The fundamental principle of the old Confederation is defective; we must totally eradicate and discard this principle before we can expect an efficient government."*[34]

Here lies the main significance of the mode of ratification in the proposed Constitution. The new procedure—ratification by special state conventions rather than by Congress and the state legislatures and provision that the

Constitution shall be established on ratification of nine states (as between them), rather than all thirteen states as required under the Articles of Confederation—was not merely illegal; it struck at the heart of the old Confederation. It denied, as Federalists like Hamilton openly admitted, the very basis of legality under the Articles of Confederation. The requirement in the Articles of Confederation for unanimous consent of the states to constitutional changes rested on the assumption that the states are the basic political entities, permanently associated indeed, but associated entirely at the will and in the interest of each of the several states.*[35] Even if it were granted that government under the Articles had collapsed (which most Anti-Federalists did not grant), there was no justification for abandoning the principles of state equality and unanimous consent to fundamental constitutional change. As William Paterson had put it in the Philadelphia Convention,

> If we argue the matter on the supposition that no Confederacy at present exists, it cannot be denied that all the States stand on the footing of equal sovereignty. All therefore must concur before any can be bound. . . . If we argue on the fact that a federal compact actually exists, and consult the articles of it we still find an equal Sovereignty to be the basis of it.[36]

Whether in the Articles of Confederation or outside, the essential principle of American union was the equality of the states. As Luther Martin had argued in Philadelphia, "the separation from G. B. placed the 13 States in a state of nature towards each other; [and] they would have remained in that state till this time, but for the confederation. . . ."[37]

The provision for ratifying the Constitution rested, in the main, on the contrary assumption that the American states are not several political wholes, associated together according to their several wills and for the sake of their several interests, but are, and always were from the moment of their separation from the King of England, parts of one whole. Thus constitutional change is the business of the people, not of the state legislatures, though the people act in (or through) their states.*[38] As one nation divided into several states, moreover, constitutional change is to be decided, not by unanimous consent of separate and equal entities, but by the major part of a single whole—an extraordinary majority because of the importance of the question.*[39] The Federalists contended that the colonies declared their independence not individually but unitedly, and that they had never been independent of one another.*[40] And the implication of this view is that the foundation of government in the United States is the interest of the nation and not the interests of the states. "The Union is essential to our being as a nation. The pillars that prop it are crumbling to powder," said Fisher Ames, staggering through a metaphorical forest. "The Union is the vital sap that nourishes the tree."[41] The Articles of Confederation, in this view, were a defective instrument of a preexisting union.*[42] The congressional resolution calling for the Philadelphia Convention had described a means—"for the

sole and express purpose of revising the Articles of Confederation"—and an end—to "render the federal constitution adequate to the exigencies of Government & the preservation of the Union."[43] If there was any conflict, the means ought to be sacrificed to the end. The duty of the Philadelphia Convention and the members of the ratifying conventions was to take their bearings, not from the defective means, but from the great end, the preservation and well-being of the Union.*[44]

This view of the matter takes the debate beyond a consideration of legality or status quo, because the Federalists argued that what appeared to be legally or traditionally right was wrong when viewed in the light of the end of that law or tradition. The result was to force the Anti-Federalists, as it forced the opponents of strong national government in the Philadelphia Convention, to higher ground. It became necessary to consider the questions, what are the ends of the government of the Union, what are the ends of the governments of the states, and what is the proper relation between these ends and therefore between these governments?

3
The Small Republic

The Anti-Federalists' defense of federalism and of the primacy of the states rested on their belief that there was an inherent connection between the states and the preservation of individual liberty, which is the end of any legitimate government. Robert Whitehill of Pennsylvania, for example, feared that the proposed Constitution would be "the means of annihilating the constitutions of the several States, and consequently the liberties of the people. . . ."[1] "We are come hither," Patrick Henry urged his fellow Virginians, "to preserve the poor Commonwealth of Virginia, if it can be possibly done; Something must be done to preserve your liberty and mine."[2] The states have to be preserved because they are the natural homes of individual liberty. As Luther Martin had argued in Philadelphia:

> At the separation from the British Empire, the people of America preferred the Establishment of themselves into thirteen separate sovereignties instead of incorporating themselves into one: to these they look up for the security of their lives, liberties, & properties: to these they must look up—The federal Govt. they formed, to defend the whole agst. foreign nations, in case of war, and to defend the lesser States agst. the ambition of the larger. . . .[3]

The governments instituted to secure the rights spoken of by the Declaration of Independence are the state governments. They do the primary business that governments are supposed to do. The government of the Union supplements the state governments, especially by giving them an external strength that none of them could manage on its own. But in principle the general government is subordinate to the state governments.

Why must the essential business of government be done by governmental units like the states? Primarily this was, in the Anti-Federalist view, a question of size. It was thought to have been demonstrated, historically and theoretically, that free, republican governments could extend only over a relatively small territory with a homogeneous population.*[4] Even among the states this rule was evident, for "the largest States are the Worst Governed."[5] One problem is that in large, diverse states many significant differences in condition, interest, and habit have to be ignored for the sake of uniform administration. Yet no genuine equality of government is possible in such a large state. The capital city, to take the prime example, will be close to some parts of the large state, but it will be remote, in every relevant sense, from the extremities.[6] A national government would be compelled to

impose a crude uniform rule on American diversity, which would in fact result in hardship and inequity for many parts of the country.

Behind the administrative defects of a large republic lie three fundamental considerations, bearing on the kind of government needed in a free society. Only a small republic can enjoy a voluntary attachment of the people to the government and a voluntary obedience to the laws. Only a small republic can secure a genuine responsibility of the government to the people. Only a small republic can form the kind of citizens who will maintain republican government. These claims are central to the Anti-Federalist position.*[7]

It should be noted at the outset that there is a complication in the practical conclusions drawn from these considerations. Assuming the soundness of the case for the small republic and assuming that nothing but republican government is to be seriously considered for the United States, the obvious conclusion is that no attempt should be made to extend a single republican government over the whole United States. But if one republican government over the whole United States should nevertheless be unavoidable, despite serious disadvantages, then the Anti-Federalist arguments for the small republic serve the practical purpose of revealing and helping to minimize these disadvantages. Cognizance of the advantages of the small republic may be helpful in avoiding the worst disadvantages of a large one. In the discussion that follows we shall be meeting both kinds of arguments. Some defend the idea of the small republic simply; others (drawn from the same theoretical source) aim to improve or mitigate the dangers of the large republic that American circumstances seemed to require. The different kinds of arguments will be clear enough as we go along, but both the distinction and the common source should be kept in mind.

The dependence of any republican government on the confidence of the people was one of the reasons given by the nationalists in the Constitutional Convention, notably James Wilson, for resting the general government directly on the people. Wilson "was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican Government this confidence was peculiarly essential."[8] The Anti-Federalists emphatically endorsed this principle. "The great object of a free people," The Federal Farmer argued, "must be so to form their government and laws, and so to administer them, as to create a confidence in, and respect for the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws, and to support them without an expensive military force."*[9] But the Anti-Federalists denied that the simple expedient of having the people elect federal representatives was enough to secure their attachment. In a large republic the people "will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass."[10] Both reason and experience prove,

Richard Henry Lee wrote, that so extensive and various a territory as the United States "cannot be governed in freedom" except in a confederation of states. Within each state, "opinion founded on the knowledge of those who govern, procures obedience without force. But remove the opinion, which must fall with a knowledge of characters in so widely extended a country, and force then becomes necessary to secure the purposes of civil government. . . ." The general rule is that government must exist, if not by persuasion, then by force.*[11] In a large empire standing armies are necessary "to cure the defect of the laws" and to take the place of popular confidence in and respect for the government.*[12]

The second characteristic of the small republic is its capacity to ensure a strict responsibility of the government to the people. In a direct democracy, responsibility is ensured by the absence of much differentiation between the people and their government. However, most of the Anti-Federalists admitted the need, under American conditions at least, for a system of representation as a substitute for the meeting together of all the citizens.[13] The problem, then, was to keep the representatives responsible, in the rather narrow meaning of that term, that is, directly answerable to and dependent on their constituents.[14] This is the reason for the concern with short terms of office, frequent rotation, and a numerous representation.[15] The Anti-Federalists understood, however, that such devices are insufficient. Effective and thoroughgoing responsibility is to be found only in a likeness between the representative body and the citizens at large. Thus "a full and equal representation is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled. . . ." According to Melancton Smith, representatives "should be a true picture of the people; possess the knowledge of their circumstances and their wants; sympathize in all their distresses, and be disposed to seek their true interests."[16] This describes the state legislatures reasonably well, it was claimed, but the federal legislature could not even come close to being representative in this genuine sense, at least not without a sharp increase in its number. Federal elections will present the voters with a choice among representatives of the well-known few, or the "natural aristocracy" as the Anti-Federalists often called them.*[17] "It is deceiving a people to tell them they are electors, and can chuse their legislators, if they cannot, in the nature of things, chuse men from among themselves, and genuinely like themselves."[18]

What is wanted in a representative system is not "brilliant talents" but "a sameness, as to residence and interests, between the representative and his constituents." No great talents are necessary for government, and the men of great abilities are, on the whole, a danger rather than a benefit to a republic.*[19] If, however, the Anti-Federalists distrusted "great abilities," they were willing to admit that "sameness" in a representative body is not literally possible. Every representative body is more aristocratic than the

body of the people by whom it is chosen,[20] and any representative body covering the whole United States would inevitably be highly selective. Here the argument shifts from the desirability of the small republic to the mitigation of the evils of the large one.*[21] Given the need, especially in the general government, for some considerable compromise of the principle of sameness, the Anti-Federalists' secondary, more practical goal was a representation large enough to secure a substantial (if not proportionate) representation of the middling classes, in particular the sturdy yeomanry. This view was based not on a presumption of intrinsic superiority in the yeoman but on the political consequences of his peculiar situation. Melancton Smith gave the Anti-Federalist argument in his classic confrontation with Alexander Hamilton on the subject of representation.

> The same passions and prejudices govern all men. The circumstances in which men are placed in a great measure give a cast to the human character. Those in middling circumstances, have less temptation—they are inclined by habit and the company with whom they associate, to set bounds to their passions and appetites—if this is not sufficient, the want of means to gratify them will be a restraint—they are obliged to employ their time in their respective callings—hence the substantial yeomanry of the country are more temperate, of better morals, and less ambitious than the great. . . .When . . . this class in society pursue their own interest, they promote that of the public, for it is involved in it.[22]

All are agreed, Sydney argued, "that the rights and liberties of a country were ever in danger from the rich and poor, and their safety in the middle sort or yeomanry of the country. . . ."[23] An adequate representation of the middling classes serves, then, as a practical and effective substitute for a full representation of the people; for it does not require an excessively large body, and yet in pursuing their own interests the middling classes tend to pursue the interests of the public at large. However, the proposed House of Representatives failed not only the strict test of sameness but the looser test of adequate representation of the middling classes. Given the number of representatives and the proportion of representatives and people, few if any of the members of this class could expect to be elected.*[24] The Anti-Federalists generally saw this as an inherent deficiency of any nationwide government, yet, as we shall see, they accepted the need for such a government. If this was a contradiction it was not, they thought, due to any deficiency in their reasoning, for it lay at the heart of the American situation. The prudent course was to confine the contradiction to the narrowest possible scope by, on the one hand, making the representation in the first branch of the national legislature as full as circumstances permitted and, on the other hand, leaving as much of the power as possible in the states, where genuine responsibility could exist.

A related aspect of the question of responsibility concerned the much-discussed issue of jury trial, which it was alleged the Constitution would weaken or destroy. There is no need here to go into detail, but the crux of

the objection lay in the political significance of the jury trial. While an adequate representation in at least one branch of the legislature was indispensable at the top, law-making, level, the jury trial provided the people's safeguard at the bottom, administrative, level. "Juries are constantly and frequently drawn from the body of the people, and freemen of the country; and by holding the jury's right to return a general verdict in all cases sacred, we secure to the people at large, their just and rightful controul in the judicial department."*[25] A [Maryland] Farmer argued, indeed, that the jury trial is more important than representation in the legislature, because "those usurpations, which silently undermine the spirit of liberty, under the sanction of law, are more dangerous than direct and open legislative attacks. . . ."[26] The main point, however, is that the democratic branch of the legislature and the jury trial are the means of effective and lawful popular control. They "are the means by which the people are let into the knowledge of public affairs—are enabled to stand as the guardians of each others rights, and to restrain, by regular and legal measures, those who otherwise might infringe upon them." The often extreme and apparently unfounded claims by the Anti-Federalists that the proposed Constitution would destroy the trial by jury should be seen against this background. The question was not fundamentally whether the lack of adequate provision for jury trial would weaken a traditional bulwark of individual rights (although that was also involved) but whether it would fatally weaken the role of the people in the *administration* of government.*[27]

The third part of the Anti-Federalist defense of the small republic concerned the kind of citizens a free republic needs. The Anti-Federalists emphasized repeatedly that the character of a people is affected by government and laws, but that that relation had been dangerously ignored in the framing of the proposed Constitution. In the words of Melancton Smith, "Government operates upon the spirit of the people, as well as the spirit of the people operates upon it—and if they are not conformable to each other, the one or the other will prevail. . . . Our duty is to frame a government friendly to liberty and the rights of mankind, which will tend to cherish and cultivate a love of liberty among our citizens." "If there are advantages," The Federal Farmer argued, "in the equal division of our lands, and the strong and manly habits of our people, we ought to establish governments calculated to give duration to them, and not governments which never can work naturally, till that equality of property, and those free and manly habits shall be destroyed; these evidently are not the natural basis of the proposed constitution."*[28]

A republican citizenry must be free and independent-minded, but it must also be homogeneous. "In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the opera-

tions of government, and prevent such conclusions as will promote the public good." Only within the relatively small communities formed by the individual states could such homogeneity be found. Given the variety of climates, productions, laws, and customs among the United States, a legislature formed of representatives from all parts of the country "would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other."[29] The preservation of homogeneity required, for many of the Anti-Federalists, protection against foreign contamination. "To what purpose have you expended so freely the blood and treasures of this country? To have a government with unlimited powers administered by foreigners?"[30] Arguing that the general government should not be given the power to naturalize aliens, Agrippa pointed to the contrasting results of Pennsylvania's policy of open immigration and the eastern states' freedom from foreign mixture. Whereas Pennsylvania purchased her size and population at the expense of religion and good morals, "the eastern states have, by keeping separate from the foreign mixtures, acquired their present greatness in the course of a century and a half, and have preserved their religion and morals." At the same time they have preserved "that manly virtue which is equally fitted for rendering them respectable in war, and industrious in peace."[31]

Homogeneity implied, for the Anti-Federalists, not only likeness but likeness of a certain kind: a society in which there are no extremes of wealth, influence, education, or anything else—the homogeneity of a moderate, simple, sturdy, and virtuous people.[32] Republican government depends on civic virtue, on a devotion to fellow citizens and to country so deeply instilled as to be almost as automatic and powerful as the natural devotion to self-interest. Many Anti-Federalists joined Patrick Henry in praise of the Swiss, who "have retained their independence, republican simplicity and valour."[33] These qualities are encouraged in the restricted sphere of the small republic, which offers little inducement or opportunity for the exercise of divisive and corrupting talents and which daily reminds each man of the benefits derived from and the duties owed to his little community.

Wherever they looked in the new Constitution the Anti-Federalists saw threats to civic virtue. The federal city provided for would breed monarchical institutions and courtly habits, with their oppressive tendencies and with the effect "above all [of] the perpetual ridicule of virtue."[34] The standing army would be not only a potential instrument of oppression but a source of moral corruption. With interests and habits different from the rest of the community, a standing army "will inevitably sow the seeds of corruption and depravity of manners. Indolence will increase, and with it crimes cannot but increase. The springs of honesty will gradually grow lax, and chaste and severe manners be succeeded by those that are dissolute and vicious. When a standing army is kept up, virtue never thrives."[35] Commerce itself, the benefits of which were one of the major reasons for the American Union,

seemed to threaten republican simplicity and virtue.[36] Commerce is the vehicle of distinctions in wealth, of foreign influence, and of the decline of morals. "As people become more luxurious, they become more incapacitated of governing themselves."[37] Anti-Federalists constantly complained of America's hankering after European luxury. They agreed generally with John Adams that "frugality is a great revenue, besides curing us of vanities, levities, and fopperies, which are real antidotes to all great, manly, and warlike virtues."[38]

Implicit in all of these opinions relating to republican citizenship is a concern with civic education, broadly conceived. Mercy Warren, who saw as deeply into this question as any of her contemporaries, flirted with the isolationism that tempted many of the Anti-Federalists. Could the pure republican spirit of the Americans be preserved, she reflected, by walling the country off from European luxury, on the one hand, and western empire on the other? It could not. However high the walls of separation, the fingers of avarice and ambition would find their ways through or around them. The danger to the republican spirit of America was illustrated by American attraction to European luxury and skepticism; but the source of the danger was not external. It lay, as it always lies, in the restless ambition and avarice in the heart of every man and every people; and that is where it must be met, principally by education. "[I]f the education of youth, both public and private, is attended to, their industrious and economical habits maintained, their moral character and that assemblage of virtues supported, which is necessary for the happiness of individuals and of nations, there is not much danger that they will for a long time be subjugated by the arms of foreigners, or that their republican system will be subverted by the arts of domestic enemies."[39] A few Anti-Federalists made specific proposals. Thus A [Maryland] Farmer proposed the establishment of local "seminaries of useful learning, with professorships of political and domestic œconomy." The citizens should be instructed not in "the philosophy of the moon and skies," but in "what is useful in this world—the principles of free government, illustrated by the history of mankind—the sciences of morality, agriculture, commerce, the management of farms and household affairs." If this were done in a short time "the people instead of abusing, would wade up to their knees in blood, to defend their governments."[40] More often the Anti-Federalist thought of the whole organization of the polity as having an educative function. The small republic was seen as a school of citizenship as much as a scheme for government. An important part—much more important than we are today likely to remember—of their argument for a federal bill of rights was the educative function of such a document in reminding the citizen of the ends of civil government and in strengthening his attachment to it. The provisions of a bill of rights "can inspire and conserve the affection for the native country, they will be the first lesson of the young citizens becoming men, to sustain the dignity of their being. . . ."[41]

Finally, many Anti-Federalists were concerned with the maintenance of religious conviction as a support of republican government. "Refiners may weave as fine a web of reason as they please, but the experience of all times," Richard Henry Lee wrote to James Madison in 1784, "shews Religion to be the guardian of morals."[42] The opinions of men need to be formed "in favour of virtue and religion. . . ."[43] Religious support of political institutions is an old idea, and here again the Anti-Federalists tended to be the conservatives. The view was well expressed by an anonymous Massachusetts writer in 1787.[44] He explained that there are but three ways of controlling the "turbulent passions of mankind": by punishment; by reward; and "by prepossessing the people in favour of virtue by affording publick protection to religion." All are necessary, but especially the last. "[I]t is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the public protection of religion." By 1787, however, the opinion seemed to be growing that organized religion could be dispensed with or taken for granted. This was, at any rate, the Anti-Federal reading of the situation. The indifference of the Constitution and its main defenders to organized religion was striking. In the words of Federalist writer Elihu, "the light of philosophy has arisen," and "mankind are no longer to be deluded with fable." "Making the glory of God subservient to the temporal interest of men, is a worn-out trick. . . ."[45] Anti-Federalists saw quite clearly the implications of such arguments and challenged them. They would have agreed with an anonymous Virginian who urged that steps be taken to revitalize religion: "Whatever influence speculative vanity may ascribe to the indefinite principle termed honor, or political refinement, to an artful collusion of interest, sound reason as well as experience proves that a due sense of responsibility to the Deity, as the author of those moral laws, an observance of which constitutes the happiness and welfare of societies as well as individuals, is the mean most likely to give a right direction to the conduct of mankind."[46] The Anti-Federalists feared that the Americans would follow the example of the Europeans as described by Mercy Warren: "Bent on gratification, at the expense of every moral tie, they have broken down the barriers of religion, and the spirit of infidelity is nourished at the fount; thence the poisonous streams run through every grade that constitutes the mass of nations." Warren insisted that skepticism is not, as some hold, necessarily fostered by republican liberty. Indeed, the history of republics is the history of strict regard to religion.[47]

It is less easy to say what concrete form the Anti-Federalists thought this concern with religion ought to take. They favored religious toleration and sometimes criticized the Constitution for the absence of protection of liberty of conscience; but this was assumed to mean, in practice, toleration of Christian (or only Protestant) sects and was rarely extended even in principle to the protection of professed atheists. They saw no inconsistency be-

tween liberty of conscience and the public support of the religious, and generally Protestant, community as the basis of public and private morality. Many Anti-Federalists supported and would even have strengthened the mild religious establishments that existed in some states. Richard Henry Lee wrote in 1784 that "he must be a very inattentive observer in our Country, who does not see that avarice is accomplishing the destruction of religion, for want of a legal obligation to contribute something to its support. The [Virginia] declaration of Rights, it seems to me, rather contends against forcing modes of faith and forms of worship, than against compelling contribution for the support of religion in general."*[48] More generally, the Anti-Federalist position was not so much that government ought to foster religion as that the consolidating Constitution threatened the healthy religious situation as it then existed. The religious diversity of the whole United States seemed so great as to strain to breaking point any publicly useful religious foundation for the nation as a whole. Consolidation would require, then, substituting for religion some other foundation of political morality—which the Anti-Federalists foresaw would be an aggregate of selfish interests held together by force. This tendency would be strengthened by the absence from the Constitution of any religious test for officeholding, which seemed intended to further undermine the public significance of religious conviction.*[49] The Constitution and its defenders deliberately turned away from religion as the foundation of civil institutions. Among the Anti-Federalists, on the other hand, there was a great deal of sympathy with views like those of Charles Turner: "without the prevalance of *Christian piety and morals*, the best republican Constitution can never save us from slavery and ruin." Turner hoped that the first Congress under the Constitution would recommend to the states the institution of such means of education "as shall be *adequate* to the *divine, patriotick purpose* of training up the children and youth at large, in that solid learning, and in those pious and moral principles, which are the *support*, the *life* and SOUL of republican government and liberty, of which a free Constitution is the body. . . ." He expressed a central Anti-Federal thought when he urged that the new rulers should turn their attention to the task, which surpasses the framing of constitutions, of fostering religion and morals, thereby making government less necessary by rendering "the people more capable of being *a Law to themselves*."[50] Such self-government was possible, however, only if the center of gravity of American government remained in the states.

4
Union

While the Anti-Federalists were concerned with individual liberty, which they thought depended on republican virtue, which in turn depended on maintaining the primacy of the states, they also wanted Union, to provide defense against foreign enemies, to promote and protect American commerce, and to maintain order among the states. "The first thing I have at heart is American *liberty*," Patrick Henry said; "the second thing is American Union. . . ." Melancton Smith "was as strongly impressed with the necessity of a Union, as any one could be: He would seek it with as much ardor." He was ready "to sacrifice every thing for a Union, except the liberties of his country, than which he could contemplate no greater misfortune." He hoped we were not reduced to the dreadful alternative of choosing one or the other.[1] The Anti-Federalists, like their opponents, spoke of the American "nation" or "country." They emphatically resisted the suggestion, which the Federalists tried to plant (with some but not much basis), that they were favorably disposed toward a breakup of the Union into separate confederacies.*[2] Everyone agreed, Merrill Jensen has written, that the United States was a nation; "they disagreed as to whether the new nation should have a federal or a national government."*[3] This is accurate enough so long as it is recognized that a debate over whether a nation should have a national government amounts to a debate over whether it shall *be* a nation. That at least is what the Federalists claimed, and the Anti-Federalists could scarcely deny it.*[4]

Generally the Anti-Federalists admitted that a more efficient federal government was needed, although they qualified this admission in a variety of ways. Some insisted that the true bond of union was a sense of mutual interest and mutual obligation, not governmental strength. The most elaborate version of this argument was presented by Agrippa, who rejected a consolidated American empire on the characteristic Anti-Federal grounds that we have already examined. A Union based on political power would result in debasement of the people and insecurity of rights. Must the states, then, separate?

This would be true if there was no principle to substitute in the room of power. Fortunately there is one. This is commerce. All the states have local advantages, and in a considerable degree separate interests. They are, therefore, in a situation to supply each other's wants. Carolina, for instance,

is inhabited by planters, while the Massachusetts is more engaged in commerce and manufactures. Congress has the power of deciding their differences. The most friendly intercourse may therefore be established between them. A diversity of produce, wants and interests, produces commerce, and commerce, where there is a common, equal and moderate authority to preside, produces friendship.[5]

The same principle applies to the new settlers in the west. "Here then we have a bond of union which applies to all parts of the empire, and would continue to operate if the empire comprehended all America." The bond of Union is to be found not in political power but in a system of diverse but harmonious economic interests. Difficulty creeps in, however, when Agrippa admits the need for "a common, equal and moderate authority to preside" over the commercial intercourse. Congress must have the power to decide differences among the states. Thus it would appear that political power is, after all, a necessary condition of the bond of Union. Even granting this, however—and it can hardly be denied—Agrippa's formulation emphasizes the *facilitating* character of federal political power, in contrast to the governing power that seemed to be provided in the Constitution. The function of the presiding political authority ought to be merely to serve commercial intercourse among the states. On this basis Agrippa could suggest very limited augmentations of the power of the general government, augmentations kept from undue expansion by a clear view of the true bond of American Union, which is commercial intercourse based on mutual needs.*[6]

The basic difficulty with this argument is that it relies decisively on the voluntary recognition of mutual dependence. The Anti-Federalists were inclined to hope, with James Monroe, that, once a substantial (but still very limited) national government was established, "their constitutional demands, or requisitions, would be complied with."[7] But the futility of this hope was the greatest lesson of the history of the Articles of Confederation. It was precisely what had led the country into what Publius described as "the last stage of national humiliation." Engagements broken, debts unpaid, credit dried up, commerce stagnated, territory violated, remonstrances scorned—in short, Publius asked, "what indication is there of national disorder, poverty and insignificance that could befal a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?"[8]

The Anti-Federalists tried to soften the stark outlines of the many pictures of this kind painted by the advocates of the Constitution. They tried to show that the circumstances of the United States were not so bad as they were described and that such evils as did exist were less the result of defects in the Articles of Confederation than of peculiar economic and political circumstances. Moreover, they alleged that the existing government had been deliberately weakened by Federalist criticism exaggerating both the urgency

and the extent of the difficulties. In any case there was no reason to abandon ordinary prudence. "Is it probable, that we shall ever be in a situation, in which we can with more temper and greater safety, deliberate upon this momentous concern than at present?"*[9]

Yet while the Anti-Federalists objected to exaggerations of American troubles, at least equally striking is the extent to which they accepted the broad outlines of the picture painted by the friends of the Constitution. It is difficult to see how Forrest McDonald can describe Philadelphians in 1787 as "serenely unaware that historians were one day to know this as the Critical Period of American history. . . ."[10] Even if the Anti-Federalists had uniformly asserted that the country was prosperous and untroubled, they could hardly have been unaware of the persistent Federalist arguments to the contrary, in which the very phrase, "critical period," figured prominently.*[11] But in fact the Anti-Federalists were less sanguine about the conditions of the country and the capacity of government under the Articles than some of their later apologists have been. The description of An Old Whig is not typical, but it is by no means unique: "we are not suffered to be the carriers of our own produce. . . . Our shipwrights are starved, our seamen driven abroad for want of employ, our timber left useless on our hands, our ironworks . . . now almost reduced to nothing, and our money banished from the country." These circumstances, following a loss of trade, "have justly alarmed us all. . . ."[12] "I know our situation is critical," wrote the most prominent and one of the most moderate of the Anti-Federalist pamphleteers, "and it behooves us to make the best of it."[13] If the alternative really had been to admit the proposed Constitution or "be left to our present weakness, confusion and distress," many Anti-Federalists would have agreed with An Old Whig and voted for the Constitution.[14] Few Anti-Federalists would in fact have objected to the designation of 1787 as the "critical period," and many used that or synonymous phrases.*[15]

The Anti-Federalists did tend to argue that the difficulties experienced by the country were not mainly caused by an ineffective general government. Not stronger government but time and industry were needed to rectify the distresses following the war.[16] A distinction should be made, insisted Candidus, between the difficulties arising from the government and those arising from our own imprudence or unfavorable circumstances; and when this is done it will be seen that only modest governmental reform is necessary.[17] The true cause of American difficulties lay deeper than forms of government. "Unhappily for us, immediately after our extrication from a cruel and unnatural war, luxury and dissipation overran the country, banishing all that economy, frugality, and industry, which had been exhibited during the war."[18] As Richard Henry Lee wrote in the spring of 1787, "I fear it is more in vicious manners, than mistakes in form, that we must seek for the causes of the present discontent."[19] The analysis of Candidus is important and characteristic enough to quote at some length.

Upon the whole, we are too apt to charge those misfortunates to the want of energy in our government, which we have brought upon ourselves by dissipation and extravagance; and we are led to flatter ourselves, that the proposed Constitution will restore to us peace and happiness, notwithstanding we should neglect to acquire these blessings by industry and frugality.—I will venture to affirm, that the extravagance of our British importations,—the discouragement of our own manufactures, and the luxurious living of all ranks and degrees, have been the principal cause of all the evils we now experience; and a general reform in these particulars, would have a greater tendency to promote the welfare of these States, than any measures that could be adopted.—No government under heaven could have preserved a people from ruin, or kept their commerce from declining, when they were exhausting their valuable resources in paying for superfluities, and running themselves in debt to *foreigners*, and to *each other* for articles of folly and dissipation:—While this is the case, we may contend about forms of government, but no establishment will enrich a people, who wantonly spend beyond their income.[20]

Some governmental improvements may be desirable, but those who look to a new government for the solution of American difficulties look in the wrong place and at the same time tend to increase the real difficulties.

May not *our manners* be the source of our national evils? May not our attachment to foreign trade increase them? Have we not acted imprudently in exporting almost all our gold and silver for foreign luxuries? It is now acknowledged that we have not a sufficient quantity of the precious metals to answer the various purposes of government and commerce; and without a breach of charity, it may be said that this deficiency arises from the want of public virtue, in prefering private interest to every other consideration.[21]

If, however, the country's domestic and economic problems were both less serious and less amenable to constitutional remedy than the Federalists contended, what of the obvious weakness of the United States under the Articles of Confederation in dealing with other nations? The Anti-Federalists agreed with Publius that "if we are to be one nation in any respect, it clearly ought to be in respect to other nations."[22] They were likely to emphasize, however, America's isolated situation and the unlikelihood of European powers involving themselves with the United States even to collect unpaid debts. Few Anti-Federalists went quite so far as Patrick Henry, but there was a good deal of hopeful sympathy with his view that as far as danger from European nations was concerned, "you may sleep in safety forever for them."[23] Wilson Nicholas characterized the Anti-Federalist argument, with much justice, as "turn[ing] upon [the] supposition: —*We shall always have peace, and need make no provision against wars.* Is not this deceiving ourselves? Is it not fallacious? Did there ever exist a nation which, at some period or other, was not exposed to war?"[24] The Anti-Federalists replied that if war does come, what will count will be not great armies and navies but the American spirit, that very manly independence and love of country that also supports American liberty. The kind of

governmental strength promised by the Constitution is deceptive, for it tends to undermine the popular independence and virtue that are the true backbone of a republic. George Mason had made this argument in the Philadelphia convention, when he compared the strength of a unitary executive with the deeper strength of a virtuous republican citizenry, and it was often repeated in the debate over ratification.[25] "For a new country to become strong and energetic, so as to be able to repel a foreign foe, the government must be *free* and *patriotic*, and the people must be *wealthy* and *well-affected* to it." "[T]he people will never fight (if they can help it) for representation, taxes and rags."[26] The Federalists exaggerated the problem of national defense and proposed the wrong solution. If there was any danger, Henry affirmed, "I would recur to the American spirit to defend us."*[27]

In both the domestic and the foreign spheres, then, the Anti-Federalists thought that the Federalists overstated the American difficulties and the extent to which they could be corrected by constitutional reform. They thought that, as Federalist propaganda against the Articles of Confederation had helped to increase the difficulties, so Federalist propaganda in defense of the Constitution might divert attention from the true cause of trouble, the deterioration of the American spirit. Far from arresting this deterioration, the Constitution seemed likely to intensify it.

When all of these qualifications are made and all these doubts stated, however, the Anti-Federalists nevertheless agreed that a Union was wanted, that it required an efficient government, and that the Articles of Confederation did not provide such a government. "The importance of preserving an union, and of establishing a government equal to the purpose of maintaining that union, is a sentiment deeply impressed on the mind of every citizen of America. It is now no longer doubted, that the confederation, in its present form, is inadequate to that end: Some reform in our government must take place. In this all parties agree. . . ." "It is on all hands acknowledged that the federal government is not adequate to the purpose of the Union."[28]

An efficient federal government need not, however, imply one so powerful as that proposed in the Constitution. The broad grants of power, taken together with the "supremacy" and the "necessary and proper" clauses, amounted, the Anti-Federalists contended, to an unlimited grant of power to the general government to do whatever it might choose to do. In the provision (Art. I, sec. 4) granting Congress the power to alter state regulations, or make its own, regarding the times, places, and manner of electing senators and representatives, for example, the Anti-Federalists saw endless possibility of usurpation and tyranny.[29] Could any possible good compensate for the dangers of such a provision? Moreover, the Anti-Federalists insisted, in contradiction to their opponents, that the powers of the proposed government, not its organization, was the central question.[30] All of the arguments

of the Federalists that this new government was better constructed than the old one fell before the massive fact that the old government was weak and this one would be strong. "The old Confederation is so defective in point of power," William Grayson plaintively explained to the Virginia convention, "that no danger can result from creating offices under it; because those who hold them cannot be paid. . . . Why not make this system as secure as that, in this respect?"[31] Not many Anti-Federalists were quite so transparent, but their opponents were quick to insist that Grayson's position was precisely the ridiculous conclusion to which the Anti-Federalist argument led: without the power to do good, a government can do no harm. But a government must have the capacity to accomplish its ends, otherwise liberty itself is in danger: "there is no way more likely to lose ones liberty in the end than being too niggardly of it in the beginning. . . ."[32] The means, the Federalists argued again and again, must be proportioned to the end, and the end in the case of the general government is not capable of being limited in advance. As bounds cannot be set to a nation's wants, so bounds ought not to be set to its resources. "The contingencies of society are not reducible to calculations. They cannot be fixed or bounded, even in imagination."

The framers of constitutions must see that "no power should be wanting which the safety of the community requires." Otherwise, when critical occasions arise, the country will suffer the alternative of usurpation or catastrophe. Of course every power can be abused, and abuse must be guarded against; but "our risk of this evil [is] one of the conditions of the imperfect state of human nature, where there is no good without the mixture of some evil."[33] Publius drove the point home:

> For the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust it to the authorities which are indispensable to their proper and efficient management. Let us not attempt to reconcile contradictions, but firmly embrace a rational alternative.[34]

This is a powerful argument, given the Anti-Federalists' own desire for a Union government powerful enough to secure common interests, especially defense. It is an argument that is almost sufficient to justify the Constitution; and it was in fact the main argument of many of the Federalist leaders and writers. Many of the Anti-Federalists simply could not meet it; but others made a series of attempts to resist the apparently invincible logic of unlimited means to accomplish unlimitable ends. They contended that it is always prudent to grant power cautiously and that it is possible to make reasonable estimates of the limited means needed under ordinary circumstances. It is safer, especially in a republic, to be guided by such estimates than by remote and extreme possibilities. Moreover, they charged that the Federalists were more or less deliberately using an argument about means to enlarge the ends of government, shifting their gaze from individual liberty to visions of national empire and glory. Finally they tried to show that the state

governments also have their ends, that these are in fact the primary ends of government, and that these also require appropriate means.

The prudence of granting power cautiously was a common Anti-Federal refrain. Governmental power should always be granted with a niggardly hand, a maxim that applies a hundredfold to this proposed general government, distant and dangerous as it must necessarily be even if improved. "As the poverty of individuals prevents luxury, so the poverty of publick bodies, whether sole or aggregate, prevents tyranny. A nation cannot, perhaps, do a more politick thing, than to supply the purse of its sovereign with that parsimony, which results from a sense of the labour it costs, and so to compel him to comply with the genius of his people, and conform to their situation, whether he will or not."[35] Again and again, Anti-Federalists argued in terms like those of a Massachusetts delegate who said that "we had a right to be jealous of our rulers, who ought never to have a power which they could abuse." Again and again Federalists answered in terms like those of Mr. Rutledge in South Carolina, that "the very idea of power included a possibility of doing harm; and if the gentleman would show the power that could do no harm, he would at once discover it to be a power that could do no good."[36] But to concede the Federalist point does not overcome the difficulty the Anti-Federalists raised. "There is no public *abuse,*" A [Maryland] Farmer argued, "that does not spring from the necessary *use* of power,—it is that insensible progress from the *use* to the *abuse,* that has led mankind through scenes of calamity and woe, that makes us now shrink back with horror, from the history of our species."[37] Prudence dictates granting too few powers rather than too many; rulers will always exercise their full legal powers, and it is easier to increase power than to lessen it. Nor is it sufficient to say that the exigencies facing the general government are in principle illimitable. Reasonable estimates can in practice be made and acted upon: ". . . every nation may form a rational judgment, what force will be competent to protect and defend it, against any enemy with which it is probable it may have to contend."[38] It is far more prudent to act upon such judgments than to rush to provide the government at once with all the power it may conceivably need. The maxim that unlimited means are necessary to meet unlimited ends is balanced by the maxim, which applies to all forms of power, "that all governments find a use for as much money as they can raise."[39] Extraordinary needs can be met as they arise. If a national credit and a national treasury are needed in time of war, let them be provided in time of war, Patrick Henry said; republics always put forth their utmost resources when required.[40]

Indeed, the stress placed by Federalists on national defense and a vigorous commercial policy often seemed to mask a radical shift in direction from the protection of individual liberty to the pursuit of national riches and glory. When the Anti-Federalists saw the new Constitution defended as having the "noble purposes" to make us "respectable as a nation abroad,

and rich as individuals at home" and as calculated to promote "the grandeur and importance of America, until time shall be no more,"[41] they feared for the principles of the American governments. "You are not to inquire how your trade may be increased," Patrick Henry warned, "nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your Government."

> Shall we imitate the example of those nations who have gone from a simple to a splendid Government? Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they have suffered in attaining such a Government—for the loss of their liberty? If we admit this Consolidated Government, it will be because we like a great splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things: When the American spirit was in its youth, the language of America was different: Liberty, Sir, was then the primary object.*[42]

Ambitious Federalists, captivated by visions of "stately palaces" and "dazzling ideas of glory, wealth, and power," wanted us "*to be like other nations.*"[43] That is just what we should not be. Americans "ought to furnish the world with an example of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves. Let the monarchs in Europe, share among them the glory of depopulating countries, and butchering thousands of their innocent citizens, to revenge private quarrels, or to punish an insult offered to a wife, a mistress, or a favorite: I envy them not the honor, and I pray heaven this country may never be ambitious of it."[44] The splendor of the monarch, and the power of the government are one thing," The Federal Farmer wrote. "The happiness of the subject depends on very different causes. . . ."[45] Wars might be necessary, but they should be strictly defensive. The Anti-Federalists generally held to what Hamilton scornfully called "the novel and absurd experiment in politics of tying up the hands of government from offensive war founded upon reasons of state";[46] and they saw in Hamilton's scorn dangerous dreams of national glory. "War is justifiable on no other principle than self-defence, it is at best a curse to any people; it is comprehensive of most, if not all the mischiefs that do or can afflict mankind; it depopulates nations; lays waste the finest countries; destroys arts and sciences, it many times ruins the best men, and advances the worst, it effaces every trace of virtue, piety and compassion, and introduces all kinds of corruption in public affairs; and in short, is pregnant with so many evils, that it ought ever to be avoided if possible; nothing but self-defense can justify it."[47]

The tendency of the Federalists to inflate national concerns was connected with their failure to recognize that defense and commercial advantage are not the only ends of government. The state governments also have their ends, and require adequate means to pursue them. Granting fully the indispensability of an effective general government, it is still the states to

which is entrusted the "most important end of government," the direction of the internal police and economy; and the happiness of the people depends "infinitely more on this than it does upon all that glory and respect which nations achieve by the most brilliant martial achievements. . . ." The just way of reasoning on this subject, then, is that the general government ought to have the authority to discharge its responsibilities for defense, foreign relations, and general commerce, "so far as is consistent with the providing for our internal protection and defence" by the state governments.[48] The American federal system is seen here as containing parallel governments in a kind of balance or tension with one another.

Neither the general government, nor the state governments, ought to be vested with all the powers proper to be exercised for promoting the ends of government. The powers are divided between them—certain ends to be attained by the one, and other certain ends by the other; and these, taken together, include all the ends of good government. This being the case, the conclusion follows, that each should be furnished with the means, to attain the ends, to which they are designed.[49]

The claims of one side must not be pressed so far as to incapacitate the other. In particular, the more urgent and more obvious claims of the general government must not be allowed to override the more fundamental claims of the states.

We come at this point in the discussion to a shift, which occurred gradually and erratically during the ratification debate, in the meaning of the term "federal" and the understanding of the American "federal" system. The early or relatively "pure" Anti-Federal position, as we have shown, was a defense of federalism in a rather strict sense, understood as the principle of a league or confederation, as we now call it.[50] The Federalist counter was to show that a merely federal government could not perform the tasks that even the Anti-Federalists would give to a general government, that the Articles of Confederation themselves were not purely federal, and that the proposed government under the Constitution was neither simply national nor simply federal but a combination of them. The mixture permeates all aspects of the constitutional system—or so, at least it was claimed—but for the present what is crucial is the constitutional division of the tasks and powers of government between the general government and the state governments. Within its sphere the general government is a complete national government, but that sphere is limited; and within their own spheres the states act as constitutionally independent entities.[51]

Initially it was the Anti-Federalists who doubted the viability of such a mixed system and the Federalists who affirmed it. The Anti-Federalists could not, however, maintain their strict federal ground, as we have seen, because they *did* see the Union as more than a league. Consequently they followed the Federalists into what we may call the "new federalism" (i.e., a

mixed national and federal system) and, despite early misgivings, became its strongest advocates; for it seemed, under all the circumstances, the best way to preserve the principles they thought fundamental. At this point there is another shift. Once the legitimacy of the new federalism is accepted, the Federalists emphasized the primacy of the national component in the mixture, while the Anti-Federalists urged the importance of a strict division of power and even something like a divided sovereignty, the possibility of which their early strictly federal argument had denied.

Not surprisingly, these shifts were reflected in terminological confusion or ambiguity. Some of the Federalists deliberately contributed to this confusion by calling this new combination of federal and national government a "federal" government. The implication, which has some surface plausibility, is that nothing very substantial hinges on a shift from one "federal" mixture in the Articles of Confederation to another "federal" mixture in the Constitution.[52] Terminological confusion is also found on the Anti-Federal side. In the reasoning of The Federal Farmer, for example, there is an overall movement from the old federalism to the new, which is reflected in a very significant terminological shift. In his first essay, The Federal Farmer makes the traditional three-part distinction between a federal plan, a consolidation, and what he here calls "partial consolidation," which is a combination of federal and national elements. But in his sixth essay (in the Additional Letters) what he had formerly called "federal" becomes a form of "pretended federalism" and what was formerly called partial consolidation becomes the true or honest federalism.[53]

The notion that the general and the particular governments had different objects was of course not new. As we have seen, for example, Luther Martin had argued in the Philadelphia Convention that the state governments were to protect and regulate individual liberty, while the general government was formed to take care of essential common interests.[54] The Articles of Confederation were not a strictly federal system but a kind of mixture. But what was missing in the earlier view was a well-developed notion of *coordinate* jurisdictions and *coordinate* state and federal sovereigns. For Martin, the tasks of government were divided, but the states were supreme; for the nationalists, the tasks might be divided, but the national government would be supreme. In either of these views the tendency was to see any division of powers as a convenient arrangement sanctioned and subject to reassessment by the supreme power, whether that was the states or the general government. The Anti-Federalists could not consistently hold to the doctrine of state supremacy because they admitted it would lead to anarchy among the states. They could not accept national supremacy because they thought it would lead to centralized tyranny. To avoid both extremes is the somewhat dubious promise of the new federalism: to provide, somehow, for a government in which neither the whole nor the parts are supreme.*[55]

The problem that persistently threatens this arrangement is of course how to deal with the possibility of conflicts between these governments and their tasks. This was, again, not a new problem, but it became acute as the notion of coordinate governments came into focus. It is true that the theoretical force of the argument against divided sovereignty was at least blunted by the perfection of the notion of the constitution as fundamental law: sovereignty could thus remain with the people, who partition power among their agents as they see fit.[56] The Federalists typically argued that the Constitution provided a sufficient delineation of power and that no vital conflict need arise. "The road is broad enough," Oliver Ellsworth said; "but if two men will jostle each other, the fault is not in the road."[57] But the very breadth of the road, the lack of restriction on the powers of the general government, and its independence of the states, seemed to the Anti-Federalists to make jostling inevitable with the states likely to find themselves in the ditch. There are only two ways to deal with this problem. Either the possibility of jostling must be altogether eliminated, or the states must be given the constitutional muscle to protect themselves in a more or less permanent contest.

To avoid conflict would require a comprehensive and exact partition of powers between the state and the general governments. Nowhere was the problem stated so clearly and its implication so sharply drawn as in James Monroe's suppressed pamphlet:

> To mark the precise point at which the powers of the general government shall cease, and that from whence those of the states shall commence, to poise them in such manner as to prevent either destroying the other, will require the utmost force of human wisdom and ingenuity. No possible ground of variance or even interference should be left, for there would the conflict commence, that might perhaps prove fatal to both.[58]

Any room for adjustment or disagreement is room for the whole equilibrium again to be drawn into question; and the tendency will be to assert the supremacy of either the states or the federal government, with the resulting tyranny of consolidation or anarchy of mere confederation. Under the ambiguous constitutional partition of powers there is great danger of this kind. But Monroe's demand was of course utterly unrealistic, as the Anti-Federalists, for all their calls for a fuller more precise apportionment, admitted. Does that not destroy, then, the whole enterprise of the new federalism? Will not a mixed system inevitably move from whatever equilibrium is originally set to one of its extremes? Perhaps so, ultimately, but there is yet another Anti-Federalist defense. If the jurisdictions or respective sovereignties of the general and the state governments cannot be so unambiguously drawn as to avoid any future uncertainties, perhaps those governments can be constructed and empowered and related in ways that ensure that the inevitable adjustments and conflicts will leave the main parties essentially intact and the system, the nation, in equilibrium.

In practice this would require, in the opinion of the Anti-Federalists,

measures to ensure the continued independence and vigor of the states, which were missing from the Constitution. They objected to the absence of explicit reservations in behalf of states' rights. Without an express declaration "in favour of the legislative rights of the several states, by which their sovereignty over their own citizens within the state should be secured," the states would "be preserved only during the pleasure of Congress."[59] The states had, moreover, been deprived of the power of self-defense. The centralization of the taxing and military authorities would leave the states and the people defenseless against their national rulers. "My great objection to this Government is, that it does not leave us the means of defending our rights; or, of waging war against tyrants. . . . Have we the means of resisting disciplined armies, when our only defence, the militia is put into the hands of Congress?"*[60] Neither was the states' influence in the general government adequately secured. No real security was to be found in the Senate, which was not truly federal and over whose deliberations the states would have little influence.*[61] The states were to have no constitutional check on the actions of the general government. It was no use pointing, as James Wilson did, to the role of the states in forming the general government.[62] Formally the states might be indispensable to the existence of the general government, but what would really count was state participation in the *operation* of government, and there was to be none of this in the new scheme.[63] The decisive issue here was the power of taxation. When Governor Randolph referred to that power as the "soul" of the new government, Patrick Henry shrewdly replied that "they shall not have the soul of Virginia."[64] Under the Constitution the states would have no constitutional way of influencing the raising of the federal revenue and thus would be closed out from substantial influence on federal policy. The states would at the same time have to sustain themselves with whatever crumbs might be left after the general government had taken its fill. The old system of requisitions provided the states with a constitutional check on the general government and ensured their continued independence. As Henry explained, requisitions are attended with the advantage of "deliberation," and the states can correct "oppressive errors" of the general government.[65] Or as Hamilton put it, "If States are to deliberate on the mode, they will also deliberate on the object of the supplies, and will grant or not grant as they approve or disapprove of it."[66] The obvious problem is that while the system of requisitions secures the position of the states, it undermines that of the general government. Why not, then, many Anti-Federalists asked, make room in the system of revenue raising for both the national and the federal principles? Allow the general government an independent source of revenue by giving it an unlimited power to impose duties; but for any additional revenue require it to make requisitions on the states, imposing direct taxes of its own only where the states fail to comply with the requisition. This was one of the recommendatory amendments that facilitated the crucial Mas-

sachusetts ratification, and it was prominent in subsequent lists of recommendatory amendments. Without here following out the debate on this question, it should be considered whether this arrangement, which would have been widely accepted among the Anti-Federalists, would not have been the mode of revenue raising most consistent with the "new federalism," and what its rejection implies for the American "federal" system.

The whole issue of the new federalism, as the Anti-Federalists saw it, was very clearly laid out in the quite theoretical discussion of A [Pennsylvania] Farmer. He began with the conventional distinction between general and local concerns. "The perfection of a federal republic consists in drawing the proper line between those objects of sovereignty which are of a general nature, and which ought to be vested in the federal government, and those which are of a more local nature and ought to remain with the particular governments. . . ." But this distinction is not sufficient; it depends on a deeper one:

> [A]ll that portion of a sovereignty which involves the common interest of all the confederating states, and which cannot be exercised by the states in their individual capacity without endangering the liberty and welfare of the whole, ought to be vested in the general government, reserving such a proportion of sovereignty in the state governments as would enable them to exist alone, if the general government should fail either by violence or with the common consent of the confederates; the states should respectively have laws, courts, force, and revenues of their own sufficient for their own security; they ought to be fit to keep house alone if necessary; if this be not the case, or so far as it ceases to be so, it is a departure from a federal to a consolidated government. . . .[67]

In this striking rule A [Pennsylvania] Farmer makes clear what is implicit in the Anti-Federalist acceptance of the "new federalism." The distinction between general and local concerns is *not* an adequate rule, for that does not ensure the maintenance of the federal equilibrium. That equilibrium consists rather in, on the one hand, a general government capable of dealing with general interests and, on the other hand, local governments capable of existing alone if necessary. To ensure the latter was the true reason (sometimes only vaguely understood) for the Anti-Federalist commitment to the system of requisitions, to state military power, and to constitutional checks by the states on the general government. This position has a good deal of weight if federalism is to be anything but a common sense modification of consolidated national government, maintained fundamentally at the discretion of that government. Yet there is an obvious difficulty; the demands of the common interest are likely to come into conflict with the requirement that the states be "fit to keep house alone if necessary." Indeed while it can be plausibly held that conflicts between local interests and general interests are in principle reconcilable, the localities being parts of one whole, the conflict between the general interest and the capacity of the states to exist

alone may be utterly irreconcilable. In fact, under A [Pennsylvania] Farmer's clearheaded analysis the new federalism dissolves into the stark alternative of the old federalism versus consolidation. And it is fairly clear which way A [Pennsylvania] Farmer would go when the conflict appears. There is, it seems, finally no middle way between a federal or a consolidated government; and while he is willing to define a federal government as substantially more than a league, it is fundamentally a league. So, on the other side, while Publius is willing to define the American federal system as something less than a national government, it is for him fundamentally a national government.

To the extent that men become persuaded that supremacy can be divided between central and local governments, the new federalism becomes theoretically defensible. Such men in 1787 and 1788 were rare. To the extent, however, that men are willing to concern themselves with dividing powers among the governments and adjusting their relations, the ultimate theoretical dilemma can be fended off by a series of practical arrangements. There were many such men in 1788. They were typically not very sanguine about the long-range viability of such arrangements, so much praised by later generations of scholars, historians, and statesmen; but they saw no other course. The Federalists accepted it mainly because of the strength of federal feeling in the country. Some of them saw it as a reasonable, permanent basis of government, many of them as a more or less temporary arrangement in the course of building a genuine national government. The Anti-Federalists were more likely to accept it as a long-term basis of American government, as a way of bringing together, if not reconciling, their own conflicting principles. As their commitment to simple federalism was more equivocal than the Federalists' commitment to simple nationalism, so their commitment to the new federalism, whose very principle is equivocation, was greater.

5
The Federalist Reply

Most of the major Federalists spoke the language of the new federalism, and some were content to rest their defense of the Constitution on this ground. The general and the particular governments have their different spheres and objects; the Constitution has defined these spheres reasonably well; and there is reason to hope that future adjustments will preserve a healthy balance. The most able Federalists, however, had reservations not merely about the feasibility of the new federalism but about its underlying premises. Men like James Madison thought that the solution of the internal as well as the external problems of American government was to be found not fundamentally in an equilibrium between states and Union, even if that could be achieved, but in a properly organized and empowered American republic. This view was prominent in the Philadelphia debates. Explaining the Virginia plan, Edmund Randolph "observed that the general object was to provide a cure for the evils under which the U.S. labored; that in tracing these evils to their origin every man had found it in the turbulence and follies of democracy. . . ."[1] Later James Madison explicitly challenged the narrow view expressed by Roger Sherman that the objects of Union were confined to dealing with foreign powers and preventing disputes among the states. To these should be added, Madison said, "the necessity of providing more effectually for the security of private rights, and the steady dispensation of Justice. Interferences with these were evils which had more perhaps than anything else, produced this convention. Was it to be supposed that republican liberty could long exist under the abuses of it practiced in [some of] the states."[2] This argument denies the basic premise of the Anti-Federal position and of the new federalism, the presumed superiority of the small republic in securing individual liberty and domestic tranquillity. On the contrary, the trouble with small republics is not mainly that they are weak and need to confederate for external purposes; it is that they cannot perform adequately the very tasks they are supposed to be best at.*[3] The extended American republic organized under the Constitution, while surely necessary for defense and commercial prosperity, will also be able to do the internal work of free republican government better than the states or any ideal small republic could do it. There are two parts of this crucial Federalist argument, the first having to do with the characteristic problem of republican government and the second with its solution.

The characteristic problem of republican government is, in the words of Publius, majority faction, which is the majority "united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."[4] This is not the traditional problem of popular licentiousness leading to resistance of authority and anarchy. Majority faction is the particular danger of popular government precisely because under popular government majorities can tyrannize under the cover of law.[5] This does not mean that Publius and the Federalists opposed majorities—Publius makes clear that not all majorities are factious—or that they were, as is sometimes inferred, enemies of popular government.[6] They did often declare against democracy (or against "pure democracy"), but democracy was understood in such contexts as a corrupt or extreme form of popular government.[7] The Federalists were preoccupied with majority faction (or democracy, in some formulations) precisely because of their commitment to the kind of government of which majority faction is the characteristic evil. The point is, as Madison explained in a letter to Jefferson, that "wherever the real power in a Government lies, there is the danger of oppression. In our Governments the real power lies in the majority of the community, and the invasion of private rights is *chiefly* to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents."[8]

Among the opponents of the Constitution there was some equivocation over majority faction. A few argued for pure democracy: "America under [a government] purely democratical, would be rendered the happiest and most powerful nation in the universe. . . ."[9] A very few seemed to deny that there can be such a thing as majority tyranny. When Brutus defined tyrannical government as that which, instead of serving the public good, promotes "the happiness and aggrandisement of one, or a few," he seemed to suggest, by omission, that there can be no tyrannical government of the many, though on the whole it is more accurate to say that, while not denying the possibility of majority tyranny, he did not see any need to discuss it.[10] Governor Clinton perhaps came closest to a denial in principle of the very possibility of majority tyranny when he insisted that the only true definition of free government is that "the will of the people . . . is law."[11]

In general, however, the Anti-Federalists acknowledged the possibility of majority faction and the need to guard against it, even though this danger typically occupied a less conspicuous place in their catalogue of dangers than in that of the Federalists.*[12] Impressed as they were by the English "Real Whigs," or Commonwealthmen, as Caroline Robbins has called them, the Anti-Federalists had been taught by their own experience that there were other dangers than kings, lords, and magistrates. Few of them would have agreed with Burgh that to argue that "the representatives of the people be checked and clogged in promoting the interest of their con-

stituents" is like arguing that "there ought to be a check to prevent individuals from being too healthy, or too virtuous. . . ."[13] Government by the people or, in practice, majority rule was accepted by the Anti-Federalists as the foundation of free government in America;*[14] but (Cato to the contrary notwithstanding) majority rule was not generally thought to be the very definition of free government, because it can lead to unjust deprivations of individual liberty. This was, indeed, one of the reasons some of the Anti-Federalists wanted a bill of rights. Thus Agrippa met the Federalist denial that a bill of rights is necessary in a representative government by insisting that it would serve "to secure the minority against the usurpation and tyranny of the majority."[15] A [Maryland] Farmer made the point even more emphatically:

> The truth is, that the rights of individuals are frequently opposed to the apparent interests of the majority—For this reason the greater the portion of political freedom in a form of government the greater the necessity of a bill of rights—Often the natural rights of an individual are opposed to the presumed interests or heated passions of a large majority of democratic government; if these rights are not clearly and expressly ascertained, the individual must be lost; and for the truth of this I appeal to every man who has borne a part in the legislative councils of America. In such government the tyranny of the legislative is most to be dreaded.[16]

Jackson Turner Main's disappointed estimate is "that less than half of the Anti-Federalist leaders had democratic inclinations, and that these were muted."*[17] But the terms of this estimate are vague in the extreme. It would be difficult to find a single articulate American of this period who did not have very significant democratic "inclinations"; yet there were very few whose democratic inclinations were not, in some significant sense, "muted." Gordon Wood, on the other hand, characterizes the Anti-Federalists as genuine populists, as "majoritarians with respect to the state legislatures," as "true champions of the most extreme kind of democratic and egalitarian politics expressed in the Revolutionary era."[18] But what precisely does this mean? There were very few "democrats" among the Anti-Federalist writers (or probably among Americans of any kind) if by that is meant those who believe simply that the will of the majority of the people is law and that that will ought to be exercised as directly and with as little restraint as possible.*[19] However, the Anti-Federalists *were* typically more democratic than the Federalists in the specific sense that they were less likely to see majority faction as the most dangerous and likely evil of popular government. They were inclined to think, with Patrick Henry, that harm is more often done by the tyranny of the rulers than by the licentiousness of the people.*[20] Moreover, so far as there may be a threat of licentiousness, it is to be met in the same way, fundamentally, as the threat to tyranny: by the alert public-spiritedness of the small, homogeneous, self-governing community.

To the Federalists, Henry's and the other Anti-Federalists' view of both the problem and the solution missed the main points. Having established the centrality to republican government of the problem of majority tyranny, the Federalists went on to challenge the Anti-Federalist preference for the small republic in all of the three essential aspects that we have considered.[21] Rather than attempting to secure the patriotic attachment and law-abidingness of the citizens through a small republic, the Federalists would bind the citizens to their polity by effective government and good administration. Rather than trying to secure responsibility through a numerous representation, the Federalists would stress the filtering effect of representation; they would accept the natural leadership of the influential few, attaching it to the government and directing it toward the public good. And finally, rather than trying to foster republican simplicity, virtue, and self-restraint, the Federalists would rely on the many diverse private gratifications available in the extended republic, with its spaciousness and opportunity, to make it unlikely that any faction (and particularly a majority faction) would have the inclination or opportunity to tyrannize over others. Let us consider each of these challenges to the Anti-Federalist position in turn.

The Anti-Federalists thought, as we have seen, that a large republic cannot attract the voluntary obedience of the people and is therefore driven to execute its resolutions by military force. In the words of The Federal Farmer, "the general government, far removed from the people, and none of its members elected oftener than once in two years, will be forgot or neglected, and its laws in many cases disregarded, unless a multitude of officers and military force be continually kept in view, and employed to enforce the execution of the laws, and to make the government feared and respected."[22] If a government of force is to be avoided, the bonds of political union must be woven from the strands of the natural human association.

> The strongest principle of union resides within our domestic walls. The ties of the parent exceed that of any other; as we depart from home, the next general principle of union is amongst citizens of the same state, where acquaintance, habits, and fortunes, nourish affection, and attachment; enlarge the circle still further, and, as citizens of different states, though we acknowledge the same national denomination, we lose the ties of acquaintance, habits, and fortunes, and thus, by degrees, we lessen in our attachments, till, at length, we no more than acknowledge a sameness of species.[23]

Significantly, Alexander Hamilton used exactly this thought in the New York ratifying convention and in *The Federalist* to show that the states need not fear being undermined by the new general government because they will always enjoy the attachment of the people. Followed with some care, however, Hamilton's discussion points to the Federalist alternative to the small natural community.

> It is a known fact in human nature that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same

principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at large, the people of each State would be apt to feel a stronger bias towards their local governments than towards the government of the Union; *unless the force of that principle should be destroyed by a much better administration of the latter.*[*24]

What is presented here as the incidental and apparently unlikely possibility of a better federal administration turns out to be crucial. Hamilton later makes it clear that there is "a probability that the general government *will* be better administered than the particular governments," being composed of a more select group of men, with more information and free of the taint of faction.[*25] Thus the advantages of the close-knit natural community in inspiring the trust and confidence of the people can be replaced by the attractive benefits of the more effective government of the large republic.

Indeed, the Federalists claimed that their opponents mistook the political ground of trust, confidence, and even public morality, which is not intimate government but effective government. It is "not generally true," Hamilton told the New York convention, "that a numerous representation [is] necessary to obtain the confidence of the people. The confidence of the people will easily be gained by a good administration. This is the true touchstone." Public attachment to government "is more strongly secured by a train of prosperous events, which are the result of wise deliberation and vigorous execution," to which large bodies are less competent than small ones.[*26] Governments attract the confidence of the people in the long run by deserving it. This includes, among other things, giving effective support to the virtues that all admit are desirable. The qualities of industry, economy, honesty, and civic virtue, about which the Anti-Federalists preach so much, are in fact undermined by the kind of governments the Anti-Federalists defend. Tender laws and paper money, the products of weak government, had led in America to well-known (and, by most Anti-Federalists, admitted) evils. "If virtue is the foundation of republican government, has it not been fatally sapped by these means? The morals of the people have been almost sunk into depravity; and the government of laws has been almost superseded by a licentious anarchy."[27] The crucial need, even for those who are the immediate losers, is wise and effective government and the confidence that only such a government can inspire. This is the source of civic prosperity. "The circulation of confidence is better than the circulation of money," and the pump of confidence is sound government, not government close to the people.

An aspect of any good government is a capacity to coerce obedience when necessary. To that extent the Anti-Federalists were right in saying that the new government would rest ultimately on force; they were wrong, in the Federalists' opinion, in thinking that there is any other kind. "[A]ll government is a kind of restraint" and "founded in force," Charles Pinckney told the South Carolina House of Representatives; "he could not

conceive that either the dignity of a government could be maintained, its safety ensured, or its laws administered, without a body of regular forces to aid the magistrate in the execution of his duty."[28] Coercion also has a broader moral and political effect. "While it compels the obedience of the refractory, it redoubles the alertness of the virtuous by inspiring a confidence in the impartiality of its burthens."[29]

The Federalist view, then, was that an effective government, in addition to being intrinsically desirable, is also the key to the attachment of the people and to civic virtue itself. A government that can actually accomplish its resolves, that can keep the peace, protect property, and promote the prosperity of the country, will be a government respected and obeyed by its citizens. It will, moreover, promote private and public morality by providing them with effective protection.

The second element of the Federalist solution of the problem of popular government is a proper system of representation. In the main, the Anti-Federalists accepted representation reluctantly, as a necessary device in a community where the people cannot assemble to do their common business. The representative body is seen in consequence as a substitute for an assembly of all the citizens, which ought to be as like the whole body as possible. The Federalists, on the other hand, saw representation not as an unfortunate necessity but as an opportunity. It permits, in the first place, an extension of popular government. Through representation, especially in a federal system, "the people of a large country may be represented as truly as those of a small one."[30] Representation is the device that makes the large republic possible. But it is more. Arguing that representation was not new, but was put to a new use in the American governments, Publius made the striking observation that the difference between ancient governments and the American governments lay "*in the total exclusion of the people in their collective capacity* from any share in the *latter*, and not in the *total exclusion of representatives of the people*, from the administration of the former." To secure the full effect of this benefit, however, it must be connected to an extensive territory. "For it cannot be believed that any form of representative government, could have succeeded within the narrow limits occupied by the democracies of Greece."*[31] Thus representation is necessary to secure the benefits of the large republic; but the large republic is also necessary to secure the benefits of representation. These benefits are to be found, negatively expressed, in the capacity of a representative system to provide for a popular government in which the people collectively play no part and in which the danger of popular excesses is thereby reduced. As a Virginia Federalist argued, "the more independent a government is . . . of the people, under proper restraints," the more likely it is to produce the security of persons and property which is the end of government.[32]

As we have seen, the Anti-Federalists complained that in a large republic the people will not in practice be able to choose men like themselves, and

the representative body will inevitably be composed of the natural aristocracy. In large districts, "a common man must ask a man of influence how he is to proceed, and for whom he must vote," and the only men with a chance of being elected are those of "conspicuous military, popular, civil or legal talents."[33] The Federalists replied that it is inevitable and natural that the people should choose such men to represent them; they cannot and should not be prevented from doing so. The small manufacturer sees that the merchant can represent him in public councils better than he could represent himself. The small landholder sees that his basic interests are shared with and protected by the great landholder. And what is wrong with electing men of conspicuous talents? Who composes this "natural aristocracy" before which the opponents of the Constitution tremble? They are the most distinguished, the most trusted, the most able men (and that is, on the whole, how the Anti-Federalists themselves identified them). But are not these precisely the kinds of men who ought to be the people's representatives? Even the radical constitution of Pennsylvania, James Wilson pointed out, declared that "representatives should consist of those most noted for wisdom and virtue." "If this is [what is] meant by a natural aristocracy, and I know no other, can it be objectionable that men should be employed that are most noted for their virtue and talents?"*[34] In New York, Chancellor Livingston argued against rotation on the same grounds. It is "an absurd species of ostracism—a mode of proscribing eminent merit, and banishing from stations of trust those who have filled them with the greatest faithfulness." Moreover, should not virtue and talents be encouraged by honors and rewards? "The acquisition of abilities is hardly worth the trouble, unless one is to enjoy the satisfaction of employing them for the good of one's country."[35]

Thus the positive side of the Federalist case for representation is the likelihood that it will produce a government with a capacity to govern well. The probability is increased in an extensive republic, which is more likely to put forward "proper guardians of the public weal" and less susceptible to electoral corruption than a small one. Corruption is difficult where there are many to bribe, and the large district is protection against other forms of "bribery" such as demagoguery and appeals to narrow interests.[36] Petty republics and small districts are the natural homes of petty men. "It is only in remote corners of a government," James Wilson thought, "that little demagogues arise. Nothing but real weight of character, can give a man real influence over a large district."[37] In a large district an aspiring politician has to seek a wide base of support, and this increases the likelihood of his taking a broad view or at least decreases the chances of narrow partiality. "The little demagogue of a petty parish or county will find his importance annihilated, and his intrigues useless, when several counties join in an election; he probably would not be known, certainly not regarded, out of his own circle; while the man whose abilities and virtue had extended a fair reputation

beyond the limits of his county, would, nine times out of ten, be the person who would be the choice of the people."*[38] For the Federalists, then, representation is a mode of selecting for rulers the best men, or at least men better than average; and the large districts of the large republic increases the chance of securing such men.

Consistently with this view that, as Publius said, the first aim of every constitution should be "to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society," the Federalists saw the duty of representatives as extending beyond the particular interests of their constituents to the common good.*[39] Noah Webster said, for example, that while a delegate is bound to represent "the true local interest" of those who elect him, "when each provincial interest is thus stated, every member should act for the *aggregate interest* of the whole confederacy. The design of representation is to bring the collective interest into view. . . ."[40] The Federalists were not naïve about the tendencies of representatives to act for narrow and selfish views; but the aim was a system in which the collective interest will emerge. Representation is not sufficient, but it is the basic device through which the people not merely re-presents but transcends itself. As Fisher Ames put it, "the representation of the people is something more than the people."*[41]

Against the third part of the Anti-Federalist defense of the small republic, the need for republican simplicity and public-spiritedness, the Federalists put forward the diversity of the extended commercial republic. Most of the Anti-Federalists thought, with Brutus, that "in a republic, the manners, sentiments, and interests of the people should be similar. If this is not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other."[42] The Federalists contended that such a homogeneous republic was possible only under the primitive, harsh conditions of a precommercial society, which no man—certainly no American—would choose to endure. John Adams had made the point well in his discussion of the little republic of San Marino.

> A handful of poor people, living in the simplest manner, by hard labor, upon the produce of a few cows, sheep, goats, swine, poultry and pigeons, on a piece of rocky, snowy ground, protected from every enemy by their situation, their superstition, and even by their poverty, having no commerce nor luxury, can be no example for the commonwealth of Pennsylvania, Georgia, or Vermont, in one of which there are possibly half a million of people, and in each of the others at least thirty thousand, scattered over a large territory.[43]

A safe mediocrity can be maintained in conditions like those of San Marino; but "in every community where industry is encouraged, there will be a division of it into the few and the many."*[44] And when this occurs, the innocence of the primitive community is lost. The Anti-Federalists could not deny this; yet they did not really desire the simple, precommercial

society, even if they could have had it. It is true that they criticized the man of commerce, "immersed in schemes of wealth" and thus "the last to take the alarm when public liberty is threatened."[45] He has no permanent attachments and can pack up and move, leaving the farmer to suffer the consequences of a bad constitution. But this was the half-hearted criticism of children of the modern commercial world who worried about its implications. There was no attempt to articulate an alternative, no account of the virtue of the agrarian way of life. There was some hankering after a simple, subsistence agricultural life, but the Anti-Federalists were irrevocably committed to a commercial order, as indeed American agriculture had always been.[46] The Federalists drew out the implications of the commitment. While they were about as likely as their opponents to write as "Farmer" or "Countryman," they denied that there was any real conflict between the landed and the commercial interests, because (as they suggested more or less explicitly) the American landed interest is fundamentally part of and dependent upon the commercial order. The Federalist Landholder argued, for example, "It may be assumed as a fixed truth that the prosperity and riches of the farmer must depend on the prosperity, and good national regulation of trade. Artful men may insinuate the contrary—tell you let trade take care of itself, and excite your jealousy against the merchant because his business leads him to wear a gayer coat, than your economy directs. But let your own experience refute such insinuations."*[47] The American world is the world of commerce.

The basic problem of the Anti-Federalists was that they accepted the need and desirability of the modern commercial world, while attempting to resist certain of its tendencies with rather half-hearted appeals to civic virtue. But such restraints, the Federalists replied, have never worked and will never work; the solution is to be found in another direction entirely.

> *Virtue*, patriotism, or love of country, never was and never will be, till mens' natures are changed, a fixed, permanent principle and support of government. But in an agricultural country, a general possession of land in fee simple, may be rendered perpetual, and the inequalities introduced by commerce, are too fluctuating to endanger government. An equality of property, with a necessity of alienation, constantly operating to destroy combinations of powerful families, is the very *soul of a republic*.[48]

To this James Madison added the extended republic.*[49] For even in the absence of primogeniture and under the constant churning of commerce distinct interests will eventually form and find their way into the political realm. Despite unparalleled opportunity for individual enterprise, the time will come even under American conditions where the many will resent the greater goods enjoyed by the few. And in a popular government where the majority are united by a common interest or passion the rights of the minority are in danger. "The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in

the 1st place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2d place, that in case they shd. have such an interest, they may not be apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a republican system on such a scale and in such a form as will controul all the evils wch. have been experienced."[50] What Brutus saw as a great defect of the Constitution—that the legislature "would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other"[51]—James Madison and others saw as its greatest virtue. In a large, diverse, wealthy country men can find ample opportunity to gratify their private wants; they will be less likely to resent the success and to encroach on the rights of others, and such resentment as they do feel will be less likely to take dangerous political form. "Divide et impera," the reprobated axiom of tyranny, is, under certain qualifications, the only policy by which a republic can be administered on just principles.[52]

The trouble with the Anti-Federalists, in this view, was that they saw civil society as a teacher, as a molder of character, rather than as a regulator of conduct. Their mentality was like that expressed in a 1776 proclamation of the Massachusetts General Court:

> That piety and virtue, which alone can secure the freedom of any people, be encouraged, and vice and immorality suppressed, the Great and General Court have thought fit to issue this Proclamation, commanding and enjoining it upon the good people of this colony that they lead sober, religious, and peacable lives, avoiding all blasphemies, contempt of the Holy Scriptures and of the *Lord's* Day, and all other crimes and misdemeanors, all debauchery, profaneness, corruption, venality, all riotous and tumultuous proceedings and all immoralities whatsoever, and that they decently and reverently attend the publick worship of God.[53]

Preaching like this, whether in the form of a direct injunction or the supposed functioning of the small republic, seemed to the Federalists ineffective, or at least grossly insufficient. No matter how strong the preaching or the community surveillance, men's interests will not be subdued or governed by considerations of public good, moral duty, or religious salvation.*[54] To warnings like that of Anti-Federalist Thomas Wait that to try to subject the vast continent of America to a democracy would be as futile as trying "to rule Hell by Prayer,"[55] the Federalist reply was, in effect, that little democracies can no more be ruled by prayer than large ones. Men act mainly from passion and interest. The Constitution was deliberately and properly designed not to try to stifle or transform those motives—to try to rule them by prayer—but to channel them in the direction of the public good.

6
The Aristocratic Tendency of the Constitution

The Federalist argument that we have been considering rejects as unrealistic the traditional republican reliance on patriotism, on respect for reputation, on the restraints of conscience, even on the not very elevated principle that honesty is the best policy. It relies instead on a constitutional system within which the strongest natural forces—particularly the passion of acquisitiveness or avarice—are not stifled (a hopeless endeavor) but are guided into channels conducive to the public good, or channels that at least make it extremely difficult for anyone to tyrannize over anyone else. The chief source of danger is always whatever element of society enjoys the right to rule, because it can tyrannize without usurpation. In republican government the problem is thus to prevent a tyranny of the majority or the many. The small republic cannot solve this problem; the well-constituted large republic can. Part of that solution lies, however, in a large, powerful government, even though that aspect of the solution is not prominent in Madison's classic formulation. For the Anti-Federalists that government is seen as itself the major problem.

More precisely the Anti-Federalists see the chief danger as the inherently aristocratic character of any government. All government is, more or less, government of the many by the few. This aristocratic character of organized civil society tends to become more severe and more selective over time, and the main efforts of constitution makers should be directed to at least putting obstacles in its way. The powerful, irresponsible government under the proposed Constitution, on the contrary, will hasten this tendency. "It changes, totally changes, the form of your present government. From a well-digested, well-formed democratic, you are at once rushing into an aristocratic government."[1] This is the underlying theme of a vast quantity of the specific criticism by the Anti-Federalists of the proposed Constitution.*[2]

Thus, so far as the proposed legislature was concerned, the Anti-Federalists criticized the House of Representatives, as we have seen, for providing only a shadow of representation; but their strongest indignation was reserved for the Senate, which represented for many of them all that was wrong with the Constitution. While seldom denying the need for a select body to check the excesses of the more popular assembly, they did object to giving this less popular branch of the legislature most of the critical powers of government. The mixture of legislative, executive, and judicial

powers in the Senate violated the maxim of separation and seemed designed to lay the foundation for a permanent aristocracy.*[3] "[W]e have seen powers, in every branch of government, in violation of all principle, and all safety condensed in this aristocratic senate: we have seen the representative, or democratic branch, weakened exactly in proportion to the strengthening the aristocratic. . . ." The Senate was the "great efficient body" of this new government and the fetus of an aristocratic domination.[4]

The same theme runs through the Anti-Federalists' criticisms of the executive, though there was more ambiguity here than might be expected. Many Anti-Federalists thought that a unitary executive was necessary, for the sake of both efficiency and responsibility, and agreed with The Federal Farmer that the office of the President and the mode of his election were well conceived. There was a fair amount of sympathy for a strong (even, under some circumstances, a hereditary) executive to resist the aristocratic tendencies of the legislature; and some of the Anti-Federalists objected that the President would be too weak to stand up to the Senate and would become a mere tool of aristocratic domination.[5] The Federal Farmer went so far as to justify a strong executive as providing that unifying "first man" that even republics need.*[6] The more common Anti-Federal view, however, was a rather pedestrian hostility to a strong executive. Some continued to argue in favor of a plural executive or an executive council, as Randolph and Mason had done in Philadelphia, to avoid the danger of monarchy and dominance by one section.*[7] Many objected that with his veto, his powers as commander-in-chief, his powers of appointment, and his general authority to see that the laws are faithfully executed, the "President-General"—as many of them called him, after the executive officer in the Galloway Plan of Union in 1774—could find justification for almost anything he might wish to do.[8] Young William Symmes shrewdly anticipated the grounds of later Presidential expansion.

> But was ever a commission so *brief,* so *general,* as this of our President? Can we exactly say how far a faithful execution of the laws may extend? or what may be called or comprehended in a faithful execution? If the President be guilty of a misdemeanor, will he not take care to have this excuse? And should it turn against him, may he not plead a mistake! or is he bound to understand the laws, or their operation? Should a Federal law happen to be as generally expressed as the President's authority; must he not interpret the Act! For in many cases he must execute the laws independent of any judicial decision. And should the legislature direct the mode of executing the laws, or any particular law, is he obliged to comply, if he does not think it will amount to a faithful execution? For to suppose that the legislature can make laws to affect the office of President, is to destroy his independence, and in this case to supersede the very constitution. Is there no instance in which he may reject the sense of the legislature, and establish his own, and so far, would he not be to all intents and purposes absolute?[9]

Better, said Patrick Henry, a dictator in times of need, like the one we had in 1781, who was chosen for his personal qualities and who rendered up his

power after using it gloriously, rather than this American presidency which can scarcely be expected to be filled by a train of such men.[10]

In the Constitutional provisions for the judiciary, too, the Anti-Federalists thought they saw the tracks of a consolidating aristocracy. The weakening of the place of the jury, the provision for a complete system of national courts, the extensive jurisdiction of the national judiciary, the provision for appeal to the Supreme Court on questions of fact as well as law, and the supremacy of the Constitution and the laws and treaties made thereunder all seemed to give enormous power over the vital daily concerns of men to a small group of irresponsible judges.[11] Although the broadest reaches of the judiciary, described subsequently by Hamilton and Marshall, were seldom canvassed during the ratification debates, the Anti-Federalists glimpsed enough to make them wary.*[12] The most farsighted of them, Brutus, very accurately anticipated the breadth with which the Supreme Court would construe its own powers and those of the general legislature and the line of reasoning that would be used. "I question whether the world ever saw, in any period of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible." Brutus predicted, moreover, the judicial review of acts of Congress and the consequent supremacy of an irresponsibile judiciary. "If . . . the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature."[13] The Federal Farmer joined Brutus in trying to show that the federal judiciary was a threat not only to state courts and to individuals but to the regime as a whole. Americans, accustomed to look to courts as checks on legislative and executive excesses, had forgotten their inherent arbitrariness. "We are not sufficiently attentive to the circumstances, that the measures of popular legislatures naturally settle down in time, and gradually approach a mild and just medium; while the rigid systems of the law courts naturally become more severe and arbitrary, if not carefully tempered and guarded by the constitution, and by laws, from time to time." Indeed, The Federal Farmer concluded—in direct contradiction to Publius' later contention that the judiciary was politically the "least dangerous" department—that "we are more in danger of sowing the seeds of arbitrary government in this department than in any other."*[14] Thus some Anti-Federalists saw the general judiciary as a locus from which an irresponsible aristocracy of legal skill might gradually and irresistibly encroach on the more popular parts of government, an anticipation of more recent concerns about the implications of legal rationality and bureaucratization.

In reply to all of these objections, the Anti-Federalists complained, they were told, "trust your rulers; they will be good men." According to the Federalists, Centinel said, "a good administration will atone for all the defects in the government, which, say they, you must necessarily have, for how can it be otherwise, your rulers are to be taken from among your-

selves."[15] A considerable amount of Anti-Federalist heat on this subject was generated by Judge Thomas McKean, who was reported to have said in the Pennsylvania ratifying convention that "though a good system is certainly a blessing, yet the wealth, the prosperity, and the freedom of the people, must ultimately depend upon the administration of the best government. The wisdom, probity and patriotism of the rulers, will ever be the criterion of public prosperity; and hence it is, that despotism, if well administered, is the best form of government invented by human ingenuity."*[16] Few Federalists went so far. Indeed, their principal argument was precisely that the interior arrangements of the Constitution were premised on a very realistic view of the untrustworthiness of rulers and cautiously provided "by opposite and rival interests, the defect of better motives." In the new system, "interest and integrity will be connected by the closest ties."[17] Nevertheless all the Federalists insisted that there must be some degree of confidence in rulers. Some relied heavily on the wisdom and virtue of the men they expected to be in charge of the new government. Thus a Federalist writer in Georgia contended that "none will be distinguished with places of trust but those who possess superior talents and accomplishments. . . ." Cassius, in a reply to Richard Henry Lee, argued that the House of Representatives would consist of men "of unsullied reputations;—of men, in whose bosoms the *sacred* principle of patriotism has, *always*, glowed in its utmost purity;—of men, who, in every possible situation of affairs, have, *invariably*, discovered an uncorruptible attachment to their country. . . ."[18] More commonly, however, the Federalist position was that jealousy of rulers must be kept within some kind of bounds, and not "extended to a degree which is degrading and humiliating to human nature. . . ."[19] "It is said that there ought to be jealousy in mankind," said Iredell. "I admit it as far as is consistent with prudence; but unlimited jealousy is very pernicious."[20] "[M]ean jealousy and groundless distrusts . . . in some measure authorize [our representatives] to betray their trust. . . ."[21] In the balanced terms of Publius, "the supposition of universal venality in human nature is little less an error in political reasoning than the supposition of universal rectitude. The institution of delegated power implies that there is a portion of virtue and honor among mankind, which may be a reasonable foundation of confidence."[22]

Nevertheless the extent to which the Federalists were willing to rely on the virtue and honor of the rulers seemed to the Anti-Federalists foolish or suspicious. A wise people will never place themselves in the hands of arbitrary government in the hopes that it will be virtuous. "Let us not flatter ourselves that we shall always have good men to govern us." The Spirit of '76 was not trust in rulers. "Confidence," Elbridge Gerry said in Philadelphia, "is the road to tyranny."*[23] Of course no one denied that confidence is a necessary part of representative government (though it could be argued that that is precisely one of the reasons why representative government is so

problematical), and the Anti-Federalists wanted to provide a basis for a reasonable degree of confidence by, among other things, increasing the representation in the House of Representatives. But public office tends to attract bad men and to bring out the worst in good ones. "[C]onstitutions are not so necessary to regulate the conduct of good rulers as to restrain that of bad ones." "Scruples would be impertinent," Robert Lansing told the New York convention, "arguments would be in vain, checks would be useless, if we were certain our rulers would be good men; but for the virtuous government is not instituted: its object is to restrain and punish vice; and all free constitutions are formed with two views—to deter the governed from crime, and the governors from tyranny." And while the Anti-Federalists, with Melancton Smith, would not affirm that all men are dishonest, in forming a constitution it is well to be on the safe side and assume that they are.*[24]

The irony is that whereas "the primary object of government" is "to check and controul the ambitious and designing," government tends to become itself the tool of these very men. Thus the overriding concern of the founder, the statesman, and the alert citizen should be the danger of insidious usurpation by the few, the inevitable and persistent pressure of "the artful and ever active aristocracy."[25] If the people will not or cannot govern themselves, the few will do it; and the fact is that the people generally cannot govern themselves, at least not outside their small communities, which is another argument for the small republic.[26] The few never sleep, while the many are rarely truly awake. "The aristocracy," said A [Maryland] Farmer, "who move by system and design, and always under the colourable pretext of securing property, act as has been frequently said like the screw in mechanics, always gaining, holding fast what it gains, and never loosing; and in the event has ever proved an overmatch for the multitude, who never act but from their feelings, and are never permitted to feel *until it is too late*. . . ."[27] Were the people always attentive, they could call unfaithful lawmakers home and send others; but they are not always attentive. Thus except under the rare circumstances of the small, homogeneous republic (and perhaps even then) rigorous provision for popular responsibility is not sufficient. "Virtue will slumber," Patrick Henry warned. "The wicked will be continually watching: Consequently you will be undone."*[28]

7
Complex Government

A people can protect themselves, with what ultimate effect remains uncertain, from their own neglectful slumber and the encroachment of the watchful few through properly formed constitutions.[1] Through limited grants of power, tight responsibility, and internal checks, the few may be prevented from doing much harm while the people drowse or pursue their private lives. But it is important to do the job properly while the people are attentive, and this is why the Anti-Federalists distrusted proposals to ratify the Constitution in expectation of future amendments. "[W]e are to expect the ardour of many, yea, of most people, will be abated;—their exertions will cease, or be languid, and they will sit down easy, although they may see that the constitution . . . does not sufficiently guard the rights of the people, or secure them against the encroachments of their rulers." They will consider the work done and neglect their liberties. "Besides, the human mind cannot continue intensely engaged for any great length of time upon one object. As after a storm, a calm generally succeeds, so after the minds of a people have been ardently employed upon a subject, especially upon that of government, we commonly find that they become cool and inattentive. . . ." Future amendments are a weak reliance. "The deed is executed—the conveyance is made—and the power of reassuming the right is gone, without the consent of the parties.—Besides, when a government is once in operation, it acquires strength by habit, and stability by exercise."[2] Before the labyrinth of amendment can be traced, "perhaps the great principles upon which our late glorious revolution was founded, will be totally forgotten."[3]

The great principle of the revolution can be expressed for present purposes as the doctrine of limited government. The Federalists and Anti-Federalists agreed that government is properly directed to the pursuit of limited ends, namely the security of individual rights; and there was very little debate about limited government in this fundamental sense, although, as we have seen, the Anti-Federalists thought the defenders of the Constitution sometimes exceeded these limits.[4] But the chief concern of limited government for the Founding generation was with subordinate limits on governmental action. And here differences begin. The first of these subordinate limits is responsibility to the people. The second is limited powers. These were the major concern of the Anti-Federalists, as we have seen, and

for many they were all that mattered. To this attitude the Federalists' impatient and powerful rejoinder was that it is not sufficient to talk of the dangers of the powers granted when all admit that broad powers are necessary, or to hark back to direct popular responsibility when all agree that a simple democracy would be both impracticable and positively undesirable. The way to limit government effectively is not by niggardly grants of power—which can only result in a government incapable of doing its work except by violating the Constitution—or by simple structure—which can only invite tyranny—but by a properly designed complex internal structure.

In the Federalists' view, one of the Founders' supreme achievements was the construction of a marvelous limited government in this third and crucial sense. Thus Alexander Hamilton argued in the New York Convention that the system of checks and balances in the Constitution "is so complex, so skilfully contrived, that it is next to impossible that an impolitic or wicked measure should pass the scrutiny with success."[5] But where Hamilton saw a finely wrought clock, the Anti-Federalists saw darkness and danger. They found the Constitution inexplicit, obscure, and dangerously complex. "A constitution," Patrick Henry said, "ought to be, like a beacon, held up to the public eye, so as to be understood by every man." But "this government is of such an intricate and complicated nature, that no man on this earth can know its real operation."[6] "[W]here is the man who can see through the constitution to its effects?" another Anti-Federalist asked. "The constitution of a wise and free people, ought to be as evident to simple reason, as the letters of our alphabet—."[7] The Constitution did not establish any identifiable *kind* of government. It was illegitimate as well as obscure. Again and again, the Anti-Federalists spat out their scorn of this "spurious brat," "this bantling," this "13 horned monster," "this heterogeneous phantom."[8] "What kind of government is this?" asked Patrick Henry. "Is this a Monarchy, like England—a compact between Prince and people; with checks on the former, to secure the liberty of the latter? Is this a Confederacy, like Holland—an association of a number of independent States, each of which retain its individual sovereignty? It is not a democracy, wherein the people retain all their rights securely."[9] The "favoured bantling" would have had no name, even, had not James Wilson, "in the fertility of his genius, suggested the happy epithet of a *Federal Republic*."[10]

Yet if the government had been truly a federal government, no complex internal checks would have been necessary. Luther Martin explained "that a *federal government* is formed by the *States*, as *States* that is in their *sovereign* capacities, in the same manner as *treaties* and *alliances* are formed—That a *sovereignty* considered as such, cannot be said to have jarring interests or principles, the one aristocratic, and the other democratic; but that the principles of a *sovereignty* considered as a sovereignty, are the *same*, whether that sovereignty is monarchical, aristocratical, democratical, or mixed—."[11] As we have seen, however, most of

the Anti-Federalists admitted the need for something other than a federal government for the United States, and they admitted in consequence the need for a structure more complex than an assembly of sovereigns.*[12] Indeed, it is striking that while the Anti-Federalists often defended the pre-eminent place of the states in the general government formed by the Articles of Confederation and its very limited powers, they very seldom defended the absence from that government of any differentiation of functions or internal checks.

We come, then, to the question of the structure of the government. Cecelia Kenyon is generally correct in saying that the Anti-Federalists favored a system of separation of powers and checks and balances and would have dissented from the view that checks and balances are incompatible with genuine popular government.[13] The Anti-Federalists typically criticized the Constitution because there was too little separation, not too much, and too few checks, not too many. Yet it is not quite accurate to say, as Kenyon does, that no one among the Anti-Federalists "attacked the general validity of the system of separation of powers and checks and balances." The full explanation is more complex.

One of the major Anti-Federalist statements, the first essay by Centinel, does in fact contain a vigorous attack on the very principle of checks and balances.[14] Centinel chose for his target John Adams, whose discussion of balanced government was probably the best preconstitutional treatment of this matter and was considered by Centinel to have been influential among the Philadelphia delegates.*[15] While considering the differences between Adams and the Anti-Federalists, however, we shall also need to see that in their understanding of balanced government they stand together in contrast to the great theoreticians of the Constitution, such as James Madison and James Wilson. "Mr. Adams's *sine qua non* of a good government," Centinel wrote, "is three balancing powers whose repelling qualities are to produce an equilibrium of interests, and thereby promote the happiness of the whole community." Adams' view is that the governors will always be actuated by self-interest and therefore that it is necessary "to create an opposition of interests between the members of two distinct bodies, in the exercise of the powers of government, and balanced by those of a third."[16] According to Adams—and we are no longer relying on Centinel's report—there have been only three discoveries in the constitution of free government since the time of Lycurgus: "representation, instead of collections of the people; a total separation of the executive from the legislative power, and of the judicial from both; and a balance in the legislature, by three independent, equal branches. . . ."[17] The issue of representation need not concern us at present. The other two modern discoveries are of the utmost importance for the present discussion. As we shall see, the Anti-Federalists accepted and advocated a separation of legislative, executive, and judicial powers (or functions) and a system of checks and balances among them to

maintain the separation and to avoid a concentration of power. But Adams' "balance" is essentially a balance within the legislature, and more important it is a balance of "orders" in the community—not hereditary orders but the natural arrangements of many, few, and one. This view cuts across and gets intertwined with the notion of a separation of the legislative, executive, and judicial functions; but the basic concern is with the balance of the different parts of the community, their different interests, and their different claims to rule, whether those parts are king, lords, commons; the many and the few; or any other fundamental differentiation.[18] This approach grows out of the great tradition of the mixed regime.*[19] As we shall see, the major Federalist theoreticians sharply modified or even abandoned this approach, providing a new statement of the whole issue of balanced government. Before considering this, however, we need to pursue further the Anti-Federalists' disagreement with Adams. For it is here, more than in their responses to specific provisions of the Constitution, that their own view of the question of "mixed" or "complex" or "balanced" government becomes most clear.

What is crucial for this purpose is that Adams directly and explicitly rejects the idea of simple government. Centinel, on the other hand, advocates simple government, and most of the Anti-Federalists were at least inclined in that direction, despite all their participation in the discussion about balances. Centinel contends that a system such as Adams' is beyond the wisdom of man to establish and maintain and that it would in any case not accomplish its objectives. "If the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?" The true principle—or perhaps it would be better to say the pure or primary principle—of free government is not balance but responsibility. "I believe it will be found that the form of government, which holds those entrusted with power, in the greatest responsibility to their constituents, the best calculated for freemen." A republican or free government can only exist where the people are virtuous and property evenly distributed; "in such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when this ceases to be the case, the nature of government is changed, and an aristocracy, monarchy or despotism will rise on its ruin."[20] This is of course a version of the argument for the small republic that we have considered above. Responsibility is best attained in a government of simple structure, under which the people can quickly and easily identify the source of abuse. Complex governments, A [Maryland] Farmer argued, "seem to bid defiance to all responsibility, (the only true test of good government) as it can never be discovered where the fault lies. . . ."[21]

If this is a basic Anti-Federalist position, or at least tendency, why was it not more often explicitly put forward? Why did the Anti-Federalists spend

most of their time arguing about the inadequacy of the checks and balances provided in the Constitution rather than taking a firm stand for simple and responsible government? Part of the reason is that the conditions for simple government did not exist in the case of the general government; but there is a deeper problem, which is connected with the aristocratic tendency of government that we have already discussed.[22] The case for simple government never seems to be squarely put, either in theory or in practice. The extraordinary men, who have an interest in great, enterprising, ambitious government, are in control of both the councils of state and the theory books.

> Is it . . . possible that governments of simplicity and equal right, can have been fairly dealt by in theory or practice? The votaries of tyranny and usurpation stand not alone—in bitter opposition; every man of enterprize, or superior talents and fortune, is interested to debase them; their banners have ever been deserted because they never can pay their troops.—The most amiable and sensible of mankind seems to have made a stand in favour of a mixed government, founded on the permanent orders and objects of men. Thither I suspect the American government is now tending. If it must be so—Let it go gently then—with slow and equal steps.[23]

It is almost as if the fate of simple government is sealed once simple government is questioned or challenged—which means whenever any man exercises his greater ambition, or wisdom, or virtue. As the Anti-Federalists saw an inevitable aristocratic impulse in civil society, so they saw an irresistible tendency toward complex government. And however much they regretted it—and unlike the Federalists they did regret it—they saw more or less the necessity of accepting this tendency and putting it to the service of liberty. John Adams stressed that there are numerous sources of inequality even in America, arising from differences "founded in the constitution of nature" in wealth, talents, and family background. These differences give rise to a "natural aristocracy," which "forms a body of men which contains the greatest collection of virtues and abilities in a free government, is the brightest ornament and glory of the nation, and may always be made the greatest blessing of society, if it be judiciously managed in the constitution." But the natural aristocracy must be managed; otherwise it is dangerous and cannot fail to lead to the destruction of the commonwealth. The instrument of management is a carefully designed complex government.[24] However tempting the Anti-Federalists found Turgot's contention that complex government was unnecessary in America because there were no fixed orders and all men were equal, they saw the force of Adams' rebuttal. Thus A [Maryland] Farmer, one of the strongest advocates among the Anti-Federalists of simple government, was driven to conclude that the great task of a free people is to manage and control the natural aristocracy. "In fine, in all governments by *representation* or *delegation of power,* where property is secured by fixed and permanent laws, from the rage of the

populace on one side, and the tyranny of a despot on the other, the aristocracy will and must rule; that is a number of the wealthiest individuals, and the heads of great families:—The perfection of all political wisdom is so to temper this aristocracy as to prevent oppression." A [Maryland] Farmer's view both of the problem and the solution was much like Adams': "The only remedy the ingenuity of man has discovered for this evil is—a *properly constituted and independent executive,* a vindex injuriarum—an avenger of public wrongs; who with the assistance of a third estate, may enforce the rigor of equal law on those who are otherwise above the fear of punishment. . . ."[25] The result was of course a much less unfavorable view of a strong executive and even of hereditary orders than might have been expected.

Many Anti-Federalists shared something of this view, though few had A [Maryland] Farmer's insight. The Anti-Federal position is characterized, finally, not so much by a commitment to simple government as by a strong tendency to think in terms of a great and traditional alternative: on the one hand, simple, responsible government based on a small homogeneous population, and on the other hand, complex, balanced government based on more or less fixed and permanent orders. The Anti-Federalists were likely to hold that simple (or relatively simple) government is more conducive to freedom, that it should be preserved as long as possible, and that a hasty and crude attempt to imitate more mature forms can only be disastrous;[26] but many saw merit in a balance of orders, as well as a more or less irresistible tendency in that direction. Their argument was that the Constitution failed to provide adequately for *either* simple government *or* balanced government. It was an imitation of the British government, built without the essential British materials.

"In the British Government there are real balances and checks," Patrick Henry argued; "In this system, there are only ideal balances. . . . The President and Senators have nothing to lose. They have not that interest in the preservation of the Government, that the King and Lords have in England. They will therefore be regardless of the interests of the people." This absence of checks based on the interests of permanent orders was what Henry meant when he said, "tell me not of checks on paper, but tell me of checks founded on self-love."*[27] Henry, who had earlier objected that the Constitution had a squint toward monarchy, was teased for his warm praise of the British monarchy; but he freely owned "that if you cannot love a Republican Government, you may love the British monarchy. . . ."[28] In America there could be no genuine monarchy; nor were there the social materials for a genuine differentiation of the two branches of the legislature. Thus The Federal Farmer warned that "the partitions between the two branches will be merely those of the building in which they sit: there will not be found in them any of those genuine balances and checks, among the real different interests, and efforts of the several classes of men in the community we aim at; nor can any such balances and checks be formed in the

present condition of the United States in any considerable degree of perfection. . . ." The Federal Farmer thought that it was impossible that a Senate organized on "pure principles" could offset the democratic House of Representatives, and this important explanation followed:

I say, on pure principles; because I make a distinction between a senate that derives its weight and influence from a pure source, its numbers and wisdom, its extensive property, its extensive and permanent connections; and a senate composed of a few men, possessing small property, small and unstable connections, that derives its weight and influence from a corrupt or pernicious source; that is, merely from the power given it by the constitution and laws, to dispose of the public offices, and the annexed emoluments, and by those means to interest officers, and the hungry expectants of offices, in support of its measures. I wish the proposed senate may not partake too much of the latter description.*[29]

The Anti-Federalists were, here again, the conservatives, believing that the framers of the Constitution had fallen awkwardly and dangerously between the two stools of simple, responsible government and genuine balanced government. On the other hand, the Federalists claimed—or the most thoughtful of them did—that they had provided a new and better kind of balanced government. Consider, in contrast to The Federal Farmer's view of a senate, James Madison's proposal to his fellow delegates in Philadelphia. Madison argued that under American conditions the weight of the Senate would depend largely on the organization and powers given to it by the Constitution and not on anything intrinsic to its members or their social status. He urged the framers, that is to say, *not* to try to represent a certain social order or to represent property in the Senate (although neither of these is entirely absent, even in Madison's view), but to give their attention primarily to the constitutional organization, powers, and operation of the body, which would determine its weight and character and thus its part in the overall balance of the government.*[30] The Constitution established neither a simple government nor a traditional mixture of orders or estates. Neither was it an attempt, following John Adams and favored (once simple government was admitted to be impracticable) by many Anti-Federalists, to represent and balance the natural orders that exist in any civilized community. It was something new, at least in the sense that it was a full working out of principles partially or incompletely expressed in the state constitutions and in earlier American thinking.*[31] James Monroe saw the distinction clearly and, unlike many of his Anti-Federal colleagues, accepted the new view. In former governments, he explained, the object of the distribution of powers had been to maintain "a composition or mixture of aristocracy, democracy, and monarchy, each of which had a repellent quality which enabled it to preserve itself from being destroyed by the other two; so that the balance was continually maintained." In America, on the other hand, the object of the division of power is to provide "a more faithful and regular administration," and to prevent a union of governmental power, with all its

dangers for the people.*[32] It is this new kind of balanced government that is described and defended in *The Federalist* and of which James Madison is the chief theoretician.

This new kind of balanced government can best be explored by approaching it through the separation of powers, the need for which, as Cecelia Kenyon correctly says, the Anti-Federalists fully accepted. A Pennsylvania Anti-Federalist made a common complaint when he wrote of the proposed Constitution that "the LEGISLATIVE and EXECUTIVE powers are not kept separate as every one of the American constitutions declares they ought to be; but they are mixed in a manner entirely novel and unknown, even in the constitution of Great Britain. . . ."[33] Even Centinel, who advocated a unicameral legislature, assumed as a matter of course "separating the executive and judicial." He argued, indeed, that "the chief improvement in government, in modern times, has been the compleat separation of the great distinctions of power; placing the *legislative* in different hands from those which held the *executive;* and again severing the *judicial* part from ordinary *administrative*." And Brutus, while contending for the principle of strict accountability to the people, went on to say that "to have a government well administered in all its parts, it is requisite the different departments of it should be separated and lodged as much as may be in different hands."[34]

The assumption behind such a separation (although neither Federalists nor Anti-Federalists give it much attention) is that all governments perform certain kinds of functions, which are best performed in distinctive ways and by distinctive kinds of bodies. "It is one of the greatest advantages of a government of different branches, that each branch may be conveniently made conformable to the nature of the business assigned to it. . . .*[35] The legislative function requires large numbers, more or less public gatherings, procedures to foster deliberation, etc. The executive function requires, as was said so often, secrecy, energy and dispatch. Judging requires manifest impartiality and special training in the artificial reasoning of the law. With each branch distinct from the others, each can perform its function in its appropriate way. This division is not aimed primarily at mutual checking but at the efficient performance of certain kinds of tasks.*[36] But two considerations of mutual checking immediately enter. First, there is a political dividend arising out of the functional distinction and the independence of the several branches: if one department becomes tyrannical or stupid, the others may remain sound and thus, to some extent, prevent tyranny or stupidity from seizing the whole government. Second, however, the functional distinction needs to be secured. To maintain their distinctiveness the different branches must be independent, and they require some defense of their independence. Mere parchment barriers will not suffice. Each branch will tend to encroach on the others, if only because of the extreme difficulty of drawing perfectly clear lines between their respective functions. "After

discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others."[37] There are two ways of doing this: by providing an appeal to some common superior—in this case presumably the people themselves—or by providing a capacity of self-defense in the several branches. The former, apart from its other difficulties, is scarcely feasible for everyday use in a large and diverse country, and it was not in fact advocated as such by the Anti-Federalists.*[38] The latter was the main reliance in the Constitution, as it had been in Britain and in the states. This required that the three branches be brought into legitimate contact with one another to avoid illegitimate encroachment; they must be brought together for the purpose of keeping them apart.[39] Thus the executive might be given a veto over legislation for the purpose of securing executive independence, which is in turn necessary to perform effectively the executive function. Most of the Anti-Federalists accepted this in principle,*[40] although some seemed to think that even this limited "mixing" should be avoided, and many thought that the Constitution had gone so far in the mixing as to endanger the separation. While it is true that there may be an incidental security deriving from such checks, the emphasis intended is on the functional discrimination.

Another step in this argument is to regard separation as a way of promoting wise deliberation. Thus one Federalist writer denied Centinel's contention that the branches "were intended to balance one another," explaining that "they all have the same interest"—i.e., that they do not represent different estates or orders.*[41] "The sole intention of [the separation] is to produce wise and mature deliberation. Experience teaches us that individuals or simple bodies of men are liable to rash and hasty decisions—to party influence and cabal—that we are generally fond of what originates with ourselves—and that another person of no greater ability than ourselves, will easily discern a blemish in our productions to which we are blind until it be pointed out."*[42] Arguments like this were extensions of the view of the separation of powers as promoting the proper conduct of the government's business by keeping the bodies that perform the functions of government separate and distinct.

In practice it is easy to move from considerations of this kind to a different notion of "balanced government," in which the separation of governmental power and mutual checking are seen as desirable quite apart from functional differentiation. In principle, however, this second view originates not with different governmental functions and their different modes but with government or political power per se. Political power is necessary but it is dangerous, and a way of guarding against the danger is to divide the power and arrange it in ways that prevent too much of it from accumulating in any one set of hands. Since the sovereign power in a state was traditionally held

to reside in the legislature, the problem of concentration of power and the solution of dividing and balancing power were often applied to the legislature only.*[43] There is no necessary identity between this separation of *power,* as we may call it, and the earlier separation of *functions.* A usual view would have been that there should be a separation of the legislative, executive, and judicial *functions* and a separation and balancing of *power* within the legislature. (And this would be likely, in turn, to be connected, as in Adams' case, with the balancing of social orders.) However, a separation of functions and a separation of power easily become linked and confused. The functional differentiation can be used to distribute power.*[44] In particular, the legislature may not only be divided from within but it may be made part of a broader balance. The practical danger of legislative sovereignty is met by external as well as internal checks. And the theoretical claim of legislative sovereignty is met by the notion that the legislature is not sovereign but is the mere creature of the Constitution (behind which stands of course the people), which apportions power to the legislature and establishes limits on it as one among several instrumentalities of government and which enforces those limits by a nicely arranged scheme of constitutional (not merely legislative) balance.

The complex or balanced government provided for in the Constitution is, then, fundamentally a balance of *constitutional* orders or powers, blended with a constitutional differentiation of functions, formed by the makers of the Constitution and requiring only the impulse of popular consent to breathe life into it and the private interests and ambitions of citizens and representatives to keep it in motion. It was on this basis that James Wilson considered it the distinction of the Americans to have invented a mixed government made wholly out of popular elements. "What is the nature and kind of that government which has been proposed for the United States by the late Convention? In its principle, it is purely democratical. But that principle is applied in different forms, in order to obtain the advantages, and exclude the inconveniences, of the simple modes of government."*[45] The differences are not derived from natural or conventional differentiations of society but are constitutional or legal constructs.

In their different ways and according to their various capacities, the Anti-Federalists doubted the theoretical soundness, the practical feasibility, and even the good intentions of this new kind of balanced government.*[46] While accepting the need for a separation of functions—and typically insisting that the Constitution did not go far enough in this respect—the Anti-Federalists became uneasy as concern shifted to what we have called a separation and balancing of power. They conceded only reluctantly the insufficiency of simple popular government, and they were likely to judge constitutional arrangements according to how well they secured popular responsibility, a test that the proposed Constitution seemed to fail. Moreover, to the extent that the Anti-Federalists accepted the need for

some form of complex government beyond a mere division of functions, they thought in traditional terms of a government composed of representatives of social orders—either the fixed orders of a mature Britain or the natural orders of a youthful America. Only such a mixture, intimately tied to the divisions inherent in society, could provide genuine checks among the parts of the government and thereby prevent the government from becoming independent of and hostile to the society. The Anti-Federalists admitted that there were slender materials for such a mixture in the United States, which was all the more reason for proceeding slowly and letting American government mature as American society matured. Instead, the framers rushed into a mere constitutional imitation of mixed government, which combined great powers with severely limited popular responsibility and ineffective internal checks.

8
Bill of Rights

It is often said that the major legacy of the Anti-Federalists is the Bill of Rights. Many of their suggestions found their way into the proposals for amendment made by state ratifying conventions and thence into the first ten amendments adopted in 1791. Three kinds of rights were stressed: the usual common law procedural rights in criminal prosecutions, liberty of conscience, and liberty of the press. The Anti-Federalists insisted that the Constitution should explicitly recognize the traditional procedural rights: to be safe from general search and seizure, to be indicted by grand jury, to trial by jury, to confront witnesses, and to be protected against cruel and unusual punishments. The most important of these was the trial by jury, and one of the most widely uttered objections against the Constitution was that it did not provide for (and therefore effectively abolished) trial by jury in civil cases. The Federalists' claim that practice among the states in this respect varied too much to provide a general rule was either denied by the Anti-Federalists or used as a further argument against the feasibility of consolidation. Regarding liberty of conscience, the Anti-Federalists' position was complex. Typically they favored both governmental encouragement of religion and liberty of individual conscience.[1] The first proposal of the minority of the Pennsylvania convention was that rights of conscience shall be held inviolable and that no state provision regarding liberty of conscience shall be abridged by the federal government.*[2] Some Anti-Federalists professed to see in the prohibition against a religious test for officers of the United States a power to regulate religious beliefs in general, to which this prohibition was an exception.*[3] The rights of conscience should be secured, even though there was no immediate threat. Times change, and "the seeds of superstition, bigotry and enthusiasm, are too deeply implanted in our minds, ever to be eradicated. . . ."[4] The third area of concern was liberty of the press, often declaimed upon by the Anti-Federalists as the palladium of American liberties.*[5] "It is the opinion of some great writers," Centinel argued, "that if the liberty of the press, by an institution of religion, or otherwise, could be rendered sacred, even in *Turkey*, that despotism would fly before it." "I say," another Anti-Federalist insisted, "that a declaration of those inherent and political rights ought to be made in a BILL OF RIGHTS, that the people may never lose their liberties by construction. If the liberty of the press be an inherent political right, let it be so declared, that no despot

however great shall *dare to gain say it.*"*[6] All of these concerns were pressed with enough vigor so that the Constitution was adopted only on the understanding that one of the first items of business of the new government would be the framing of amendments.

While the Federalists gave us the Constitution, then, the legacy of the Anti-Federalists was the Bill of Rights. But it is an ambiguous legacy, as can be seen by studying the debate. Indeed, in one sense, the success of the Bill of Rights reflects the failure of the Anti-Federalists. The whole emphasis on reservations of rights of individuals implied a fundamental acceptance of the "consolidated" character of the new government. A truly federal government needs no bill of rights. Indeed, there were some Federalists who tried to use the Anti-Federalists' federalism to destroy the Anti-Federalists' argument for a bill of rights (incidentally undermining their own position). One Alfredus contended, for example, that a bill of rights was not necessary because the Constitution was a compact not between individuals but between sovereign and independent societies.[7] This argument is easy enough to answer, and the Anti-Federalists often answered it: the government under the Constitution was not a mere compact of sovereign states—at least not in its operation—and it was not exempt from the need for a bill of rights on that account. But in making this reply the Anti-Federalists decisively abandoned the doctrine of strict federalism.

A more substantial "federal" argument against a bill of rights was made by James Wilson in his famous "State house speech" of 4 October 1787. Wilson acknowledged the maxim often put forward by the Anti-Federalists that in establishing governments all powers not expressly reserved are presumed to be granted, but he denied that it applied to the proposed general government, because that was to be a government of specifically enumerated powers. Whereas in the state constitutions the people "invested their representatives with every right and authority which they did not in explicit terms reserve," under the proposed Constitution "the congressional power is to be collected, not from tacit implication, but from the positive grant expressed in the instrument of the union. Hence, it is evident, that in the former case, everything which is not reserved is given; but in the latter the reverse of the proposition prevails, and everything which is not given is reserved." Thus, Wilson concluded, "it would have been superfluous and absurd to have stipulated with a federal body of our own creation, that we should enjoy those privileges of which we are not divested, either by the intention or the act that has brought the body into existence."[8] This is a substantial argument; it was heavily relied on by defenders of the Constitution; and the basic theory on which it rests has become a part of American constitutional orthodoxy. Yet it has some serious difficulties, especially when applied to the question of a bill of rights.

Wilson's position depends on the assumption that the "powers" delegated to the government are fairly easily identifiable and unambiguous.

Thus, for example, he contended that there is no "power" granted to the federal government "to regulate literary publications" and therefore no need for a reservation in favor of liberty of the press. If Congress should enact such a law, the judges would declare it null and void because "inconsistent with those powers vested by this instrument in Congress. . . ."[9] But (even leaving aside the question of libel and seditious libel)[10] the general government is given authority to lay and collect taxes and to regulate commerce, for example, and could not either of these be used to stifle the press? More generally, does not the general government, in the pursuit of its delegated powers, have implied powers that need to be limited for the sake of individual liberties? Cannot the federal government define crimes and criminal procedures, in connection with federal postal regulations, for example; and is there not therefore a need for procedural restraints of the traditional kind? Brutus made the argument thus: "The powers, rights, and authority, granted to the general government by this constitution, are as complete, with respect to every object to which they extend, as that of any state government—It reaches to every thing which concerns human happiness—Life, liberty, and property, are under its controul. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits, as in that of the state governments."[11]

The constitutional grant of power to Congress—so laconic and broad—is an argument in favor of a bill of rights, not against it. In fact, said the satirical Aristocrotis, "this constitution is much better and gives more scope to the rulers than they durst safely take if there was no constitution at all; for then the people might contend that the power was inherent in them; and that they had made some implied reserves in the original grant; but now they cannot, for every thing is expressly given away to government in this plan."[12] Who can overrule the pretensions of Congress that any particular law is "necessary and proper"? "No one; unless we had a bill of rights to which we might appeal, and under which we might contend against any assumption of undue power and appeal to the judicial branch of the government to protect us by their judgements."[13]

The inadequacy of Wilson's argument is further demonstrated by the presence in the Constitution of a truncated bill of rights. Why was there any need to restrict the suspension of the writ of habeas corpus or to prohibit granting titles of nobility? Where were such powers granted? The very few Federalists who made any attempt to meet this objection sought to show that these were exceptions to implied powers,[14] but this only reenforced the contention that the "powers" granted are anything but simple and unambiguous—that they are in fact complex and doubtful and capable of great extension.

Nor was it any use to point, as some Federalists did, to the state bills of rights or to the general principles of the common law. The Constitution is an original compact, dependent on nothing but itself. It "is not dependent on

any other book for an explanation, and contains no reference to any other book. All the defences of it, therefore, so far as they are drawn from the state constitutions, or from maxims of the common law, are foreign to the purpose."[15]

Even if it were granted that a bill of rights was, strictly speaking, unnecessary, the Anti-Federalists asked, why not be safe? What is the harm? Would it, Patrick Henry asked, have taken too much paper? One answer was that a bill of rights would be positively dangerous, because, as Wilson explained, "it would imply that whatever is not expressed was given, which is not the principle of the proposed constitution."[16] There is some basis for this view. Yet the Anti-Federalists could forcefully contend that any harm of this kind had already been done by the reservations in behalf of individual rights included in the Constitution. And, all things considered, this Federalist argument seemed a bit sophistical. "This indeed is a distinction of which the votaries of scholastic philosophy might be proud—but in the political world, where reason is not cultivated independently of action and experience, such futile distinctions ought not to be agitated."[17]

Despite all their rhetorical emphasis on a bill of rights, however, the Anti-Federalists were typically quite doubtful about the practical utility of this kind of provision in the new Constitution. Thus Samuel Chase wrote to John Lamb, "A declaration of rights alone will be of no essential service. Some of the powers must be abridged, or public liberties will be endangered, and, in time, destroyed."[18] Of far more practical importance than bills of rights were the powers and structure of the general government—the unlimited power to tax, for example, and the inadequate representation in the federal legislature. A bill of rights, without more, would make little difference. Why, then, did the Anti-Federalists emphasize a bill of rights as much as they did? Why did they invite the brilliantly successful Federalist tactic of first standing fast on all points, then opening the door to a bill of rights and watching the Anti-Federalists stumble through it to a strong national government? In some cases they doubted that they could win on the greater questions. In many cases they must have been influenced by the rhetorical attractiveness of arguments for bills of rights compared to arguments about state prerogatives and federal powers. But there were also deeper reasons. The debate over the bill of rights was an extension of the general debate over the nature of limited government, and at this level the Anti-Federalists can perhaps claim a substantial, though not unmitigated, accomplishment.

"I presume," one Anti-Federalist wrote, "that the liberty of a nation depends, not on planning the frame of government, which consists merely in fixing and delineating the powers thereof; but on prescribing due limits to those powers, and establishing them upon just principles."[19] Yet this seems a bit odd. If liberty depends on establishing *limits* on government, what is government itself for? The problem arises even more sharply in a comment

by the wise Brutus: " . . . in forming a government on its true principles, the foundation should be laid . . . by expressly reserving to the people such of their essential natural rights, as are not necessary to be parted with."[20] Again, is this not putting the cart before the horse? However necessary a reservation of rights may be, how can the *foundation* of government be laid in *reservations* against that very government? To answer that question is to grasp the Anti-Federalist case for a bill of rights in its most fundamental aspect.

The Federalists contended that the proponents of a bill of rights failed to grasp the crucial fact that a constitution *is* a bill of rights. A bill of rights was unnecessary, Judge McKean told the Pennsylvania ratifying convention; "for in fact the whole plan of government is nothing more than a bill of rights—a declaration of the people in what manner they choose to be governed."[21] "What have we to do with bills of rights?" Edmund Randolph asked his fellow Virginians. Many states have none, and the predilection for it has arisen from a misunderstanding of its principles. In England, where the king might do what he liked in the absence of restraint, the bill of rights is needed; but in a republic it is useless if not dangerous.[22] A country free from its birth and resting on constitutions establishing government and granting its powers has no need to imitate the bills of rights of a country that established its liberty by gradual encroachments on royal prerogative.[23] The place to look for security of liberty is not in bills of rights, Benjamin Rush said, but in a pure and adequate representation. He considered it "an honor to the late convention, that this system has not been disgraced with a bill of rights," although he intended no reflection upon those states "which have encumbered their constitutions with that idle and superfluous instrument."[24] "Men in full possession and enjoyment of all their natural rights, cannot lose them but in two ways, either from their own consent, or from tyranny. This Constitution, neither implies the former, nor creates an avenue to the latter. Therefore no cause can operate to this effect,—because the *people,* are always both able and ready, to resist the encroachments of Supreme Power."[25]

One reply to these arguments—one that strikes the Federalists close to home—is that the supremacy of the people does not secure the rights of individuals and minorities against the majority. As we have seen, some of the Anti-Federalists argued that one of the functions of a bill of rights in a republican government is to serve as a check against majority faction. To the question, whom does a bill of rights protect in a popular government? Agrippa answered: "such a government is indeed a government by ourselves; but as a just government protects all alike, it is necessary that the sober and industrious part of the community should be defended from the rapacity and violence of the vicious and idle. A bill of rights therefore ought to set forth the purposes for which the compact is made, and serves to secure the minority against the usurpation and tyranny of the majority."[26]

Moreover, the Anti-Federalists contended that *this* constitution was not an adequate bill of rights. If ever there was a case for an explicit reservation of individual rights, the proposed constitution provided one, with its very extensive powers, its shadow of genuine representation, and its weak and dubious checks on the encroachments of the few. Identical considerations apply to the Federalist argument that the states would serve as powerful checks on the general government.[27] If the general government lays excessive taxes, "the constitution will provide . . . no remedy for the people or the states—the people must bear them, or have recourse, not to any constitutional checks or remedies, but to that resistance which is the last resort, and founded in self-defence."*[28] The state legislatures can only check the general legislators "by exciting the people to resist constitutional laws."*[29] The best of the Federalists understood the validity of this point. Although they judged the states' intrinsic advantages to be weightier, longer-lasting, and more dangerous than did the Anti-Federalists, they saw that the Constitution placed the weight of legality on the side of the federal government. The ultimate check is, indeed, the revolutionary one, made more significant, however, by the support and coherence that the state governments will lend the populace in case of such an ultimate resort. After all, Publius emphasized, along with many defenders of the Constitution, the ultimate security of the people rests in their understanding of their rights and their willingness to defend them.*[30]

This leads to the deepest level of the argument over a bill of rights. The final Federalist answer to the question, what harm can a bill of rights do? was the seldom explicitly stated fear that a bill of rights, especially undue emphasis on a bill of rights, might weaken *government,* which is the first protection of rights and which was in 1787 in particular need of strengthening. The first defense of individual rights is a government able to accomplish the necessary tasks of self-defense, regulation of commerce, administration of justice, etc. Loose and easy talk about rights was likely to distract attention from the difficult but fundamental business of forming a government capable of doing the things that have to be done to protect rights.*[31]

The Anti-Federalists replied that the need for government is not yet the bedrock of the free republic. For there remains the question, what does that government depend on? On nothing, as the Federalists themselves admit, but the people themselves, specifically on the people's understanding of the purpose of government, their sharp-eyed scrutiny of the actions of government, and their willingness to resist the encroachments of that government on their own behalf and that of their fellow citizens. An enumeration of individual rights and of the basic principles of free government at the head of the Constitution "can inspire and conserve the affection of the native country, they will be the first lesson of the young citizens becoming men, to sustain the dignity of their being. . . ." Specific reservations in favor of individual liberty actually strengthen republican government by

strengthening the people's attachment to it.[32] Even admitting that all rights not expressly given up are reserved, and admitting of course that no bill of rights can add anything to men's natural rights, there are "infinite advantages," The Federal Farmer insisted, in an enumeration of reserved rights.

> We do not by declarations change the nature of things, or create new truths, but we give existence, or at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot. If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book.[33]

This is the reason for bills of rights serving, as they often did in the state constitutions, as *preambles,* often of an exhortatory kind. This is the reason for apparently paradoxical arguments like that of Brutus, that reservations of individual rights precede, in principle, the very government against which those reservations are made. The fundamental case for a bill of rights is that it can be a prime agency of that political and moral education of the people on which free republican government depends. The famous Virginia Declaration of Rights of 1776 held "that no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles."[34] One of the main texts in which these principles are to be read is a well-formed bill of rights, reminding citizens of the beginning and therefore of the end of civil government.

9
Conclusion

The Anti-Federalists lost the debate over the Constitution not merely because they were less clever arguers or less skillful politicians but because they had the weaker argument. They were, as Publius said, trying to reconcile contradictions. There was no possibility of instituting the small republic in the United States, and the Anti-Federalists themselves were not willing to pay the price that such an attempt would have required. A basis for republican government and the solution of the problems of republican government had somehow to be found in the great and complex republic. To this task the framers directed their attention, and the Constitution was their magnificent response. The Federalists, moreover, reminded Americans that the true principle of the Revolution was not hostility to government but hostility to tyrannical government. They sought to recover the balance that Americans had lost in the zeal of revolution. "There is no quarrel between government and liberty; the former is the shield and protector of the latter. The war is between government and licentiousness, faction, turbulence, and other violations of the rules of society, to preserve liberty."[1]

In the commencement of a revolution which received its birth from the usurpations of tyranny, nothing was more natural than that the public mind should be influenced by an extreme spirit of jealousy. To resist these encroachments, and to nourish this spirit, was the great object of all our public and private institutions. The zeal for liberty became predominant and excessive. In forming our Confederation, this passion alone seemed to actuate us, and we appear to have had no other view than to secure ourselves from despotism. The object certainly was a valuable one, and deserved our utmost attention; but, sir, there is another object, equally important, and which our enthusiasm rendered us little capable of regarding: I mean a principle of *strength* and *stability* in the organization of our government, and *vigor* in its operations.*[2]

The framers of the Articles of Confederation, misled by the vigor and good sense displayed by the people during the war, made the "amiable mistake" of thinking that the Americans needed no government, "that the people of America only required to know what ought to be done to do it."[3] The Americans are, however, like other men, which is to say that they cannot be relied on to govern themselves voluntarily. The Anti-Federalists' fondness for the small republic and their concern with the inculcation of civic virtue amounted to an attempt to push aside this harsh truth.[4] Thus

they refused to accept, or they accepted only halfheartedly, that the prime need was a government with a capacity to govern and not dependent for its goodness and trustworthiness on the everyday goodness and trustworthiness of the people or their representatives. The Constitution was designed so that, as far as possible, the ordinary operations of government would call for little more than the reliable inclination of men to follow their own interests, fairly narrowly understood. This system has been remarkably, if not gloriously, successful.

If, however, the foundation of the American polity was laid by the Federalists, the Anti-Federalist reservations echo through American history; and it is in the dialogue, not merely in the Federalist victory, that the country's principles are to be discovered. The Anti-Federalists were easily able to show that the Constitution did not escape reliance on republican virtue. One of the chief replies to the critics' descriptions of dangers of the new and powerful general government was that the American people could be trusted to elect good men to office and to keep them under scrutiny while there. There were frequent remarks like that of James Wilson that the framers must have assumed that the people and the states would give proper attention to the men elected to the legislature: "If they should now do otherwise, the fault will not be in Congress, but in the people . . . themselves. I have mentioned oftener than once, that for a people wanting to themselves, there is no remedy."[5] "Let the Americans be virtuous," an anonymous Federalist wrote, "let them be firm supporters of Republicanism—let them have confidence in their representatives—then their Liberties will be secured to them, and peace and prosperity will ensue."*[6] Nor were these only the arguments of lesser Federalist thinkers or the ones least free of the old reliance on civic virtue. Madison himself defended the provisions for representation on the ground that "the people will have virtue and intelligence to select men of virtue and wisdom." He went on to ask:

> Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks, no form of government, can render us secure. To suppose that any form of government will secure liberty or happiness without any virtue in the people is a chimerical idea. If there be sufficient virtue and intelligence in the community, it will be exercised in the selection of these men; so that we do not depend on their virtue, or put confidence in our rulers, but in the people who are to choose them.[7]

Publius, too, perhaps the least equivocal advocate of the constitutional system of channeled self-interest, remarked that the genius of the American people is such as to make it unlikely that they will put up with the loss of their liberty, or will take no interest in the activities of the government, or will choose ignorant or bad men as representatives. The crucial point is conceded in *The Federalist,* no. 55, where Publius argues that "as there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust, so there are other qualities in human nature,

which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form."[8] Publius did not here name the "other qualities"—itself a point of some interest—but they must include an enlightened understanding of the objects of government, a degree of public-spiritedness, a participation in citizenship as distinct from a merely private life.

Given this kind of argument, the Anti-Federalists could rightly contend that the new Constitution does, after all, depend on something like republican virtue. It is distinguished not by emancipation from this old dependence but by a lack of much attention to the question of how that necessary republican virtue can be maintained. As they took for granted a certain kind of public-spirited leadership,*[9] so they took for granted the republican genius of the people; but that cannot prudently be taken for granted.

The Federalist solution not only failed to provide for the moral qualities that are necessary to the maintenance of republican government; it tended to undermine them. Will not the constitutional regime, the Anti-Federalists asked, with its emphasis on private, self-seeking, commercial activities, release and foster a certain type of human being who will be likely to destroy that very regime?

> It is alledged that the opinions and manners of the people of America, are capable to resist and prevent an extension of prerogative or oppression; but you must recollect that opinion and manners are mutable, and may not always be a permanent obstruction against the encroachments of government; that the progress of a commercial society begets luxury, the parent of inequality, the foe to virtue, and the enemy to restraint; and that ambition and voluptuousness aided by flattery, will teach magistrates, where limits are not explicitly fixed to have separate and distinct interests from the people, besides it will not be denied that government assimilates the manners and opinions of the community to it. Therefore, a general presumption that rulers will govern well is not a sufficient security.*[10]

Can a legal system for the regulation of private passions to the end that those passions may be more fully gratified serve as the foundation of civic virtue? Montesquieu argued that the virtue required in a republican government is "the love of laws and of our country," that such love "requires a constant preference of public to private interest," that "every thing . . . depends on establishing this love in a republic; and to inspire it ought to be the principal business of education. . . ."[11] The question is whether the Constitution, as the Federalists understood it, succeeded in laying that argument to rest. The Anti-Federalists contended that it did not; "Whatever the refinement of modern politics may inculcate, it still is certain that some degree of virtue must exist, or freedom cannot live." They rejected "Mandervill's [sic] position . . . 'that private vices are public benefits.' . . ."[12]

The Federalists did not, it should be emphasized, rely on some unseen hand to produce public good out of individual selfishness. The foundation

was the Constitution, and the working of the system depended upon an attachment of the people to the Constitution. It was admitted that that attachment was not sufficiently assured by narrow self-interest. Whereas the Federalists regarded this as a somewhat peripheral problem, however, to be dealt with by avoiding certain kinds of mistakes and providing auxiliary institutions, such as judicial review, the Anti-Federalists saw it as a permanent and central concern of the republic.

The matter was canvassed most profoundly on the Federalist side by Publius in *The Federalist,* no. 49, and by Chief Justice John Marshall in his Opinion in *Marbury* v. *Madison.*[13] A brief consideration of the former will suffice for the present purpose. The specific question was how to settle disputes between the different departments of government and whether provision should be made, as Jefferson had suggested, for appeals in such cases to the people. Publius treated this proposal with great respect, due not only to its author but also to its theoretical cogency, given the principles of popular government; but he rejected it. Two arguments are of special importance here. First, he suggested that every appeal to the people "would carry on implication of some defect in the government," and "frequent appeals would in great measure deprive the government of that veneration, which time bestows on every thing, and without which perhaps the wisest and freest governments would not possess the requisite stability." While a nation of philosophers would be led to revere the laws by an enlightened reason, "in every other nation, the most rational government will not find it a superfluous advantage, to have the prejudices of the community on its side." Second, Publius pointed to the danger of "disturbing the public tranquillity by interesting too strongly the public passions. . . . Notwithstanding the success which has attended the revisions of our established forms of government and which does so much honor to the virtue and intelligence of the people of America, it must be confessed that the experiments are of too ticklish a nature to be unnecessarily multiplied."*[14]

The basis of this argument is a radical disjunction between the founding of the government and its operation. The circumstances conducive to the good operation of a government under a properly constructed constitution (e.g., a wide variety of interests) are extremely pernicious in the making or altering of the Constitution.[15] American constitutional reform occurred during a time when sharp diversities of opinion were muted and patriotic sentiments relatively great, when confidence in leaders was high, and when excesses of liberty had made the people willing to accept a sound constitution. It was the Americans' good fortune that the need for constitutional reform coincided with circumstances conducive to it, but these circumstances are rare and the coincidence unlikely. As a general rule, "a people does not reform with moderation."[16] It is necessary that every precaution be taken not to upset that original patriotic act and to preserve and foster reverence for the laws, and particularly for the highest law. The Federalist authors did not

argue, as Lincoln later did, that reverence for the laws ought to become the political religion of the nation. They took a narrower view of the problem and proposed more modest means. The task of basic lawmaking having been done, in the main successfully, the aim must be to avoid reopening the fundamental political questions, which were hardly likely to be so well answered another time, and to let time do its work of fostering veneration. Publius' argument was a negative one: do nothing to disturb "that veneration, which time bestows on everything."

But will the mere passage of time be enough? Many of the Anti-Federalists thought that it would not, that the passage of time would magnify the difficulty of preserving the American republic, rather than overcoming it. The Revolutionary preoccupation with liberty, which may have made men forget the need for government, nevertheless had a profound effect in holding the American governments true to their ends. And the spirit of the Revolution was a spirit of dedication to the common good.

> It is next to impossible to enslave a people immediately after a firm struggle against oppression, while the sense of past injury is recent and strong. But after some time this impression naturally wears off;—the ardent glow of freedom gradually evaporates;—the charms of popular equality, which arose from the *republican plan*, insensibly decline;—the pleasures, the advantages derived from the new kind of government grow stale through use. Such declension in all those vigorous springs of action necessarily produces a supineness. The altar of liberty is no longer watched with such attentive assiduity;—a new train of passions succeeds to the empire of the mind;—different objects of desire take place;—and, if the nation happens to enjoy a series of prosperity, voluptuousness, excessive fondness for riches, and luxury gain admission and establish themselves—these produce venality and corruption of every kind, which open a fatal avenue to bribery. Hence it follows, that in the midst of this general contageon a few men—or one—more powerful than all the others, industriously endeavor to obtain all authority; and by means of great wealth—or embezzling the public money,—perhaps totally subvert the government, and erect a system of aristocratical or monarchic tyranny in its room. . . . It is this depravation of manners, this wicked propensity, my dear countrymen, against which you ought to provide with the utmost degree of prudence and circumspection. All nations pass this *parokism* of vice at some period or other;—and if at that dangerous juncture your government is not secure upon a solid foundation, and well guarded against the machinations of evil men, the liberties of this country will be lost—perhaps forever!*[17]

This view is strikingly like that of Abraham Lincoln in his speech in 1838 on "The Perpetuation of Our Political Institutions."[18] And some of the Anti-Federalists also saw the need, if the country was to survive its great moral crises, of leaders "who have genius and capacity sufficient to form the manners and correct the morals of the people, and virtue enough to lead their country to freedom."[19]

Indeed, the crisis might not be so far off. The post-Revolutionary period was a time, Federalists and Anti-Federalists seem to have agreed, when

men's lives, thoughts, and guiding principles were increasingly detached from the community. The Anti-Federalists thought that the Constitution would strengthen this tendency, and they feared for the Republic. It is a simplification, but not a misleading simplification, to say that the crisis faced by Abraham Lincoln seventy years later required a synthesis of the Federalist solution and the Anti-Federalist reservation. And if the major element in the synthesis was still the Federal one, yet it is due the Anti-Federalists to say that it was they, more than the defenders of the Constitution, who anticipated the need. The Anti-Federalists saw, although sometimes only dimly, the insufficiency of a community of mere interest.*[20] They saw that the American polity had to be a moral community if it was to be anything, and they saw that the seat of that community must be the hearts of the people.

Mercy Warren's reflections a decade after the adoption of the Constitution—not bitter or partisan reflections, but somewhat melancholy ones—suggest a question about the American experiment that is not less vital today than it was in the 1780s or the 1850s.

> [S]uch a people as the Americans cannot suddenly be reduced to a state of slavery; it is a work of time to obliterate old opinions, founded in reason, and fanned by enthusiasm, till they had become a part of the religious creed of a nation. Notwithstanding the apprehensions which have pervaded the minds of many, America will probably long retain a greater share of freedom than can perhaps be found in any other part of the civilized world. This may be more the result of her local situation, than from her superior policy or moderation. From the general equality of fortune which had formerly reigned among them, it may be modestly asserted, that most of the inhabitants of America were too proud for monarchy, yet too poor for nobility, and it is to be feared, too selfish and avaricious for a virtuous republic.[21]

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Notes

An asterisk indicates a note of substance. For the use of paragraph numbers (e.g., Martin 2.4.36) in references to volumes 2–6 of *The Complete Anti-Federalist,* see above, pp. xvii–xviii. For works cited in shortened form, see above, pp. 77–78.

CHAPTER ONE

1. See John Fiske, *The Critical Period of American History, 1783–1789* (Boston 1888) ch. 7; George Bancroft, *History of the Formation of the Constitution of the United States of America* (New York 1882) II, book 4 passim; George Ticknor Curtis, *Constitutional History of the United States: From Their Declaration of Independence to the Close of the Civil War* (New York 1889) I, 626; Andrew McLaughlin, *The Confederation and the Constitution, 1783–1789* (New York 1905) ch. 17; Forrest McDonald, *E Pluribus Unum* (Boston 1965) 208.

2. Charles A. Beard, *An Economic Interpretation of the Constitution* (New York 1913, 1935); Merrill Jensen, *The Articles of Confederation* (Madison, Wisc., 1940); Jensen, *The New Nation* (New York 1950); Jackson Turner Main, *The Anti-federalists: Critics of the Constitution* (Chapel Hill, N.C., 1960); Forrest McDonald, *We the People: The Economic Origins of the Constitution* (Chicago 1958); Robert E. Brown, *Charles Beard and the Constitution: A Critical Analysis of "An Economic Interpretation of the Constitution"* (Princeton 1956); Jackson Turner Main, "Charles A. Beard and the Constitution: A Critical Review of Forrest McDonald's *We the People*," *William and Mary Quarterly* January 1960, 88–102, with a rebuttal by Forrest McDonald, ibid. 102–10.

3. See, e.g., Main, *Antifederalists* 280–81.

4. Cecelia Kenyon, "Men of Little Faith: The Anti-Federalists on the Nature of Representative Government," *William and Mary Quarterly* January 1955; Kenyon, "Introduction," *The Anti-Federalists* (Indianapolis 1966).

5. Gordon Wood, *The Creation of the American Republic, 1776–1787* (Chapel Hill, N.C., 1969) ch. 12. See Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass., 1967).

*6. For this reason "Anti-Federalist" seems the best rendering of the name. There was no consistent usage at the time and there has been none since. "Anti-Federalist" balances the positive and negative sides by giving the group (or the position) a proper name, while still emphasizing its character as opposition. The typographically convenient "Antifederalist," now generally in favor, suggests more cohesion than actually existed, while "anti-Federalist" suggests a merely negative, dependent unity. Forrest McDonald, apparently the only other writer to consider this little question in print, agrees about the implications of the main forms. He adopts "anti-Federalist" as "the more neutral term"; and while it is not neutral, it does accurately reflect his

opinion, contrary to the conclusion here, that there was no significant theoretical coherence in the Anti-Federalist arguments or principles. Forrest McDonald, "The anti-Federalists, 1781–1789," *Wisconsin Magazine of History* Spring 1963, 206n.

7. Plebeian 6.11 and others.

*8. The fundamental unity of *The Federalist* can be disputed. See Douglass Adair, "The Authorship of the Disputed Federalist Papers" part 2, *William and Mary Quarterly* April and July 1944; repr. in Adair, *Fame and the Founding Fathers,* ed. H. Trevor Colbourn (New York 1974) 27–74. Alpheus Mason, "The Federalist—a Split Personality," *American Historical Review* LVII, no. 3 (1952). Gottfried Dietze, *The Federalist* (Baltimore 1960).

9. See Daniel Boorstin, *The Genius of American Politics* (Chicago 1953).

10. *The Federalist* no. 23, 151.

CHAPTER TWO

1. Brutus XIV, 2.9.184; [Maryland] Farmer I, 5.1.3; Martin 2.4.26; see Agrippa X, 4.6.43; XI, 4.6.47; XIV, 4.6.60; Monroe 5.21.37; Newport Man 4.25.1.

*2. "There is nothing solid or useful that is new—and I will venture to assert, that if every *political institution* is not fully explained by Aristotle, and other ancient writers, yet that, there is no *new* discovery in this the most important of all sciences, for ten centuries back." [Maryland] Farmer II, 5.1.21. In the exchange between A [Maryland] Farmer and his critic, Aristides, the former speaks in behalf of the older Anti-Federal heads against the rash, know-it-all Federalist youths. See Stanley Elkins and Eric McKitrick, "The Founding Fathers: Young Men of the Revolution," *Political Science Quarterly* LXXVI, no. 2 (1961).

3. Resolution of Congress, 21 February 1787, Farrand III, 14; [Pennsylvania] Farmer 3.14.22; Denatus 5.18.4; Henry 5.16.1; Columbian Patriot 4.28.4 (objections 16–18); Warren 6.4.38; Sydney 6.9.2, 7–8; Republican Federalist 4.13.5–7, 16; see Lansing and Paterson, Farrand I, 249–50 (16 June). See this volume, ch. 3 n. 17.

4. Martin 2.4.36; Lowndes 5.12.1; Republican Federalist 4.13.15 and passim. See also Federal Farmer II, 2.8.23; Republican Federalist 4.13.16; Delegate Who Has Catched Cold 5.19.13ff; Cornelius 4.10.15.

5. Centinel I, 2.7.4; Federal Farmer I, 2.8.1. See Smith 6.12.7 on the "fickleness and inconstancy" of a free people and the implications of that for governmental change. See Impartial Examiner 5.14.26; Countryman 6.7.8, 9; Warren 6.14.49–51.

6. *The Federalist* no. 78, 527. For an unusually radical Federalist statement of the right of the people to change their governments, see Conciliator to the Honest American, Philadelphia *Independent Gazetteer* 15 January 1788.

7. Henry 5.16.1.

8. G. Livingston, Elliot II, 287. Cf. Jensen, *The Articles of Confederation* ch. 1; Jensen, *New Nation,* conclusion; Vernon Parrington, *Main Currents in American Thought* (New York 1927–30) I, chs. 1, 2; III, pp. 410–11.

9. Lowndes 5.12.1; Philadelphiensis XI, 3.9.89; Denatus 5.18.14. See also Old Whig I, 3.3.3; Tredwell, Elliot II, 401.

10. Aristocrotis 3.16.17; Sidney, *New York Journal* 4 December 1888. See Isaac Q. Leake, *Memoir of the Life and Times of General John Lamb* (Albany 1850) 305–6; McDonald, *We the People* 113; McDonald, "The anti-Federalists," *Wisconsin Magazine of History* XLVI, no. 3 (1963); Main, *Antifederalists* xi–xii; Robert Rutland, *The Ordeal of the Constitution* (Norman, Okla., 1966) 5–6; Linda Grant DePauw, *The Eleventh Pillar: New York State and the Federal Constitution* (Ithaca, N.Y., 1966) 170–72. Federalist larceny on a much larger scale is a major theme of Wood's *Creation* (see p. 562).

11. [James Wilson] *Considerations on the Bank of North-America* (Philadelphia 1785) 19; Elliot III, 157; E. Wilder Spaulding, *New York in the Critical Period, 1783–1789* (New York 1932) 184. See Ford, *Essays* 412; Farrand I, 487 (30 June); Elliot IV, 281; Symmes 4.5.2; Henry 5.16. Federal Farmer IX, 2.8.116; XI, 2.8.143, 147; Kate Mason Rowland, *The Life of George Mason, 1725–1792* (1892) II, 190, 191; Monroe 5.21.12.

12. Burton A. Konkle, *George Bryan and the Constitution of Pennsylvania, 1731–1791* (Philadelphia 1922) 305.

*13. Main, *Antifederalists* xi. "Blush ye well meaning citizens, who have associated with such men as are the ringleaders of antifederalism (*alias* sedition) in the United States." A Patriotic Citizen, New Hampshire *Freeman's Oracle* 6 June 1788.

14. See the references to an "efficient federal government" by Federalists Rufus King, Nathaniel Gorham, and William Heath, Elliot II, 55–57, 69, 121.

15. Impartial Examiner 5.14.26.

16. See Candidus 4.9.23, 41, whose plan aimed at true federalism in both senses.

17. Albany Anti-Federal Committee 6.10.2; Pennsylvania Convention Minority 3.11.16–20; Smith 6.12.5; Plebeian 6.11.13; Warren 6.14.49; Philadelphiensis IX, 3.6.60; Gerry 2.1.4–5; Officer of the Late Continental Army 3.8.3; Agrippa III, 4.6.13; X, 4.6.43; [Pennsylvania] Farmer 3.14.18–21; Symmes 4.5.2; Brutus I, 2.9.5; Mason, Virginia ratifying convention, Elliot III, 29; Georgian 5.9.2–3; Martin 2.4 passim.

18. Farrand II, 667. See Republican Federalist 4.13.10; see extract of letter from William Pierce to St. George Tucker, 28 September 1787, *Gazette of the State of Georgia* 20 March 1788: "The great object of this new government is to consolidate the Union, and to give us the appearance and power of a nation."

19. *The Federalist* no. 85, 594. Cf. King, Elliot II, 55; Charles Pinckney, Elliot IV, 255–56.

20. James Wilson, Farrand I, 413 (25 June); Demosthenes Minor, *Gazette of the State of Georgia* 15 November 1787.

21. Brutus I, 2.9.5.

22. Yates and Lansing 2.3.6.

23. Monroe 5.21.11; see Symmes 4.5.3; Federal Farmer I, 2.8.12–14.

24. Elliot II, 46. Cf. James Wilson in the Philadelphia ratifying convention, McMaster and Stone 263–64.

25. Farrand I, 166 (8 June); McMaster and Stone 227. Cf. similar arguments of A Citizen of America, Fabius, and David Ramsay, in Ford, *Pamphlets* 38, 55, 176–77, 373; A Citizen, *Carlisle Gazette* 24 October 1787; Plain Truth, McMaster and Stone 189.

26. See Farrand I, 166 (8 June); McMaster and Stone 301, 395; Elliot II, 445–47. Cf. Madison's draft of a preface to the Debates of the Constitutional Convention, Farrand III, 539ff; and a letter by William Pierce to St. George Tucker, dated 28 September 1787, *Gazette of the State of Georgia* 20 March 1788.

27. See Paterson, Farrand I, 259 (16 June); Clinton 6.13.16–18.

28. Agrippa VI, 4.6.24; XIII, 4.6.60. See, for the same view, Monroe 5.21.14; Lowndes 5.12.5; [Maryland] Farmer VII, 5.1.112.

*29. Whether there is some deeper basis of reconciliation of the parts of Wilson's argument need not be pursued here. Consider, however, his remarks to the Pennsylvania ratifying convention on 28 November 1787 to the effect that "to preserve the state governments unimpaired" was the "favorite object" of the framers; "and, perhaps, however proper it might be in itself, it is more difficult to defend the plan on account of the excessive caution used in that respect than from any other objection that has been offered here or elsewhere." McMaster and Stone 265. See Ralph Rossum, "The Political Pyramid and the Federal Republic: The Political Thought of James Wilson" (University of Chicago, Ph.D. diss. 1973). Cf. the interesting argument of Fabius (John Dickinson), Ford, *Pamphlets* 176–77.

30. Elliot III, 93–94; McMaster and Stone 322.

31. Centinel V, 2.7.99; Agrippa V, 4.6.21. See also Impartial Examiner 5.14.4; Officer of the Late Continental Army 3.8.3; One of the Common People 4.8.1; Martin 2.4.114; Pennsylvania House Minority 3.2.6–7; [Pennsylvania] Farmer 3.14.8. Cf. Hamilton's objection to divided sovereignty in Farrand I, 287 (18 June).

32. Ford, *Essays* 367–68. James Monroe was, as usual, more open to the Federalist view: "The mixture between the general and state governments, being partly a consolidated and partly a confederated one, suggests a balance between sovereignties that is new and interesting." He hoped that by drawing precise boundaries and establishing proper checks, it might survive. Monroe 5.31.36. See also this volume 34.

33. Henry 5.16.1. See the similar objections of Whitehill in Pennsylvania and Caldwell in North Carolina: McMaster and Stone 256–57; Elliot IV, 15–16, 23–24.

*34. Alexander Hamilton, Elliot II, 234. Also *The Federalist* no. 15, 93: "the evils we experience do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric."

*35. When it was argued by the Pennsylvania republicans in 1785 that the Bank of North America, established by Pennsylvania on the recommendation of Congress, should not be abolished without at least notifying Congress of the reasons for the repeal of the charter, Jonathan Dickinson Sergent replied with (according to Brunhouse) "characteristic Radical reasoning: 'We are not bound by any terms made by Congress—Congress are our creatures!' " Robert L. Brunhouse, *The Counter Revolution in Pennsylvania: 1776–1790* (Harrisburg, Pa., 1942) 175.

36. Farrand I, 250 (16 June).

37. Farrand I, 324 (19 June); see also ibid. 340–41 (20 June). See also Monroe 5.21.4ff; Martin 2.4.39; Henry 5.16.2; Massachusetts ratifying convention, Elliot II, 54–55 (King); Justice Chase in *Ware* v. *Hylton*, 3 Dall. 199, 224 (1798).

*38. Whether this is the true implication of the ratification provision is of course controversial; and some Federalists denied, or at least softened, this interpretation. Cf. the account in *The Federalist* no. 39, 253–54, with Chief Justice Marshall's interpretation in *McCulloch* v. *Maryland*, 4 Wheat. 403–5 (1819). And see the arguments of A Freeman, who was a Federalist, that the Constitution is the act of the people of the United States as several and separate sovereignties, *Pennsylvania Gazette* 23 January 1788.

*39. Again it can be argued that the ratification provision is based on federal principles, since the Constitution was to come into effect, when nine states had ratified, only as between the ratifying states. This equivocation is important, but, as the Anti-Federalists saw, the thrust is in the national direction. The underlying rationale is that the Union is the decisive political entity, as was very widely recognized on both sides at the time. Moreover the practical effect supports and underlines the theory. It is true that a state might decide to stay out of the new government. That that would be extremely difficult is less important than that a state could not alone prevent the others from making fundamental constitutional change, as it could under the Articles. That obviously alters the situation not only of a majority wanting to act but also of a minority wanting to block action. The practical effect of the nine-state ratification provision was to make not merely ratification but ratification by thirteen states more likely than it would have been under a thirteen-state ratification provision.

*40. General Charles Cotesworth Pinckney told the South Carolina House of Representatives: "The separate independence and individual sovereignty of the several states were never thought of by the enlightened band of patriots who framed this Declaration; the several states are not even mentioned by name in any part of it,—as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent. Let us, then, consider all attempts to weaken this Union, by maintaining that each state is separately and individually independent, as a species of political heresy, which can never benefit us, but may bring on us the most serious distress." Elliot IV, 301–2. See Abraham Lincoln, Message to Congress in Special Session, 4 July 1861, *Collected Works* (ed. Basler) IV, 421–41. William W. Crosskey and William Jeffrey, Jr., *The Political Background of the Federal Convention* (Chicago 1980), the third volume of Crosskey's *Politics and the Constitution in the History of the United States* (vols. 1 and 2, Chicago 1953), is largely devoted to showing the primacy of the Union to the states, both in practice and in common opinion. Not all Federalists, however, took this view. See A Freeman, cited above, n. 38, and Thomas McKean, who described the new system as proposing a union of thirteen sovereign and independent states, McMaster and Stone 272. See also *Penhallow* v. *Doane*, 3 Dall. 54 (1795), where Justice Paterson took the view, contrary to Iredell, that external sovereignty never did belong to the states and that the sovereignty of the national government as to foreign relations was inherited from the Continental Congress. See *U.S.* v. *Curtis-Wright Export Co.*, U.S. 304 (1936), p. 299.

41. Elliot II, 158.

*42. After the Declaration of Independence the people "relaxed their union into a league of friendship between sovereign and independent states." State Soldier, *Virginia Independent Chronicle* 6 February 1788. "It was an honest and solemn covenant among our infant States, and virtue and common danger supplied its defects." A Citizen of Philadelphia, McMaster and Stone 106. See also Wilson, McMaster and Stone 226; Iredell, Elliot IV, 227; *Kent's Commentaries on American Law*, 12th ed., ed. O. W. Holmes, Jr. (Boston 1893) I, part 2, lect. 10, p. 212.

43. Resolution of Congress, 21 February 1787, Farrand III, 14.

*44. Farrand I, 253, 255 (16 June); 283 (18 June); 324 (19 June). See Elliot IV, 206, 215, 229. "The confederation had failed to answer the purposes for which governments are instituted among men. Its powers or its impotence operated to the destruction of those ends, which it is the object of government to promote." John Quincy Adams, *The Jubilee of the Constitution* (New York 1839) 65.

CHAPTER THREE

1. McMaster and Stone 287.

2. Henry 5.16.2.

3. Farrand I, 340–41 (20 June); see Brutus VII, 2.9.87.

*4. Hamilton himself confessed that "the extent of the Country to be governed, discouraged him." Farrand I, 287 (18 June); see also Wilson's account, McMaster and Stone 220ff. For arguments in defense of the small republic, this volume 16–21; Yates and Lansing 2.3.7; Brutus I, 2.9.11; Federal Farmer I, 2.8.14; IV, 2.8.75; XVII, 2.8.208; Sidney 6.8.1–2; Cato Uticensis 5.7.6; [Maryland] Farmer III, 5.1.52–53; Pennsylvania Convention Minority 3.11.16; Old Whig IV, 3.3.20; Monroe 5.21.13; Cato III, 2.6.12–13; Agrippa XII, 4.6.48; Albany Anti-Federal Committee 6.10.2; Centinel I, 2.7.19; V, 2.7.94; Martin 2.4.44; [Pennsylvania] Farmer 3.14.7, 9; Columbian Patriot 4.28.4; Warren 6.14.5; Smith 6.12.19–20; Henry 5.16.2; Clinton 6.13.13; etc.

5. Ellsworth, Farrand I, 406 (25 June); see Martin, Farrand II, 4 (14 July).

6. Federal Farmer II, 2.8.17; XII, 2.8.158; Cato III, 2.6.16; Impartial Examiner 5.14.6.

*7. In Gordon Wood's view, the Anti-Federalists became fervent defenders "of the traditional assumption that the state was a cohesive organic entity with a single homogeneous interest at the very time they were denying the consequences of this assumption." Wood understands this traditional view, the "republicanism" of the Revolution, to be a secularized Puritanism aimed at securing a sacrifice of individual interest to the common good. *Creation* 499, 418, and ch. 2. One of my own reasons for turning to the study of the Anti-Federalists was the expectation that they defended some such tradition; the Anti-Federalists seemed to be of interest as defenders of at least residual principles of premodern, preindustrial, preliberal worlds. Yet, without here taking up the more complex question of how far such principles may in fact have been involved in Revolutionary republicanism, they are strikingly absent from the Anti-Federalist thought. The Anti-Federalists are liberals—reluctant and traditional, indeed—in the decisive sense that they see the end of government as the security of individual liberty, not the promotion of virtue or the fostering of some organic common good. The security of liberty does require, in the Anti-Federalist view, the promotion of civic virtue and the subordination (not, in the usual case, "sacrifice") of individual interest to common good; but virtue and the common good are instrumental to individual liberty, and the resemblance to preliberal thought is superficial.

8. Farrand I, 49 (31 May).

*9. Federal Farmer III, 2.8.24. Agrippa XII, 4.6.50, referred to our present government, which "is respected from principles of affection and obeyed with alacrity." See Mason, Farrand I, 112 (4 June); Smith 6.12.10; Henry 5.16.17; Clinton 6.13.13.

10. Brutus I, 2.9.18.

*11. Richard Henry Lee, letter to ——, 28 April 1788, in Lee, *Letters* II, 464; Federal Farmer III, 2.8.24; VII, 2.8.93. One of the arguments for leaving the states to decide how they would raise the money needed by the general government was this need for popular confidence. "Because *each* being thus accommodated, and participating [in] the advantages of union,—*none* subjected to any inconvenience thereby,—all will consequently concur in nourishing an affection for the government, that so cemented them." Impartial Examiner 5.14.6.

*12. Agrippa XII, 4.6.48. See Cato III, 2.6.16; Pennsylvania Convention Minority 3.11.51; Brutus IX, 2.9.105–10; Candidus 4.9.23. If this thought seems utterly archaic, the modern reader may grasp it better by substituting "bureaucracy" for "standing army." The Anti-Federalists were not so much worried about military coups or about "militarism" in the popular sense, as about rigid rule of a large and varied republic by the force of government, of which the standing army is the ultimate expression. Consider Cato's challenge: "will you submit to be numbered like the slaves of an arbitrary despot; and what will be your reflections when the taxmaster thunders at your door for the duty on that light which is the bounty of heaven." VI, 2.6.41.

13. Cf. Brutus I, 2.9.14ff; IV, 2.9.45ff; [Maryland] Farmer VII, 5.1.98. Cf. James Wilson's remarks in the Constitutional Convention on representation with those in the Pennsylvania ratifying convention. Farrand I, 132–33 (6 June); McMaster and Stone 221ff. See Montesquieu, *The Spirit of Laws* XI, ch. 6.

14. Cf. Federal Farmer I, 2.8.4–6; VIII, 2.8.108; *The Federalist* no. 63; no. 74, 500; no. 76, 510–12; no. 79, 532.

15. Columbian Patriot 4.28.4; Pennsylvania Convention Minority 3.11.33–37; Tamony 5.11.7; Warren 6.14.8, 47; Symmes 4.5.7; Smith 6.12.9; Federal Farmer XIV, 2.8.178. Rotation was thought to serve not only as an instrument of responsibility but also as training in public service, thus contributing to the attachment of the citizens to their community. Smith 6.12.27–28.

16. Federal Farmer II, 2.8.15; Smith 6.12.15. See Brutus I, 2.9.14; III, 2.9.42; and passim; Pennsylvania Convention Minority 3.11.4–5; Martin 2.4.42; Clinton 6.13.35.

*17. The state legislatures "are so numerous as almost to be the people themselves. . . ." Federal Farmer XII, 2.8.163. See ibid. 2.8.155; VIII, 2.8.106; IX, 2.8.113; Smith 6.12.15, 22; Henry, Elliot III, 322; Lee 5.6.2.

18. Federal Farmer VII, 2.8.97.

*19. Federal Farmer XII, 2.8.158; see Centinel I, 2.7.3; VI, 2.7.106–10; IX, 2.7.129. "There are no such mighty talents necessary for government as some who pretend to them, without possessing them, would make us believe. Honest affections, and common qualifications, are sufficient. . . . Great abilities have generally, if not always, been employed to mislead the honest unwary multitude, and draw them out of the plain paths of public virtue and public good." [Trenchard], *Cato's Letters* I, 177–78, quoted by Friend to the Republic 4.23.8.

20. Federal Farmer IX, 2.8.113.

*21. There is a continuity in the argument, since the principle of representation, which is the cause of the difficulty, is generally admitted by the Anti-Federalists even in the small republic. Many of them did think that there is a quantitative limit to the reach of the representative principle, that that limit was exceeded by the dimensions of the United States, and that therefore any representative body covering the whole United States must be inherently inadequate and untrustworthy. See Federal Farmer VI, 2.8.75; VII, 2.8.99; Smith 6.12.9.

22. Smith 6.12.17–18; cf. Hamilton, Elliot II, 254–57.

23. Sydney 6.9.19. See [Maryland] Farmer III, 5.1.56–58.

*24. See this volume 41, 43–45. In addition, because of the dispersed circumstances of the landed interest it would not be equally represented under the new system, which would tend to follow the lead of the commercial interests. Cornelius 4.10.11.

*25. Federal Farmer XV, 2.8.190. A general verdict is one in which the jury finds either for the plaintiff or for the defendant in general terms, judging both law and fact, as opposed to a special verdict, in which a particular finding of fact is made by the jury, leaving to the court the application of the law to the facts thus found.

26. [Maryland] Farmer IV, 5.1.65; see generally ibid. 5.1.61ff.

*27. Federal Farmer XV, 2.8.190. Noah Webster argued, for example, that the trial of the vicinage was no longer necessary to do justice in individual cases. Ford, *Pamphlets* 53. However, the Federal Farmer made it clear that for him that was not the main concern.

*28. Smith 6.12.20; Federal Farmer V, 2.8.59. See [Maryland] Farmer III, 5.1.52; Turner in Massachusetts ratifying convention, Elliot II, 31; Smith 6.12.9; Agrippa XII, 4.6.48. While the Federalist writers were less concerned with this question, see A Federalist, *Boston Gazette and Country Journal* 3 December 1787, who denied an Anti-Federalist argument that a constitution maker should adapt the constitution to the pre-civil habits of the people: ". . . his object would be, to introduce a code of laws that would *induce* those habits of civilization and order, which must result *from* good government. The truth of the case is, that as a people, we are destitute of *Federal Features* and *Habits*—the several *State Constitutions* are *local, partial,* and *selfish;* they are not calculated in their construction to form *national views.* . . ."

29. Brutus I, 2.9.16.

30. Republican Federalist 4.13.26.

31. Agrippa IX, 4.6.34.

32. See Impartial Examiner 5.14.6; [Pennsylvania] Farmer 3.14.7.

33. Henry 5.16.8; cf. *The Federalist* no. 19, 122–23.

34. Cato IV, 2.6.27. See Friend to the Rights of the People 4.23.3; [Maryland] Farmer VII, 5.1.111; Turner 4.18.2; Columbian Patriot 4.28.1.

35. Federal Republican 3.6.21. See "The Congress under the New Constitution," *New York Journal* 28 January 1788; [New Hampshire] Farmer 4.17.4; Impartial Examiner 5.14.8.

36. See discussion of Agrippa, this volume 24, 25.

37. Turner 4.18.1. See Cato V, 2.6.34; Alfred 3.10.5; Lansing (New York), Elliot II, 218; Williams, Elliot II, 240; Warren 6.14 passim; Delegate Who Has Catched Cold 5.19.9. See Andrew Carnegie, *The Gospel of Wealth and Other Timely Essays* (1933), ed. Edward C. Kirkland (Cambridge, Mass., 1962) 3; Montesquieu, *The Spirit of Laws* XX, ch. 1.

*38. *Thoughts on Government,* John Adams, *Works* IV, 109. See Livingston, Elliot II, 341. Some of the Anti-Federalists for this reason favored sumptuary laws. See [Maryland] Farmer V, 5.1.82; George Mason, Farrand II, 344 (20 August), 606 (13 September). See this volume 75, 76 and ch. 4. n. 42.

39. Warren 6.14.157.

40. [Maryland] Farmer VI, 5.1.82; see Warren 6.14.132–33.

41. Delegate Who Has Catched Cold 5.19.16. See Federal Farmer XVI, 2.8.196; Henry 5.16.37; this volume, ch. 8.

42. R. H. Lee, letter to James Madison, 26 November 1784, Lee, *Letters* II, 304.

43. David 4.24.2.

44. See Clinton Rossiter, *Political Thought of the American Revolution* (New York 1963) 204–6. See Alexis de Tocqueville, *Democracy in America* I, part 1, ch. 9; II, part 2, chs. 15–19. Alan Aichinger, "Civic Education in the New Republic" (University of Chicago Ph.D. diss. 1970).

45. David 4.24 n.1. See the satire of Aristocrotis (3.16.3) describing the free-thinking origin of the Constitution as an attempt to deny any divine limits on civil rulers.

46. *Virginia Independent Chronicle* 31 October 1787. See Federal Republican 3.6.21.

47. Warren 6.14.148, 135–37. See Agrippa IX, 4.6.34; XII, 4.6.48. Also Federal Farmer IV, 2.8.53. American fears about American corruption are considered at length by Gordon Wood in *Creation* chs. 3 and 10.

*48. R. H. Lee, letter to James Madison, 26 November 1784, Lee, *Letters* II, 304. "William Penn" (Penn 3.12.18) found a contradiction in state constitutional provisions for liberty of conscience alongside provisions for religious oaths for office-holders; but he made no attempt to resolve it.

*49. See, for example, the remarks of Amos Singletary, Elliot II, 44. For a good statement of the Federalist case against test oaths (and civil religion in general), see A

Landholder (Oliver Ellsworth) in Ford, *Essays* 168–71, who, however, approved of "our laws against drunkenness, profane swearing, blasphemy, and professed atheism." See letter of William Williams, Ford, *Essays* 207–9.

50. Turner 4.18.2; see David Caldwell, Elliot IV, 199; Friend to the Rights of the People 4.23.3(9).

CHAPTER FOUR

1. Henry 5.16.6; Smith 6.12.2.

*2. See Madison's Notes of Proceedings of Congress, 21 February 1787; *Documentary History of the Constitution* IV, 80–81; see ibid. 22, 24–25; Luther Martin in the Constitutional Convention as favoring a dissolution of the Union in preference to any plan abandoning the equality of the states, Farrand I, 445 (28 June); II, 4 (14 July). While Patrick Henry and some other Anti-Federalists were widely thought to favor separate confederacies, their public statements described dissolution of the Union only as the lesser of evils. Main, in an appendix entitled "Separate Confederacies," concludes: "Possibly some of the Antifederalists favored the idea; however the evidence is very strong that most of the talk about separate confederacies was generated by the other side." *Antifederalists* 283–84. Main somewhat underestimates Anti-Federal support (equivocal as it surely was) for separation. See (in addition to the citations in Main) Lansing, Elliot II, 219; Smith, ibid. 382; Countryman 6.7.8; Sydney 6.9.2; Centinel XI, 2.7.140–42; Henry 5.16.8. The Federalists "generated" much of the talk about separate confederacies in 1787–88 because they thought it was the end to which the Anti-Federal opposition to the Constitution was, more or less deliberately, pointing. The Anti-Federalists' frequent denial of the capacity of any republican government to extend over such a wide territory as the United States left them open to the criticism of striking at the root of Union itself. (See Wilson, McMaster and Stone 386; Randolph, Elliot III, 71.) In attributing to the Anti-Federalists an *intention* to move toward separate confederacies, such Federalists as Publius were doubtless more than a little disingenuous. See *The Federalist* no. 1, 7; no. 2, 8; no. 2, 12; no. 59, 402; State Soldier, *Virginia Independent Chronicle* 6 February 1788; Ford, *Pamphlets* 81–82. Main indeed produces evidence to show that there was more support of separate confederacies among Federalists than among Anti-Federalists; but he does not make it sufficiently clear that the Federalist support of separate confederacies occurred prior to the proposed new Constitution. During the ratification debates the only support seems to have come from the other side. Previous to the appearance of the Constitution, separate confederacies were seen as means of strengthening bonds of interstate association. Thus Benjamin Rush wrote in October 1786 that "some of our enlightened men who begin to despair of a more complete union of the States in Congress" had secretly proposed three confederacies, each of which "they say will be united by nature, by interest, and by manners, and consequently they will be safe, agreeable and durable." Benjamin Rush to Richard Price, 27 October 1786, *Letters of Benjamin Rush*, ed. L. H. Butterfield (Princeton, 1951) I, 408. Once the proposed constitution was on the agenda, separate confederacies appeared rather as means of loosening interstate bonds.

*3. Jensen, *New Nation* xiv. But cf. the comment by Elbridge Gerry defending the report that was the basis of the "Great Compromise" in the Constitutional Convention: "We were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely." Farrand I, 532 (5 July).

*4. Where the Anti-Federalists used "nation," they nearly always meant the United States. Cato I, 2.6.4; III, 2.6.10, 18; Warren 6.14.21, 133, passim; [Maryland] Farmer III, 5.1.50–52 passim; Impartial Examiner 5.14.7; Plebeian 6.11.7, 23; Federal Farmer I, 2.8.10; etc. "Community" and "country" refer sometimes to the states, more often to the United States. Federal Farmer I, 2.8.6; II, 2.8.15; V, 2.8.61,62; IX, 2.8.113; Brutus I, 2.9.15; Brutus [Virginia] 5.15.1.

Patrick Henry's equivocal terminology is of a piece with his argument. While at least once he used "nation" in a context where it must refer to the state (Elliot III, 386), he began his first speech in the Virginia ratifying convention with a reference to

"this great national [American] question," in the deliberations of which he regarded himself as the servant of the people of "this commonwealth" [Virginia]. He conceived "the republic" [probably Virginia] to be endangered and asked whether the existence of "the country" [probably the United States] was threatened. Elliot III, 21. Later he said he had come to preserve "the poor commonwealth of Virginia," and he appealed to "my beloved Americans" and the American spirit (5.16.2). He argued that "a majority of the community" [Virginia] has a right to alter the government (ibid.). "This country" [the United States] has not virtue enough to manage its own affairs (5.16.9). Epithets on "our country" [Virginia] are undeserved. Elliot III, 163.

5. Agrippa VIII, 4.6.31.

*6. Agrippa (VIII, 4.6.32) does not resolve the deeper question whether commerce is a unifying force within the states themselves, and in this he exhibits a characteristic Anti-Federal tension. On the one hand, he suggests that "the spirit of commerce is the great bond of union among citizens," presumably within as well as between states (I, 4.6.6). On the other hand, he is concerned to maintain a purity of population, morals, and religion that does not seem to be consistent with an open, vigorous commercial society. See for example, his criticism of Pennsylvania, VII, 4.6.26; cf. III, 4.6.12–13; Montesquieu, *The Spirit of Laws* XX, chs. 1–2.

7. Monroe 5.21.17.

8. *The Federalist* no. 15, 91–92.

*9. Citizen 6.5.4. "Like a person in the agonies of a violent disease, who is willing to swallow any medicine, that gives the faintest hope of relief; the people stood ready to receive the new constitution, in almost any form in which it could be presented to them," the Old Whig asserted, IV, 3.3.18.

10. McDonald, *We the People* 3. See Jensen, *New Nation* passim; Wood, *Creation* 393–94.

*11. Madison reported to Edmund Pendleton on 27 May 1787 that in general the members of the Convention "seem to accord in viewing our situation as peculiarly critical. . . ." *Documentary History of the Constitution* IV, 169; see ibid. 347; Ford, *Pamphlets* 369; A Landholder II, ibid. 142–45; *The Federalist* no. 37. See the oration of the youthful John Quincy Adams on 18 July 1787: "At this critical period, when the whole nation is groaning under the intolerable burden of these accumulated evils. . . ." *Columbian Magazine* September 1787.

12. Old Whig VI, 3.3.32; cf. *The Federalist* no. 15.

13. Federal Farmer I, 2.8.1.

14. Old Whig IV, 3.3.18; see Citizen 6.5.4.

*15. Federal Farmer VI, 2.8.70; Philadelphiensis II, 3.9.8–9; III, 3.9.17–18; Brutus I, 2.9.2; Candidus 4.9.5; Centinel I, 2.7.3.

A favorite target of those historians who doubt that the American difficulties in 1787 were as serious as they have been pictured is of course John Fiske's *The Critical Period of American History*, a popular version of what Merrill Jensen calls the "chaos and patriots to the rescue" view of the American Founding. "The point is," Jensen writes, "there were patriots on both sides of the issue, but . . . they differed as to desirable goals for the new nation. At the same time, of course, there were men as narrow and selfish on both sides as their political enemies said they were." *New Nation* xiii. The observation was anticipated and met by Publius; see *The Federalist* no. 1, 4–6; no. 37, 231–32.

16. See Smith 6.12.10.

17. Candidus 4.9.13.

18. Williams, Elliot II, 240.

19. Letter from Lee to George Mason, 15 May 1787, Lee, *Letters* II, 419. See Alfred 3.10.2; cf. Henry 5.16.20; Lansing, Elliot II, 218; Warren 6.14.14.

20. Candidus 4.9.18.

21. Alfred 3.10.5; Plebeian 6.11.22.

22. *The Federalist* no. 42, 279.

23. Henry 5.16.2; DeWitt 4.3.29; Alfred 3.10.2; Centinel I, 2.7.26; Warren 6.14.14, 125, 157; Citizen 6.5.4.

24. Elliot III, 358.

25. Farrand I, 110–14 (4 June).
26. Philadelphiensis III, 3.9.22; [Maryland] Farmer V, 5.1.75; see also Old Whig IV, 3.3.22.
*27. Henry 5.16.2. A Federalist writer in Albany asked the opponents "whether they imagine that the sounds of *public spirit* and DEMOCRACY will prove as effectual a charm in blunting the tomahawk and dagger, as they have been in lulling the senses and fears of the multitude." P. Valerius Agricola, *Albany Gazette* 6 December 1787.
28. Plebeian 6.11.12; Tredwell, Elliot II, 358; see Gerry 2.1.3, 8; Old Whig 3.3.18; Republican Federalist 4.13.25.
29. See this volume 111–12, references at Art. I, sec. 4.
30. See this volume 67–68.
31. Elliot III, 375.
32. State Soldier, *Virginia Independent Chronicle* 16 January 1788.
33. Hamilton, Elliot II, 351; Iredell, Elliot IV, 95; see also Gore, Elliot II, 66; Sedgwick, ibid. 96.
34. *The Federalist* no. 23, 151.
35. Symmes 4.5.20; see Clinton 6.13.5.
36. Widgery, Elliot II, 28; see also Turner 4.18.1; Elliot IV, 276.
37. [Maryland] Farmer II, 5.1.46.
38. Brutus VII, 2.9.90; cf. Federal Farmer XVIII, 2.8.215ff.
39. Smith 6.12.37; Plebeian 6.11.2; Cornelius 4.10.3; Old Whig IV, 3.3.38; Symmes 4.5.2.
40. Henry 5.16.23.
41. State Soldier, *Virginia Independent Chronicle* 6 February 1788; letter from a correspondent, ibid. 28 November 1787; see Freeholder, ibid. 9 April 1788.
*42. Henry 5.16.2 (toward end of speech). Cf. Madison, Elliot III, 135; Warren 6.14.121, 15, 23. In 1834 Andrew Jackson sought to persuade his fellow countrymen in his famous "Protest" that "it is not in a splendid government supported by powerful monopolies and aristocratical establishments that they will find happiness or their liberties protection, but in a plain system, void of pomp, protecting all and granting favors to none, dispensing its blessings, like the dews of Heaven, unseen and unfelt save in the freshness and beauty they contribute to produce." Andrew Jackson, "Protest," April 1834, James D. Richardson, *A Compilation of the Messages and Papers of the Presidents of the United States* III, 93.
43. Officer of the Late Continental Army 3.8.5; see Lee, *Letters* II, 464; Agrippa XI, 4.6.45; Aristocrotis 3.16.11.
44. Brutus VII, 2.9.87; cf. *The Federalist* no. 34.
45. Federal Farmer XVII, 2.8.213.
46. *The Federalist* no. 34, 211; cf. Brutus VIII, 2.9.96ff; etc.; but for a different Anti-Federal view, see Impartial Examiner 5.14.13–16.
47. [New Hampshire] Farmer 4.17.4.
48. Brutus VII, 2.9.86–87.
49. Brutus VI, 2.9.80.
50. See this volume 9–14. See Martin Diamond, "What the Framers Meant by Federalism," *A Nation of States*, ed. Robert A. Goldwin, 2d ed. (Chicago 1974).
51. See *The Federalist* no. 39; *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819); James Wilson, McMaster and Stone 322.
52. *The Federalist* no. 9; but cf. no. 15.
53. Federal Farmer I, 2.8.10–11 and n. 9; VI, 2.8.72.
54. See this volume 15.
*55. The new federalism is anticipated in the Articles of Confederation in its attempt to secure the sovereignty of the states while also providing that the league shall be perpetual.
56. James Wilson, McMaster and Stone 229–31, 301–3; see Wood, *Creation* 524–32.
57. Elliot II, 195.
58. Monroe 5.21.17.
59. Agrippa VI, 4.6.23; see Henry 5.16.36.

*60. Henry 5.16.2. The power of the states to provide military training according to congressional discipline only meant that "the states are constituted drill sergeants and fuglemen to train up soldiers for the general government." Aristocrotis 3.16.11.

*61. Rufus King argued in Massachusetts that if the state legislatures found their delegates erring they could give them public instructions, which the senators would scarcely dare to ignore. Elliot II, 47. But while the Federal Farmer and other Anti-Federalists referred to the Senate as "representing 13 sovereign states" and as being organized "entirely on the federal plan" (Federal Farmer III, 2.8.28; XI, 2.8.143), others pointed out that the Senate was not in fact based on federal principles. The senators were elected by the state legislatures but were to vote as individuals and not as state delegates, and the implication surely was that, once elected, they were not mere delegates of the states. Countryman from Dutchess County 6.6.45. In fact, as a Pennsylvanian replied to James Wilson, the power to appoint means nothing without the power to control and dismiss. [Pennsylvania] Farmer 3.14.14–16. There was a considerable measure of disagreement among the Anti-Federalists on this whole issue; some opposed equal representation of the states in the Senate, others regarded it as the only good thing in the Constitution.

62. McMaster and Stone 264.

63. Federal Farmer XVII, 2.8.211.

64. Henry 5.16.16.

65. Ibid.

66. Farrand I, 286 (18 June).

67. [Pennsylvania] Farmer 3.14.8.

CHAPTER FIVE

1. Farrand I, 51 (31 May).

2. Ibid. 134 (6 June). Brackets indicate James Madison's revision; see C. J. Taney in *Ableman* v. *Booth*, 21 How. 506, 516 (1859).

*3. This leaves aside the additional and practically very powerful argument that the states were mostly larger than the traditional small republics anyway. See *The Federalist* no. 9, 52–53.

4. *The Federalist* no. 10, 57.

5. See Gordon Wood's excellent discussion of this point, *Creation* 409–13.

6. See Parrington, *Main Currents in American Political Thought* I, chs. 1, 2; III, pp. 401–3; Jensen, *New Nation* 424–27; Jensen, *The Articles of Confederation* passim; Wood, *Creation* 513.

7. See for example Farrand I, 51 (31 May), 288 (18 June); Elliot II, 10.

8. Letter from James Madison to Thomas Jefferson, 17 October 1788. Madison, *Writings* (ed. Hunt) V, 272.

9. Philadelphiensis X, 3.9.76.

10. Brutus IV, 2.9.45 and passim.

11. Clinton 6.13.2.

*12. "He had," Elbridge Gerry told his fellow delegates at Philadelphia, "been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levilling spirit." Farrand I, 48 (31 May); see Mason, Farrand I, 101 (4 June).

13. James Burgh, *Political Disquisitions* (London 1774) I, 117. See Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge, Mass., 1959).

*14. The difficult question of the franchise played little part in the ratification debate, since the Constitution left this matter to the states. While James Madison initially favored some form of freehold suffrage requirement as a way of checking the excesses of popular government, he later concluded that such a restriction on the franchise was dubious both in practice and in principle. See Farrand II, 203–4 (7 August) and Madison's very interesting fuller and more mature views in Farrand III, 450–55. See Wood, *Creation* 167–70.

15. Agrippa XVI, 4.6.73.

16. [Maryland] Farmer I, 5.1.15.

*17. Main, *Antifederalists* 173. Whether unmuted democratic views were as common as Main assumes even among the obscure people may well be questioned on the basis of the available evidence.

18. Wood, *Creation* 516.

*19. On the other hand, there were very few nondemocrats among the Federalists if by that is meant those who deny (1) that all powers derive from the consent of the governed and (2) that in general the will of the majority should prevail. Indeed, in his very important restoration of the thought of *The Federalist,* Martin Diamond insists on the Founders' "democratic" intentions. Martin Diamond, "Democracy and *The Federalist:* A Reconstruction of the Framers' Intent," *American Political Science Review* March 1959 (reprinted in Richard Stevens and Morton Frisch, *American Political Thought* [New York 1971]); "The Federalist," in *History of Political Philosophy,* ed. Leo Strauss and Joseph Cropsey, 2d ed. (Chicago 1972) 636–41. There is usage to support this view. Madison spoke in the Constitutional Convention of the need to remedy "the inconveniences of democracy" in ways "consistent with the democratic form of Govt." Farrand I, 135 (6 June). John Marshall said that the Federalists (in contrast to their opponents who had praised monarchy) "idolize democracy" and consider the Constitution to provide for "a well-regulated democracy." Elliot III, 222. Nathaniel Gorham asserted that the preponderance of the landed interest will enable it to prevent the introduction "of any other than a perfectly democratical form of government." Elliot II, 69. A Federalist essayist, A Patriotic Citizen, in New Hampshire (see above, ch. 2 n. 13) stressed that "the people are the sole, the great source from which all powers delegated to the federal government, by this truly democratic constitution, are to flow. . . ." See also [Pennsylvania] Farmer 3.14.2–3; Monroe 5.21 passim; Cato II, 2.6.8; Elliot II, 242; Penn 3.12.12. Nevertheless, while it is not inaccurate to say that the Founders favored a "well regulated democracy," to say that they favored "democracy" does not reflect dominant contemporary usage nor, I think, does it foster analytical clarity. The term "democracy" is ambiguous, containing a range of ideas from simple, direct popular rule to a regulated, checked, mitigated rule of the people. Generally, especially when aiming at precision of expression, both the Federalists and the Anti-Federalists used the term "popular government" to contain this whole range of ideas, reserving "democracy" for the former end of the scale and "republic" for the latter. See Elliot III, 394, and the very clear distinction drawn in *The Federalist* nos. 14 and 10. John Adams provides a good explanation in his *Defence* I, letter 3 (*Works* IV, 308–9).

*20. Henry 5.16.2. Cf. Federal Farmer V, 2.8.59; VII, 2.8.100. Cf. Madison, Elliot III, 87. On their side, the Federalists did not deny that rulers might be tyrannical, but they saw it as the secondary danger. But see the comment by Fabius (John Dickinson) that history "holds up the *licentiousness* of the people, and *turbulent temper* of some of the states, as *the only causes* to be dreaded, not the conspiracies of federal officers." Ford, *Pamphlets* 200. See this volume 50, 51.

21. See this volume, ch. 3.

22. Federal Farmer II, 2.8.23; see Brutus I, 2.9.18.

23. Cato III, 2.6.20.

*24. *The Federalist* no. 17, 107; italics added. See Elliot II, 354–55. Publius goes on to argue that this consideration is strengthened by the state's administration of ordinary criminal and civil justice, thus involving itself in the daily lives of the people.

*25. *The Federalist* no. 27, 172; italics added. Added to this consideration is the increased mingling of federal authority in the ordinary life of the people. Ibid. 173–74; no. 16, 102–3; cf. Plebeian 6.11.2.

Some of the Anti-Federalists saw the implication for the states of this line of argument. John Smilie thought that, for just such reasons as Publius gave, the people would become unwilling to support the state governments at all. "For, Sir, the attachment of citizens to their government and its laws is founded upon the benefits which they derive from them, and it will last no longer than the duration of the power to confer those benefits. When, therefore, the people of the respective States shall find their governments grown torpid, and divested of the means to promote their welfare and interests, they will not, Sir, vainly idolize a shadow, nor disburse their

hard earned wealth without the prospect of a compensation. The constitution of the States having become weak and useless to every beneficial purpose, will be suffered to dwindle and decay, and thus if the governors of the Union are not too impatient for the accomplishment of unrivalled and absolute dominion, the destruction of State jurisdiction will be produced by its own insignificance." McMaster and Stone 270–71.

*26. Elliot II, 254. See Wilson, ibid. 474; Philadelphiensis X, 3.9.80: "The allegiance of freemen to government will ever be a consequence of protection."

27. Jasper Yeates, McMaster and Stone 298; cf. Charles Cotesworth Pinckney, John Marshall, Elliot III, 231; Tench Coxe, Ford, *Pamphlets* 147; John Dickinson, ibid. 174.

28. Elliot IV, 261, 260–61.

29. Edward Carrington to Thomas Jefferson, 9 June 1787, *Proceedings of the Massachusetts Historical Society* 2d series, XVII, 463.

30. Hamilton, Elliot II, 353; see Randolph, Elliot III, 84–85.

*31. *The Federalist* no. 63; cf. Montesquieu, *The Spirit of Laws* XI, ch. 6. Some Federalists did describe representation as a new idea. Thus Noah Webster asserted that "the moderns have invented the doctrine of *representation*, which seems to be the perfection of human government." Ford, *Pamphlets* 30, 42–43. See also Gorham, Elliot II, 68–69; Wilson, ibid. 423ff and McMaster and Stone 221ff.

32. State Soldier, *Virginia Independent Chronicle* 19 March 1788; cf. Ames, Elliot II, 8; *The Federalist* no. 10.

33. Henry 5.16.27; Smith 6.12.17.

*34. McMaster and Stone 335. The Pennsylvania Constitution of 1776 provided (II, sec. 7): "the house of representatives of the freemen of this commonwealth shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every city and county of this commonwealth respectively." John Adams in his influential *Thoughts on Government* wrote of deputing power "from the many to a few of the most wise and good." *Works* IV, 194.

35. Livingston, Elliot II, 293; replied to by Smith, ibid. 310–11.

36. *The Federalist* no. 10, 62. Cassius (a Federalist reply to R. H. Lee), *Virginia Independent Chronicle* 2 April 1788; see Gouverneur Morris, Farrand II, 30–31 (17 July).

37. McMaster and Stone 336.

*38. Charles Cotesworth Pinckney, Elliot IV, 302. Consider, however, Hamilton's reflection that demagogues are not always petty men. Farrand I, 147 (6 June). Publius concedes that the the case is equivocal. If the large republic has a larger proportion of fit characters, it also has a larger proportion of bad ones; if corruption is more difficult, so is popular supervision of representatives. *The Federalist* no. 10, 63.

*39. *The Federalist* no. 57, 384. Nevertheless, it goes too far to say, as Gordon Wood does, that putting "good men into the administration" is "the crux of the Federalist argument," as indeed Wood's summary chapter sufficiently shows. *Creation* 508, 602–6. See this volume 53, 54, on limited government.

40. Ford, *Pamphlets* 40.

*41. Elliot II, 8. Wood sees behind such views the old notion of virtual representation based on an "organic" and homogeneous society, together with the clever rhetoric of a social elite seeking to maintain its position. The more plausible foundation is the ostensible one, the belief that even in a civil society devoted to the preservation of individual liberty, there is an objective collective interest which does not necessarily coincide with popular inclinations. Cf. Wood, *Creation* chs. 5, 12; *The Federalist* no. 71, 482–83.

42. Brutus I, 2.9.16; cf. Impartial Examiner 5.14.6.

43. *A Defence of the Constitutions of Government of the United States of America* I, letter 3 (John Adams, *Works* IV, 309–10). On citations to the *Defence*, see Martin 2.4.38 n. 9.

*44. Hamilton, Farrand II, 288 (18 June). See the very interesting discussion in [Carter Braxton] *An Address to the Convention of . . . Virginia . . .* By a Native of that Colony (Philadelphia 1776). Braxton describes the severe limits that a democratic regime based on public virtue requires. "Schemes like these may be practicable in

countries so sterile by nature as to afford a scanty supply of the necessaries and none of the conveniences of life," but in a more bountiful country men "will always claim a right of using and enjoying the fruits of their honest industry, unrestrained by any ideal principles of government. . . . These are rights which freemen will never consent to relinquish, and after fighting for deliverance from one species of tyranny, it would be unreasonable to expect they should tamely acquiesce under another" (p. 17).

45. Centinel VIII, 2.7.126; see also [New Hampshire] Farmer 4.17.8.

46. See Harry V. Jaffa, "Agrarian Virtue and Republican Freedom: An Historical Perspective," *Equality and Liberty: Theory and Practice in American Politics* (New York 1965).

*47. Ford, *Essays* 140. A Landholder explains to his readers that he is a merchant, now retired to the country—the best of both worlds, as it were. See also *The Federalist* no. 12, and cf. Charles Pinckney's different view, Elliot IV, 321–22.

48. Noah Webster, Ford, *Pamphlets* 59.

*49. See "Vices of the Political System of the U. States," April 1787, Madison, *Writings* (ed. Hunt) II, 366–69; Farrand I, 134–36 (6 June); *The Federalist* no. 10; letter to Thomas Jefferson, 24 October 1787, Madison, *Writings* (ed. Hunt) V, 17–41, esp. 32. Douglass Adair has shown that Charles Beard was largely responsible for initiating the present-day prominence of *The Federalist* no. 10 and for giving it a peculiar interpretation. Adair shows without difficulty that Beard's description of Madison's theory as a form of economic determinism is wrong. He also shows that Madison had carefully worked out his defense of the extended republic and that it had played a prominent role in Madison's argument in the Constitutional Convention. The influence of Madison's arguments or the role played, more broadly, by various versions of the notion of the extended republic are questions that have yet to receive satisfactory examination. Adair, "The Tenth Federalist Revisited," *William and Mary Quarterly* January 1951; " 'That Politics May Be Reduced to a Science': David Hume, James Madison and the Tenth Federalist," *Huntington Library Quarterly* August 1957; both articles reprinted in Adair, *Fame and the Founding Fathers* chs. 3, 4.

50. Farrand I, 136 (6 June).

51. Brutus I, 2.9.16; see Federal Farmer VIII, 2.8.110.

52. See Charles Pinckney, Elliot IV, 326–27; G. Morris, Farrand II, 54 (19 July).

53. Elisha Douglass, *Rebels and Democrats* (Chapel Hill, N.C., 1955) 148, quoting *American Archives* 4th series, III, 1514.

*54. See A Citizen of America [Noah Webster], Ford, *Pamphlets* 55–56. Nevertheless, the Federalists preached too, though relying on it less. See, for example, James Wilson's Fourth of July Address, *Boston Gazette and Country Journal* 28 July 1788; Ralph Lerner, "The Supreme Court as Republican Schoolmaster," *Supreme Court Review* 1967.

55. Letter from Thomas B. Wait to George Thatcher, 22 November 1787, "Thatcher Papers," *Historical Magazine* November 1869, 258.

CHAPTER SIX

1. Lincoln, Elliot IV, 313. See the characteristic argument made by John Dewitt 4.3.10–14; Centinel I, 2.7.5–24.

*2. See Wood, *Creation* 488–92 and 503. Wood, however, underestimates the extent to which what he describes as the Old Whig concern with a dichotomy between rulers and people is still an important part of the Anti-Federal concern with aristocracy.

*3. See Mason 2.2.3–4; Brutus XVI, 2.9.202–4; "The Congress" (see above, ch. 3 n. 35); Cincinnatus IV, 6.1.26–34; V, 6.1.36. See Madison on the debate on executive departments in the first Congress, *Annals of Congress* I, 380 (1 May): "Perhaps there was no argument urged with more success or more plausibly grounded against the Constitution, under which we are deliberating, than that found in the mingling of the

Executive and Legislative branches of the Government in one body." James Wilson confessed that the powers of the Senate were not favorite provisions of his but were generally desired. McMaster and Stone 326ff.

4. Cincinnatus V, 6.1.35; Centinel I, 2.7.23. See A Citizen, *Carlisle Gazette* 24 October 1787 (reply to Centinel).

5. Monroe 5.21.27; Federal Farmer XIV, 2.8.177; [Maryland] Farmer II, 5.1.30–31; "The Congress" (see above, ch. 3 n. 35); cf. Mason 2.2.6.

*6. Federal Farmer XIV, 2.8.178. Here again the Federal Farmer took the more traditional view, similar to Adams but different from Madison and from Publius. "In every large collection of people there must be a visible point serving as a common centre in the government, towards which to draw their eyes and attachments. The constitution must fix a man, or a congress of men, superior in the opinion of the people to the most popular man in the different parts of the community, else the people will be apt to divide and follow their respective leaders." Ibid. Cf. John Adams, *Defence* I, preface, letter 55 (*Works* IV, 285–92, 585). While A [Maryland] Farmer argued for the need in a representative system for an executive for life (V, 5.1.74), The Federal Farmer would have the executive limited to one several-year term. Both sought to avoid the convulsions invited by short-range terms and re-eligibility; rather than that, The Federal Farmer said, it would be "almost as well" to establish a hereditary executive (XIV, 2.8.180). Cf. Cornelius 4.10.12–15; Williamson, Farrand II, 101 (24 July); Franklin, Farrand I, 83 (2 June), 103 (4 June).

*7. Farrand I, 101–2, 113–14 (4 June). Randolph expressed himself as opposing "a unity in the Executive magistracy" which would be "the foetus of monarchy," a form of government altogether inconsistent with the fixed genius of the American people. Farrand I, 66 (1 June). See Centinel II, 2.7.51; Pennsylvania Convention Minority 3.11.45; Federal Republican 3.6.39; Maryland Convention Minority 5.4.7.

8. Mason, Elliot III, 496–97; Philadelphiensis IX, 3.9.61 (see also 3.9.57, 58, 60); Clinton 6.13.32; Cato IV, 2.6.25–26; Old Whig V, 3.3.31; Sidney 6.8.1; Officer of the Late Continental Army 3.8.3; Cornelius 4.10.12, 20–21; Lowndes 5.12.4; Impartial Examiner 5.14.38–40; Henry 5.16.7.

9. Symmes 4.5.2.

10. Henry 5.16.11.

11. Federal Republican 3.6.23–24; see Wilson, McMaster and Stone 359.

*12. On the Federalist side Charles Pinckney of South Carolina predicted that the national judiciary "might be made the keystone of the arch, the means of connecting and binding the whole together, of preserving uniformity in all the judicial proceedings of the Union. . . . [I]n republics, much more (in time of peace) would always depend upon the energy and integrity of the judicial than on any other part of the government—that, to insure these, extensive authorities were necessary. . . ." Elliot IV, 258.

13. Brutus XV, 2.9.186, 193. On judicial review, see also Centinel XVI, 2.7.168; Countryman from Dutchess County 6.6.27, 28; Martin 2.4.89; James Wilson, Elliot II, 489, 446, and McMaster and Stone 304–5; Ellsworth, Elliot II, 196.

*14. Federal Farmer XV, 2.8.185. Publius contended that "the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the constitution. . . . [T]hough individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter. . . ." *The Federalist* no. 78, 522–23.

15. Centinel V, 2.7.101.

*16. McMaster and Stone 280. Publius rejected this "political heresy," yet concluded that "the true test of a good government is its aptitude and tendency to produce a good administration." *The Federalist* no. 68, 461.

17. *The Federalist* no. 51, 349; R. R. Livingston, Elliot II, 345.

18. Demosthenes Minor, *Gazette of the State of Georgia* 15 November 1787 (see also his essay on 22 November 1787); Cassius, *Virginia Independent Chronicle* 2 April 1788.

19. Randolph, Elliot III, 70.

20. Iredell, Elliot IV, 221; see also ibid., 195: "There is a degree of jealousy which

it is impossible to satisfy." See McKean, McMaster and Stone 274–75; One of the Middle Interest, *Massachusetts Centinel* 28 November 1787.

21. Alfredus, New Hampshire *Freeman's Oracle* 18 January 1788.

22. *The Federalist* no. 76, 513–14.

*23. Agrippa XV, 4.6.71; Farrand II, 285 (14 August); see also Old Whig III, 3.3.17; Republican Federalist 4.13.18. See Thomas Jefferson, the Kentucky Resolutions: ". . . confidence is everywhere the parent of despotism—free government is founded in jealousy and not in confidence; it is jealousy, and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power. . . ." *The Complete Jefferson,* ed. Saul K. Padover (New York 1943) 133. Samuel Adams: "[T]here is a Degree of Watchfulness over all Men possessed of Power or Influence upon which the Liberties of Mankind much depend." Letter to Elbridge Gerry, 23 April 1784, *The Writings of Samuel Adams,* ed. H. A. Cushing (New York 1904–8) IV, 302.

*24. Brutus IV, 2.9.54; Elliot II, 295–96; Smith 6.12.34. Cf. Federal Farmer III, 2.8.25; *The Federalist* no. 51, 349. The Anti-Federalists were impressed with Burgh's caution: "To take the character of man from history, he is a creature capable of any thing the most infernally cruel and horrid, when actuated by interest, or what is more powerful than interest, passion, and not in immediate fear of punishment from his fellow-creatures; for damnation lies out of sight. Who would trust such a mischievous monkey with superfluous power?" Burgh, *Political Disquisitions* I, 106. See N. Barrell in Elliot II, 159, and in letter to George Thatcher, 15 January 1788, *Historical Magazine* November 1869, 264–65; Columbian Patriot 4.28 passim; Luther Martin, Ford, *Essays* 378. And see Georgian 5.9.2: ". . . mankind, upon the whole, is so depraved as, with pleasure, to trample upon the sacred rights and privileges of their fellow creatures."

25. Federal Farmer IV, 2.8.58.

26. Centinel I, 2.7.9.

27. [Maryland] Farmer II, 5.1.30.

*28. Henry 5.16.14. "The executive branch of the government was eternally in action; it was ever awake; it never slept; its action was continuous and unceasing, like the tides of some mighty river, which continued flowing and flowing on, swelling, and deepening, and widening, in its onward progress, till it swept away every impediment, and broke down and removed every frail obstacle which might be set up to impede its course." Henry Clay, Speech on the Amendment of the Constitution Respecting the Veto Power, 24 January 1842, *Life and Speeches of The Hon. Henry Clay,* ed. Daniel Mallory, 4th ed. (New York 1844) II, 519. See Jefferson to Edward Carrington, 27 May 1788: "The natural progress of things is for liberty to yeild [*sic*] and government to gain ground." *The Papers of Thomas Jefferson,* ed. Julian P. Boyd (Princeton 1950–) XIII, 208–9.

CHAPTER SEVEN

1. See the very good statement by The Federal Farmer I, 2.8.13, and VI, 2.8.70.

2. Plebeian 6.11.12, 2.

3. Old Whig I, 3.3.3.

4. See this volume, ch. 6.

5. Elliot II, 348.

6. Henry, Elliot III, 579; see Cato III, 2.6.14.

7. Denatus 5.18.5.

8. Centinel IV, 2.7.89; G. Livingston, Elliot II, 388; Selected Committee for Cumberland County, *Carlisle Gazette* 5 March 1788; Columbian Patriot 4.28.4.

9. Henry 5.16.2.

10. Columbian Patriot 4.28.4. See Henry 5.16.11: "This Government is so new it wants a name."

11. Martin 2.4.38.

*12. Part of the limited character of the new government was the very division of

power between the general government and the states, which has been discussed above (ch. 4). "Separation of powers" and "checks and balances" often took on an additional meaning for the Anti-Federalists, and even "mixed government" was sometimes used to refer to the "mixture" of general and state governments. Henry 5.16.22; Federal Farmer VI, 2.8.78. A major difficulty with the notion of a federal balance, however, is the absence of any third, "balancing" power. See Dickinson's excellent brief statement of the relation between traditional checks and balances and the American federal-state balance in the Constitutional Convention. Farrand I, 86–87 (2 June), 152–53 (7 June).

13. Kenyon, *The Antifederalists* lxxx.

14. See also Lowndes 5.12.3.

*15. The evidence bearing on the question of the influence on the Constitutional Convention of John Adams' book, the first volume of which reached Philadelphia in the spring of 1787, is slender. According to Charles Francis Adams, it "was much circulated in the convention, and undoubtedly contributed somewhat to give a direction to the opinions of the members." Benjamin Rush suggested to Richard Price that Adams' book was having a valuable effect on the constitutional deliberations. The influence has probably been exaggerated. As the text makes clear and as Gordon Wood has recently shown, the Constitutional scheme of complex government was quite different from Adams'. Yet they *were* both schemes of complex government. It is quite clear in any case that many Anti-Federalists took Adams' ideas to have been influential; and the *Defence* figured significantly in their discussions of the Constitution. John Adams, *Works* IV, 276; letter of Benjamin Rush to Richard Price, 2 June 1787, *Letters of Benjamin Rush* (ed. Butterfield) I, 418; Page Smith, *John Adams* (Garden City, N.Y., 1962) 698–701; Wood, *Creation* ch. 14; Centinel I, 2.7.7–9; Humble 3.7.1.

16. Centinel I, 2.7.7.

17. See *Defence*, preface (John Adams, *Works* IV, 284).

18. See *Defence*, letters 23, 25, 55 (John Adams, *Works* IV, 380–82, 397–98, 579–80.

*19. The American Founding generation found access to this tradition mainly, though by no means exclusively, through Montesquieu's *The Spirit of Laws* and William Blackstone's *Commentaries on the Laws of England*, each in its way a modern adaptation of old ideas of the mixed regime. An important early American statement is to be found in *The Essex Result* (Newbury-Port 1778), printed in Theophilus Parsons, Jr., *Memoir of Theophilus Parsons* (Boston 1859) 359 ff. Most secondary work on mixed government and the separation of powers has now been superseded by M. J. C. Vile, *Constitutionalism and the Separation of Powers* (Oxford 1967), and W. B. Gwyn, *The Meaning of the Separation of Powers* (New Orleans 1965).

20. Centinel I, 2.7.8–9. For a fuller and better argument in favor of simple government, see [anon.] *Four Letters on Interesting Subjects* (Pennsylvania 1776) (Evans, *Early American Imprints* no. 14759).

21. [Maryland] Farmer II, 5.1.34.

22. See this volume, ch. 6.

23. [Maryland] Farmer V, 5.1.69; see ibid. 80–82; Warren 6.14.168. See Adams' somewhat different account in his *Defence*, preface (*Works* IV, 289–90), and Monroe's in his *Some Observations* 5.21.21. On the obsolescence of pure democracy, see Alexis de Tocqueville, "Report Given before the Academy of Moral and Political Sciences on January 15, 1848 . . .," in *Democracy in America*, ed. Mayer (Garden City, N.Y., 1969), Appendix II, 740.

24. *Defence*, letter 25 (John Adams, *Works* IV, 397).

25. [Maryland] Farmer II, 5.1.29, 31.

26. Ibid. 5.1.18–49; V, 5.1.68–83.

*27. Henry 5.16.14. "There being nothing to prevent his [the President's] corruption but his virtue, which is but precarious, we have not sufficient security." Monroe, Elliot III, 489; see ibid. 218–19.

28. Henry 5.16.7, 14.

*29. Federal Farmer XI, 2.8.146, 145. It should be noted that The Federal Farmer's proposal was to increase the number in the Senate and to connect it with the states for stability and stature, so that his concern with a stronger place for the states in the new general government would also be served. See also ibid. VII, 2.8.97: "We talk of balance in the legislature, and among the departments of government; we ought to carry them to the body of the people."

*30. The same question arises in connection with the executive. Madison stated this in the convention on 6 June when he referred to the difficulty of rendering the executive competent to its own defense in a republic, "which could not give to an individual citizen that settled pre-eminence in the eyes of the rest, that weight of property, that personal interest against betraying the National Interest, which appertains to an hereditary magistrate." Farrand I, 138. See *The Federalist* nos. 76–77.

*31. Noah Webster, defending the need for a senate, even though there was no American nobility, said that "in most of our American constitutions, we have all the advantages of checks and balances, without the danger which may arise from a superior and independent order of men." Ford, *Pamphlets* 35ff.

*32. Elliot III, 218–19. See also the similar observation of A Citizen in the *Carlisle Gazette* for 24 October 1787, who contended that the branches were not intended to balance one another (at least, it may be added, not in the Adams sense) as Centinel claimed: "The sole intention of it is to produce wise and mature deliberations."

33. Officer of the Late Continental Army 3.8.3.

34. Centinel II, 2.7.50; Brutus XVI, 2.9.197.

*35. Federal Farmer X, 2.8.135. The writer went on to say, "and all be conformable to the condition of the several orders of the people," which is an additional part of the argument considered above. See also ibid. XIV, 2.8.173–78; Adams, *Defence,* letter 55 (*Works* IV, 581–84); Blackstone, *Commentaries on the Laws of England* I, 48–52. Cf. the scheme in Tussman and tenBrock, "The Equal Protection of the Laws," *California Law Review* September 1949; and Vile, *Constitutionalism and the Separation of Powers* ch. 1.

*36. This is fundamentally the same argument made for an independent national executive as a result of experience under the Articles of Confederation. See Charles Thach, *The Creation of the Presidency, 1775–1789: A Study in Constitutional History* (Baltimore 1922) ch. 3. The position is compatible with legislative supremacy; and it was held by the civil service reformers of the late nineteenth century, who argued in favor of the independence of the civil service, even against the legislature, precisely on the ground that this was the only way the civil service could efficiently serve the legislature.

37. *The Federalist* no. 48, 332.

*38. See the very interesting discussion by Brutus of this question in his last essay (XVI, 2.9.197ff). It is perhaps significant that the Brutus essays broke off before reaching the promised discussion of the senatorial power of impeachment—the critical case of a mixture of powers in behalf of popular responsibility.

39. This is what Publius explained in *The Federalist* nos. 47 and 48.

*40. ". . . it is impracticable, perhaps, to maintain a perfect distinction between these several departments—for it is difficult, if not impossible, to call to account the several officers in government, without in some degree mixing the legislative and judicial." Brutus XVI, 2.9.197; see also ibid. 202–3.

*41. This is the traditional view of balanced government; cf. this volume, 55–56.

*42. A Citizen, *Carlisle Gazette* 24 October 1787. See Pelatiah Webster's defense of the division of the legislature into three branches, to promote both safety and mature deliberation. The veto of the President "will furnish all the new light which a most serious discussion in a third House can give, and will make a new discussion necessary in each of the other two, where every member will have an opportunity to revise his opinion, to correct his arguments, and bring his judgment to the greatest maturity possible." "Remarks on the Address of the Sixteen Members . . . ," McMaster and Stone 96. See Jean Louis DeLolme, *Constitution of England* (London 1853) II, ch. 3, 156–62.

*43. Blackstone, *Commentaries on the Laws of England* I, 48–52; see this volume

55–56 and ch. 7 n. 17. The movement from Adams to Madison is, among other things, a movement from legislative sovereignty to constitutional balance.

*44. The three-part division of functions, legislative, executive, and judiciary, seems a natural basis for a three-part balance of power arrangement. We need not here inquire into the deeper implications of the question whether a balance of power system necessarily reduces itself in principle to a three-part system. A three-part balance of power, however fluid and complex, seems the obvious foundation for the constitution-maker and was so viewed by the men of the Founding generation. (A major difficulty of the "federal" system as a balance of power system is its lack of a third, "balancing," power.) Neither do our present purposes require a consideration of the important question of the status of the particular threefold division of functions that finds expression in the American constitution. The chief alternatives to this scheme are the legislative-federative-executive division of Locke and the simpler legislative-executive scheme occasionally favored in the late eighteenth century and later adopted by civil service reformers and students of public administration.

*45. Elliot II, 434; cf. McMaster and Stone 230–31. Later Wilson explained: ". . . all authority of every kind *is derived by* REPRESENTATION *from the* PEOPLE *and the* DEMOCRATIC *principle is* carried into every part of the government." James Wilson, ibid. 344. The Constitution "unites in its different parts all the advantages, without any of the disadvantages, of three well-known forms of government and yet it preserves the attributes of a republic." One of the Four Thousand, ibid., 116. If Europe has the merit of discovering representation, Publius said, "America can claim the merit of making the discovery the basis of unmixed and extensive republics." *The Federalist* no. 14, 84. See Wood, *Creation* 584.

*46. Some of the Federalists also had doubts, most notably Alexander Hamilton, who expressed in the Philadelphia Convention his doubts about the scheme in which "a democratic assembly is to be checked by a democratic senate, and both these by a democratic chief magistrate." Farrand I, 310 (18 June).

CHAPTER EIGHT

1. See this volume 22–23 for a discussion of the Anti-Federalists' view of religion.

*2. Pennsylvania Convention Minority 3.11.13. Many Anti-Federalists, especially in Pennsylvania, deplored the absence of any constitutional exemption from military service for conscientious objectors, such as the Quakers had enjoyed in Pennsylvania. Philadelphiensis II, 3.9.11.

*3. Cincinnatus I, 6.1.19. Others, on the other hand, were concerned that the officeholding could not be confined to Protestants or even Christians. Philadelphiensis II, 3.9.13.

4. Old Whig V, 3.3.27.

*5. The Anti-Federalists were especially warm in their defense of a free press, because of their own attempts to use the press to mobilize opinion in opposition to the Constitution and their belief that, in one way or another, attempts were being made to muzzle them. See below, Centinel II, 2.7.28–38. But they were also concerned, more deeply, that the Federalist lack of protection for a vigorous free press signaled a basic hostility to popular enlightenment, based on a dogma that government is too important a business for the people to be involved in. See Aristocrotis 3.16.3; Old Whig I, 3.3.3.

*6. Centinel I, 2.7.25; A Confederationist, *Pennsylvania Herald and General Advertiser* 27 October 1787. The precise meaning of freedom of the press was seldom discussed. James Wilson made the then-standard argument that it does not preclude the punishment of libel, including seditious libel: "what is meant by the liberty of the press is, that there should be no antecedent restraint upon it; but that every author is responsible when he attacks the security or welfare of the government or the safety, character and property of the individual." McMaster and Stone 308–9. See One of the Middle Interest (above, ch. 6 n. 20). Most of the Anti-Federalists would probably

have accepted this understanding (see [New Hampshire] Farmer 4.17.3), but a few denied it, adopting the more modern view. A Confederationist went on to say, "When this declaration [of the liberty of the press] be made, let the attorney general of the United States, file an information against me for libel; I will carry that declaration in my hand, as my shield and my constitutional defence."

7. New Hampshire *Freeman's Oracle* 18 January 1788; Luther Martin, Ford, *Essays* 364–65; cf. James Wilson's federal liberty argument, this volume 11. See Remarker, *Boston Independent Chronicle* 22 December 1787.

8. McMaster and Stone 143–44; see Charles Pinckney, Elliot IV, 259–60; Agrippa XIII, 4.6.60.

9. McMaster and Stone 144, 354; see ibid. 304–5.

10. See Leonard Levy, *A Legacy of Suppression* (Cambridge, Mass., 1960).

11. Brutus II, 2.9.26; see ibid. 2.9.31.

12. Aristocrotis 3.16.15. Cf. Symmes 4.5.2 on the laconic character of the Constitution.

13. Old Whig II, 3.3.12. See [Maryland] Farmer I, 5.1.15.

14. Randolph, Elliot III, 464–65. See also Yeates in the Pennsylvania ratifying convention, McMaster and Stone 296.

15. Agrippa VI, 4.6.22; see Brutus II, 2.9.31; Henry 5.16.34–37; [Maryland] Farmer I, 5.1.12; Friend to the Rights of the People 4.23.6. For Federalist arguments being rebutted here, see Alfredus (above, ch. 6 n. 21); One of the Middle Interest (above, ch. 6 n. 20); A Citizen (above, ch. 2 n. 25); Civis Rusticus, *Virginia Independent Chronicle* 30 January 1788; Sherman, Farrand II, 588 (12 September).

16. Henry 5.16.37. Wilson, McMaster and Stone 254. See above, n. 12. See letter from S. Lee to George Thatcher, 19 January 1788, *Historical Magazine* November 1869, 266–67.

17. Federal Republican 3.6.50.

18. Samuel Chase, letter to John Lamb, 13 June 1788, in Leake, *Memoir of the Life and Times of General John Lamb* 310; see Philadelphiensis 3.9.43.

19. Impartial Examiner 5.14.4.

20. Brutus II, 2.9.24.

21. McMaster and Stone 252; see Wilson, ibid. 253–54.

22. Elliot III, 191.

23. A Native of Virginia [Burwell Starkes?], *Observations upon the Proposed Plan of Government* (Petersburg, Va., 1788); this pamphlet was at one time erroneously attributed to James Monroe and is printed in *The Writings of James Monroe*, ed. S. M. Hamilton (New York 1898–1903) I, 349–55. See Wilson, McMaster and Stone 252–54; One of the Middle Interest (above, ch. 6. n. 20).

24. McMaster and Stone 295. See also Cassius, Ford, *Essays* 28; Plain Truth, McMaster and Stone 190–91.

25. Remarker, *Boston Independent Chronicle* 27 December 1787.

26. Agrippa XVI, 4.6.73; see this volume 40.

27. Hamilton, Elliot II, 239; see Smith 6.12.20 n. 21, and Elliot II, 354–55.

*28. Federal Farmer IX, 2.8.121. Agrippa XV, 4.6.71: "But for want of a bill of rights the resistance is always by the principles of their government, a rebellion which nothing but success can justify."

*29. Brutus X, 2.9.128; see VI, 2.9.69. Luther Martin contended that a man might find himself compelled to be guilty of treason against the general government or against his state, when the latter is resisting the arbitrary encroachments of the former. Martin 2.4.96.

*30. *The Federalist* no. 28, 179. It is striking that Publius' reference to checks by the states on the general government are usually connected with some reference to the ultimate defense by the people of their rights. See *The Federalist* no. 26, 169; no. 46, 321–22; no. 60, 404.

*31. "The public good, in which the private is necessarily involved, might be hurt by too particular an enumeration; and the private good could suffer no injury from a deficient enumeration, because Congress could not injure the rights of private citizens without injuring their own. . . ." Bowdoin, Elliot II, 87–88.

32. Delegate Who Has Catched Cold 5.19.16; Old Whig IV, 3.3.22. See Impartial Examiner 5.14.10.

33. Federal Farmer XVI, 2.8.196.

34. Sec. 15. In Thorpe, *Federal and State Constitutions* 3814.

CHAPTER NINE

1. Pendleton, Elliot III, 37; cf. Nicholas, ibid. 98; State Soldier, *Virginia Independent Chronicle* 12 March 1788.

*2. Hamilton, Elliot II, 301. Similarly, cheap government is not necessarily good government. See Noah Webster, Ford, *Pamphlets* 47; also Oliver Ellsworth's formulation: "The cheapest form of government is not always the best, for parsimony, though it spends little, generally gains nothing. Neither is that the best government which imposes the least restraint on its subjects; for the benefit of having others restrained may be greater than the disadvantage of being restrained ourselves. That is the best form of government which returns the greatest number of advantages in proportion to the disadvantages with which it is attended." The Landholder, Ford, *Essays* 192. See A Native of Virginia (above, ch. 8 n. 23), in *The Writings of James Monroe* 352; Impartial Examiner 5.14.2.

3. John Jay, Ford, *Pamphlets* 71.

4. *The Federalist* no. 51, 349.

5. McMaster and Stone 351.

*6. Maecenas, *State Gazette of South Carolina* 6 December 1787. "What the government may terminate in depends on the people. . . . " Civis Rusticus, *Virginia Independent Chronicle* 30 January 1788, reply to Mason: ". . . the liberties of the people never can be lost, until they are lost to themselves, in a vicious disregard of their dearest interests, a sottish indolence, a wild licentiousness, a dissoluteness of morals, and a contempt of all virtue." Ibid. See Governor Huntington, Elliot II, 199–200.

7. Elliot III, 536–37.

8. *The Federalist* no. 55, 378; cf. no. 76, 513–14.

*9. For a revealing picture of Federalist government to contrast with Federalist principles of government, see Leonard D. White, *The Federalists* (New York 1948) chs. 2, 3, 8, 9, and 40, and *The Jeffersonians* (New York 1951) chs. 3–5 and 35.

*10. Cato V, 2.6.34. "Where then is our republicanism to be found? Not in our constitution but merely in the spirit of our people. That would oblige even a despot to govern us republicanly." *Memoirs, Correspondence and Miscellanies from the Papers of Thomas Jefferson,* ed. Thomas Jefferson Randolph, 2d ed. (Boston 1830) IV, 287.

11. *The Spirit of Laws* IV, ch. 5.

12. Federal Republican 3.6.21.

13. 1 Cranch 137, 176–78 (1803).

*14. *The Federalist* no. 49, 340–41. Cf. Madison to Jefferson, 4 February 1798, Madison, *Writings* (ed. Hunt) V, 438–39. John Marshall described the adoption of the Constitution as "a very great exertion." *Marbury* v. *Madison,* 1 Cranch 137, 176 (1803).

15. *The Federalist* no. 37, 238.

16. [John Dickinson] "Letter from a Farmer in Pennsylvania to the Inhabitants of the British Colonies" (1767), in *Empire and Nation,* ed. Forrest McDonald (Englewood Cliffs, N.J., 1962) 69. See *The Federalist* no. 37; A Citizen of New York [John Jay], "An Address to the People of the State of New York," Ford, *Pamphlets* 69–86.

*17. Impartial Examiner 5.14.15. See Mercy Warren, this volume 76. After the Revolution, Federalist John Jay wrote, "the spirit of private gain expelled the spirit of public good, and men became more intent on the means of enriching and aggrandizing themselves than of enriching and aggrandizing their country." Ford, *Pamphlets* 70–71; see Jay in New York convention, Elliot II, 284. Columbian Patriot 4.28.3:

"But there are certain seasons in the course of human affairs, when Genius, Virtue, and Patriotism, seems to nod over the vices of the times, and perhaps never more remarkably, than at the present period."

18. Lincoln, *Collected Works* I, 108–15. See Harry V. Jaffa, *Crisis of the House Divided* (Garden City, N.Y., 1959) ch. 9.

19. Columbian Patriot 4.28.12; see Mercy Warren on Washington, 6.14.54–77.

*20. The Federalists were not, generally speaking, less antislavery than the Anti-Federalists (indeed, one of the very few attempts to provide any kind of moral justification of slavery was made by Anti-Federalist Rawlins Lowndes); but their commitment to a policy of interest made it relatively easy to say, as did Oliver Ellsworth of the participation by the Southern states in the slave trade, that "their consciences are their own, tho' their wealth and strength are blended with ours." The Landholder, Ford, *Essays* 164; see also William Heath, Elliot II, 115. See Ford, *Pamphlets* 146; Martin 2.4.45, 68–70. The Anti-Federalists were less easily persuaded that questions of politics can be freed from questions of conscience.

21. Warren 6.14.67.

The Articles of Confederation

Keyed to the Principal Anti-Federalist Discussions
(see volumes 2–6 below)

To all to whom these Presents shall come, we the under signed Delegates of the States affixed to our Names, send greeting.

Whereas the Delegates of the United States of America, in Congress assembled, did, on the 15th day of November, in the Year of Our Lord One thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America, agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia in the words following, viz. "Articles of Confederation and perpetual Union between the states of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia. [3.11.30; 4.13.16; 5.16.1–2]

Article I. The Stile of this confederacy shall be "The United States of America." [5.21.6]

Article II. Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled. [2.5.9; 2.6.3; 2.7.37–38; 2.7.98; 2.8.81; 3.3.8; 3.5.2; 3.6.51; 3.11.27; 5.12.2; 5.14.5; 5.21.6; 5.21.8; 5.21.12]

Article III. The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever. [3.6.2; 5.14.44–45; 5.21.6]

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free

ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state, of which the Owner is an inhabitant; provided also that no imposition, duties or restrictions shall be laid by any state, on the property of the united states, or either of them. [2.8.85; 5.21.6]

If any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall, upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Article V. For the more convenient management of the general interests of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, to recal its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year. [2.8.147; 5.21.6; 5.21.8]

No state shall be represented in Congress by less than two, nor by more than seven Members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the united states, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the united states in Congress assembled, each state shall have one vote. [2.4.28; 2.4.32–33; 2.4.35; 2.4.45; 3.6.12]

Freedom of speech and debate in Congress shall not be impeached or questioned in any Court, or place out of Congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

Article VI. No state, without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state;

nor shall the united states in congress assembled, or any of them, grant any title of nobility. [2.8.84; 5.16.2; 5.21.5]

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage. [2.9.112]

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the united states in congress assembled can be consulted: nor shall any state grant commisssions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled, shall determine otherwise.

Article VII. When land-forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the State which first made the appointment. [5.21.6]

Article VIII. All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the

value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time direct and appoint. [2.8.123; 3.6.43; 5.21.6]

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

Article IX. The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities, whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts. [2.8.82–83; 4.2.8; 5.21.5]

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day

appointed, without showing reasons, which congress shall judge sufficient, or being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also, that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the united states—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing or regulating post-offices from one state to another, thoughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office—appointing all officers of the land forces, in the service of the united states, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction—to

appoint one of the number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expences—to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expence of the united states; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled. [2.9.114]

The congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six Months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any

delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Article X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite. [5.21.6]

Article XI. Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states. [2.8.85; 5.21.6]

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation, shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged. [2.7.167; 5.21.6]

Article XIII. Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state. [2.1.3; 2.3.4–5; 2.4.36; 2.4.110–14; 2.6.3; 2.6.9; 2.8.85; 2.8.229; 3.3.42; 3.11.9; 4.2.11; 4.3.26; 4.4.13; 4.6.43; 4.10.4; 4.13.6–7; 4.13.10; 4.13.16; 4.14.10; 5.3.1; 5.21.4; 5.21.6; 6.5.4; 6.6.20; 6.7.4; 6.11.8]

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In Witness whereof we have hereunto set our

hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth day of July, in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America.

Josiah Bartlett,
John Wentworth, junr.
August 8th, 1778,
— On the part & behalf of the State of New Hampshire.

John Hancock,
Samuel Adams,
Elbridge Gerry,
Francis Dana,
James Lovell,
Samuel Holten,
— On the part and behalf of the State of Massachusetts Bay.

William Ellery,
Henry Marchant,
John Collins,
— On the part and behalf of the State of Rhode-Island and Providence Plantations.

Roger Sherman,
Samuel Huntington,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams,
— On the part and behalf of the State of Connecticut.

Jas. Duane,
Fra. Lewis,
Wm. Duer,
Gouvr. Morris,
— On the part and behalf of the State of New York.

Jno. Witherspoon,
Nathl. Scudder,
— On the Part and in Behalf of the State of New Jersey, November 26th, 1778.

Robert Morris,
Daniel Roberdeau,
Jon. Bayard Smith,
William Clingar,
Joseph Reed,
22d July, 1778,
— On the part and behalf of the State of Pennsylvania.

Thos. McKean,
Feby. 22d, 1779,
John Dickinson,
May 5th, 1779,
Nicholas Van Dyke,
— On the part & behalf of the State of Delaware.

John Hanson,
March 1, 1781,
Daniel Carroll, do
— On the part and behalf of the State of Maryland.

Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee,
— On the Part and Behalf of the State of Virginia.

John Penn,
July 21st, 1778,
Corns. Harnett,
Jno. Williams,
— On the part and behalf of the State of North Carolina.

Henry Laurens,
William Henry Drayton,
Jno. Mathews,
Richd. Hutson,
Thos. Heyward, junr.
} On the part and on behalf of the State of South Carolina.

Jno. Walton,
24th July, 1778,
Edwd. Telfair,
Edwd. Langworthy,
} On the part and behalf of the State of Georgia.

The Constitution of the United States

Keyed to the Principal Anti-Federalist Discussions
(see volumes 2–6 below)

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America. [2.9.57; 3.11.30; 4.13.21; 5.16.1; 6.9.2; 6.13.25]

Article. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. [2.6.35; 2.6.37; 2.7.22; 4.6.60]

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen. [2.8.150; 4.13.26]

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. [2.6.39; 2.8.44; 3.6.43–44; 4.14.1–2; 4.13.22; 4.26.4; 6.12.8] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York

six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. [2.8.15; 2.8.25; 3.6.12; 3.11.34–35; 4.13.25; 6.1.29; 6.12.8–10]

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment. [2.4.87; 3.16.15; 6.1.29]

Section. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote. [2.6.37; 2.8.147, 164, 214; 2.9.198–201; 3.14.14; 5.3.7; 5.21.32–33; 6.1.26–36; 6.12.25–35]

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies. [3.6.15; 3.6.42]

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided. [2.4.84; 6.1.27]

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. [2.4.88; 2.6.45; 5.21.33]

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature

thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators. [2.6.46–47; 2.7.73–74; 2.7.100; 2.8.181; 3.11.25; 3.16.5; 4.4.2–3; 4.4.6; 4.10.10; 6.1.53–55; 6.7.4]

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a small Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide. [2.8.28; 4.10.10]

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal. [4.5.2; 5.16.20]

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. [3.14.15; 4.10.8–9; 4.14.1; 4.23.3(3); 5.12.2] They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place. [3.4.3]

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office. [2.4.46–48; 4.13.5]

Section. 7. All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills. [2.2.3; 2.4.51–52; 3.6.41; 4.2.6; 6.1.27]

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the

United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return in which Case it shall not be a Law. [2.4.53–54; 3.9.65; 3.12.15–17; 5.14.38]

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; [2.4.55–56; 4.5.8–16; 5.14.6; 6.12.36–38]

To borrow Money on the credit of the United States; [3.14.12; 4.22.4; 6.8.28]

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; [4.6.53]

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States; [2.8.10; 2.8.35; 2.8.214; 2.8.224; 3.13.5]

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations; [2.8.185; 2.9.86; 4.6.42; 4.9.22]

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; [3.6.20; 5.16.23; 5.21.5]

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; [2.4.59; 2.8.39; 4.5.2; 4.23.3(4)]

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; [2.4.60–61; 2.8.217; 3.3.29; 3.11.58; 5.16.2]

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, [2.8.222–23; 2.9.200; 4.8.1; 4.9.32; 4.12.10; 5.7.7] and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; [2.8.223–24; 5.16.12]—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof. [2.9.5; 2.9.8–9; 2.9.57; 2.9.60; 2.9.153; 3.3.12; 6.1.24; 6.9.13; 6.9.23]

Section. 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person. [2.2.14; 2.4.63–71; 2.6.35; 2.9.39; 5.12.1]

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it. [2.9.30; 5.9.8; 5.16.38]

No Bill of Attainder or ex post facto Law shall be passed. [2.9.103; 3.16.18; 5.16.39; 6.7.13]

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. [2.8.44]

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to,

or from, one State, be obliged to enter, clear, or pay Duties in another. [2.4.73–74]

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time. [4.22.4; 5.16.8]

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State. [2.8.198; 4.2.10; 6.7.8]

Section. 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility. [2.4.76–77; 2.9.182; 3.13.5; 4.5.2]

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress. [2.4.79; 3.14.11; 5.12.2; 6.1.43]

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay. [2.8.200]

Article. II.

Section. 1. The executive Power shall be vested in a President of the United States of America. [2.4.81; 2.6.25; 5.2.3] He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector. [2.4.83; 2.6.30; 2.6.47; 2.7.100; 2.8.177; 2.8.214; 3.9.63; 4.6.75; 4.9.11; 4.13.13; 4.28.4; 5.9.9; 5.13.13]

The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same

State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. [2.4.84] But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected. [2.8.181; 3.13.3]

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them. [4.10.12; 4.12.5; 5.9.9]

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of

my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; [2.4.85; 2.6.31; 3.3.31] he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. [2.2.9; 2.4.85; 2.5.41; 2.7.23; 2.7.51; 3.11.45]

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; [2.9.33; 3.3.14] and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; [2.4.86; 4.23.3(6)] but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. [2.8.45]

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session. [2.5.41; 2.6.37]

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; [2.6.45; 5.10.2; 5.12.4] he shall receive Ambassadors and other public Ministers; [2.6.31] he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. [2.4.87–88; 5.21.34]

Article. III.

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior

Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. [2.8.147; 2.8.186; 2.8.188; 2.9.191–92]

Section. 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; [2.8.195; 2.9.134–40; 2.9.160; 3.4.4–5; 5.3.13]—to all Cases affecting Ambassadors, other public Ministers and Consuls; [2.9.168; 4.6.42; 4.9.22]—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States; [2.8.43; 2.9.160–61; 4.6.52]—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. [2.7.25; 2.8.186; 2.9.168–77; 3.3.51; 4.8.4; 5.7.7] In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. [2.8.189; 6.1.7]

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed. [2.4.92–93; 2.7.43–44; 2.8.186–93; 2.9.173; 2.9.179; 3.3.16; 3.5.5–9; 3.11.41; 4.6.21; 6.1.7; 6.1.13–15]

Section. 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article. IV.

Section. I. Full Faith and Credit shall be given in each State to the public Acts, Records, and judical Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States. [6.9.30]

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress. [2.4.16(14); 2.4.34; 2.4.99–107; 4.23.3(8); 5.20.6]

The Congress, shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence. [3.6.25; 4.5.2; 6.7.10; 6.9.14–15; 6.9.23; 6.10.10; 6.13.26]

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; [2.5.37; 2.7.56; 2.8.58; 3.3.50; 3.3.55] Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; [4.26.14–15] and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate. [2.8.143; 5.13.12]

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption

of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; [2.7.97; 2.8.46; 2.9.5; 2.9.31; 3.3.13; 3.11.22; 6.6.25–29; 6.9.12–13; 6.9.21] and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [3.11.13; 5.4.7]

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States. [4.14.3; 6.1.19]

Article. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. [4.2.11; 4.4.14; 4.4.20]

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independance of the United States of America the Twelfth. In witness whereof We have hereunto subscribed our Names,

Go. Washington—Presidt.
and deputy from Virginia

New Hampshire	John Langdon Nicholas Gilman
Massachusetts	Nathaniel Gorham Rufus King
Connecticut	Wm. Saml. Johnson Roger Sherman
New York	Alexander Hamilton
New Jersey	Wil: Livingston David Brearley. Wm. Paterson. Jona: Dayton
Pennsylvania	B Franklin Thomas Mifflin Robt. Morris Geo. Clymer

Pennsylvania	Thos. FitzSimons Jared Ingersoll James Wilson Gouv Morris
Delaware	Geo: Read Gunning Bedford jun John Dickinson Richard Bassett Jaco: Broom
Maryland	James McHenry Dan of St. Thos. Jenifer Danl. Carroll
Virginia	John Blair— James Madison Jr.
North Carolina	Wm. Blount Richd. Dobbs Spaight. Hu Williamson
South Carolina	J. Rutledge Charles Cotesworth Pinckney Charles Pinckney Pierce Butler.
Georgia	William Few Abr Baldwin

The First Ten Amendments to the Constitution

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. [2.7.55; 2.8.53; 2.8.86; 3.11.13; 4.17.3; 5.4.6; 5.6.5; 6.1.5–12]

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed. [3.11.13]

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law. [2.8.86; 2.8.202; 5.4.6]

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [2.7.55; 5.2.2; 6.2.2]

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; [2.8.200; 4.15.2; 4.15.4] nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; [2.9.27] nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. [2.8.43; 2.9.27; 3.5.6; 3.13.5; 4.6.21; 4.15.4; 5.6.5; 5.14.10; 6.1.19; 6.6.31]

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, [2.8.51; 3.5.5–9; 3.8.3; 4.8.2] and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law. [2.9.175–76; 3.11.38–39]

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. [2.7.55; 2.9.28; 5.16.36–37]

Article IX

The enumeration in the Constitution, of certain rights, shall not be con-

strued to deny or disparage others retained by the people. [2.8.198; 4.6.69–70]

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. [2.8.198; 5.5.8]

The Complete Anti-Federalist

The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 2

Objections of Non-Signers of
the Constitution
and
Major Series of Essays
at the Outset

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Contents

VOLUME TWO

Contents of Other Volumes vi
A Note on Cross References x
Works Frequently Cited xi

PART I

Objections of Non-Signers of the Constitution

Introduction 3
2.1 Elbridge Gerry's Objections to Signing the National Constitution (*Massachusetts Centinel* 3 November 1787) 4
2.2 George Mason's Objections to the Constitution of Government Formed by the Convention (1787) 9
2.3 Robert Yates and John Lansing, Reasons of Dissent (*New York Journal* 14 January 1788) 15
2.4 Luther Martin, The Genuine Information Delivered to the Legislature of the State of Maryland (1788) 19
2.5 Letter from Edmund Randolph Giving His Reasons for Refusing His Signature to the Proposed Federal Constitution (10 October 1787) 83

PART 2

Major Series of Essays at the Outset

2.6 Letters of Cato (*New York Journal* September 1787–January 1788) 101
2.7 Letters of Centinel (Philadelphia *Independent Gazetteer* and Philadelphia *Freeman's Journal* October 1787–April 1788) 130
2.8 Observations Leading to a Fair Examination of the System of Government Proposed by the Late Convention, Letters from The Federal Farmer (1787 and 1788) 214
2.9 Essays of Brutus (*New York Journal* October 1787–April 1788) 358

Contents of Other Volumes

VOLUME ONE

Foreword by Joseph Cropsey
Preface by Murray Dry
Prefatory Notes by Herbert J. Storing

What the Anti-Federalists Were *For*

1 Introduction
2 Conservatives
3 The Small Republic
4 Union
5 The Federalist Reply
6 The Aristocratic Tendency of the Constitution
7 Complex Government
8 Bill of Rights
9 Conclusion

The Articles of Confederation, Keyed to the Principal Anti-Federalist Discussions
The Constitution of the United States, Keyed to the Principal Anti-Federalist Discussions

VOLUME THREE
Pennsylvania

3.1 William Findley (28 September 1787)
3.2 Minority of the Pennsylvania House of Representatives (4 October 1787)
3.3 An Old Whig (October 1787–February 1788)
3.4 Montezuma (17 October 1787)
3.5 A Democratic Federalist (17 October 1787)
3.6 A Federal Republican (1787)
3.7 John Humble (29 October 1787)
3.8 An Officer of the Late Continental Army (6 November 1787)
3.9 Philadelphiensis (November 1787–April 1788)

3.10 Alfred (13 December 1787)
3.11 Minority of the Convention of Pennsylvania (18 December 1787)
3.12 William Penn (January 1788)
3.13 Deliberator (20 February 1788)
3.14 A Farmer (April 1788)
3.15 None of the Well-Born Conspirators (23 April 1788)
3.16 Aristocrotis (1788)

Volume Four
Massachusetts and New England

4.1 Anon., "A confederation" (9 October 1787)
4.2 A Gentleman in a Neighbouring State (October 1787)
4.3 John DeWitt (October–December 1787)
4.4 Vox Populi (October–November 1787)
4.5 William Symmes (15 November 1787)
4.6 Agrippa (November 1787–February 1788)
4.7 A Federalist (26 November 1787)
4.8 One of the Common People (3 December 1787)
4.9 Candidus (December 1787–January 1788)
4.10 Cornelius (December 1787)
4.11 Poplicola (24 December 1787)
4.12 Helvidius Priscus (December 1787–February 1788)
4.13 A Republican Federalist (December 1787–February 1788)
4.14 Samuel (10 January 1788)
4.15 Hampden (January–February 1788)
4.16 A Customer (March 1788)
4.17 A Farmer (January–June 1788)
4.18 Charles Turner (17 January and 6 February 1788)
4.19 The Yeomanry of Massachusetts (25 January 1788)
4.20 An American (28 January 1788)
4.21 A Bostonian (4 February 1788)
4.22 A Watchman (February 1788)
4.23 A Friend to the Rights of the People, A Friend to the Republic (February 1788)
4.24 David (7 March 1788)
4.25 A Newport Man (March 1788)
4.26 Consider Arms, Malichi Maynard, and Samuel Field (April 1788)
4.27 Phileleutheros (May 1788)
4.28 A Columbian Patriot (1788)

Volume Five

PART 1
Maryland

5.1 A Farmer (February–April 1788)
5.2 A Farmer and Planter (April 1788)
5.3 Samuel Chase (April 1788)
5.4 Minority of the Maryland Ratifying Convention (May 1788)
5.5 John Francis Mercer (April or May 1788)

PART 2
Virginia and the South

5.6 Richard Henry Lee (16 October 1787)
5.7 Cato Uticensis (17 October 1787)
5.8 A Proposal for Reviving Christian Conviction (October 1787)
5.9 A Georgian (15 November 1787)
5.10 Cato (November–December 1787)
5.11 Tamony (9 January 1788)
5.12 Rawlins Lowndes (January 1788)
5.13 Republicus (February and March 1788)
5.14 The Impartial Examiner (February–June 1788)
5.15 Brutus (14 May 1788)
5.16 Patrick Henry (June 1788)
5.17 George Mason (4 June 1788)
5.18 Denatus (11 June 1788)
5.19 A Delegate Who Has Catched Cold (June 1788)
5.20 Sentiments of Many (18 June 1788)
5.21 James Monroe (1788)

Volume Six

PART 1
New York

6.1 Cincinnatus (November–December 1787)
6.2 A Son of Liberty (8 November 1787)
6.3 Brutus, Jr. (8 November 1787)
6.4 An Observor (19 November 1787)
6.5 A Citizen (24 November 1787)
6.6 A Countryman from Dutchess County (November 1787–February 1788)

6.7 A Countryman (December 1787–January 1788)
6.8 Sidney (February–March 1788)
6.9 Sydney (June 1788)
6.10 Albany Antifederal Committee (26 April 1788)
6.11 A Plebeian (1788)
6.12 Melancton Smith (June 1788)
6.13 George Clinton (June–July 1788)

PART 2

Conclusion

6.14 Mercy Warren (1805)

VOLUME SEVEN

Index

A Note on Cross References

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.16.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 below. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

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PART 1

Objections of Non-Signers of the Constitution

Introduction

The Anti-Federalist argument opens with the statements of those members of the Constitutional Convention who refused to sign the document. Abraham Yates and Robert Lansing left the Convention on 10 July; Luther Martin left on 10 September; Edmund Randolph, Elbridge Gerry, and George Mason remained to the end, and their explanations of their refusal to sign occupied a major part of the last two days of the Convention. In the view of these men, the public good was to be served, not by following Franklin and silently sacrificing their doubts, but by going to the country with public declarations of the reasons for their opposition. Not surprisingly, their statements, made as they were by distinguished figures who had participated in the secret business at Philadelphia, played a prominent part in the debate over the Constitution.

Elbridge Gerry's Objections to Signing the National Constitution

MASSACHUSETTS CENTINEL
3 November 1787

An active revolutionary and faithful member of the Continental Congress, Elbridge Gerry was a signer of the Declaration of Independence and the Articles of Confederation. He was a member of the Philadelphia Convention, taking an active part in its deliberation but refusing to sign the Constitution. His fundamental concerns were in many ways similar to those of Edmund Randolph, another non-signer, although Randolph finally joined the Federalist ranks and gave the Constitution powerful support in the Virginia convention.[1] One of the old Republicans, described by Samuel Eliot Morison as ever faithful to the Spartan ideals of 1776,[2] Gerry, like Randolph, thought that "the evils we experience flow from the excess of democracy." "He had," he confessed at the Constitutional Convention, "been too republican heretofore: he was still however republican, but had been taught by experience the danger of the levilling spirit."[3] Gerry was the chairman of the committee that worked out the basis for the compromise on the representation in the two branches of the legislature. "We were neither the same Nation nor different Nations. We ought not therefore to pursue the one or the other of these ideas too closely."[4] He thought that the plan finally adopted was almost entirely a national government, but it is not clear how far this was an important objection to him.[5]

There are two lists of Gerry's objections to the Constitution, one given near the conclusion of the Philadelphia Convention,[6] the other in Gerry's Letter to the Massachusetts Legislature, which he is said to have written with the assistance of Richard Henry Lee[7] and which is printed below. The letter is brief and contains little argument to support the objections; but attention should be called to its manifest and deliberate moderation, quite properly emphasized by Gerry's biographer.[8] On the last day of the Convention, Gerry said that he feared that the proposed Constitution might trigger a civil war, particularly in Massachusetts. "In that State there are two parties, one devoted to Democracy, the worst he thought of all political evils, the other as violent in the opposite extreme. From the collision of

these in opposing and resisting the Constitution, confusion was greatly to be feared. He had thought it necessary for this and other reasons that the plan should have been proposed in a more mediating shape, in order to abate the heat and opposition of parties—As it had been passed by the Convention he was persuaded it would have a contrary effect."[9] Gerry's public objections were written with a view to these circumstances.

Gerry's Letter was first published in the *Massachusetts Centinel*, 3 November 1787, from which it is taken here. It seems to have had considerable effect[10] and was widely reprinted throughout the country. The chief reply was made by Oliver Ellsworth in the fourth and fifth numbers of his letters of The Landholder. In later letters Ellsworth accused Gerry of opposing the Constitution only because the Convention rejected a selfishly motivated proposal by Gerry regarding the redemption of the old Continental money, of which he was a large holder. A series of warm exchanges ensued between Ellsworth, on the one side, and Luther Martin and Gerry on the other, which reveals the dubious character of the charges.[11] Rufus King gave a point-by-point refutation of Gerry's objections in a speech in the Massachusetts convention.[12]

1. See below, Randolph 2.5.

2. *Dictionary of American Biography* VII, 223. Gerry's republicanism is the theme of the thoughtful recent biography by George A. Billias, *Elbridge Gerry: Founding Father and Republican Statesman* (New York 1976); see xvi, 30, 36, 68, 70, 72, 144, 153–56, 331–36. It may be questioned whether a man for whom the signing of the radically individualistic and libertarian Declaration of Independence was "the most important single act of his entire life" (p. 70) can consistently have viewed political society, as Billias says Gerry did, as an organic entity that ought to be guided by those entitled by nature to rule and devoted to the pursuit of virtue. While Billias reasonably warns against making excessive theoretical demands of secondary, mainly practical men like Gerry, my own reading of Billias' evidence suggests that the bedrock of Gerry's republicanism was after all the equality and individual rights of the Declaration of Independence. Doubtless a rather vague residual classical republicanism played, for Gerry as well as many of the other Anti-Federalists, a significant psychological as well as rhetorical role.

3. Farrand I, 48 (31 May).

4. Farrand I, 532 (5 July); see 467 (29 June), 522 (3 July).

5. See Farrand I, 80 (2 June).

6. Farrand II, 632–33 (15 September): "Mr. Gerry, stated the objections which determined him to withhold his name from the Constitution. 1. the duration and re-eligibility of the Senate. 2. the power of the House of Representatives to conceal their journals. 3—the power of Congress over the places of election. 4 the unlimited power of Congress over their own compensations. 5 Massachusetts has not a due share of Representatives allotted to her. 6. 3/5 of the Blacks are to be represented as if they were freemen. 7. *Under* the power over commerce, monopolies may be established. 8. The vice president being made head of the Senate. He could however he said get over all these, if the rights of the Citizens were not rendered insecure 1. by the general power of the Legislature to make what laws they may please to call necessary and proper. 2. raise armies and money without limit. 3. to establish a tribunal without juries, which will be a Star-chamber as to Civil cases. Under such a view of the Constitution, the best that could be done he conceived was to provide for a second general Convention."

On the different lists of Gerry's objections, see Billias, *Elbridge Gerry* 199–208.

7. The letter was written in New York on 18 October. George Bancroft says the letter was written with the assistance of Richard Henry Lee, apparently relying on a somewhat ambiguous remark by the unfriendly Oliver Ellsworth. See Bancroft, *History of the Formation of the Constitution of the United States of America* II, 230; The Landholder VI, Ford, *Essays* 161.

8. James T. Austin, *The Life of Elbridge Gerry* (Boston 1829) 45–46.

9. *Farrand* II, 646–47 (17 September).

10. See Main, *Antifederalists* 201; Rutland, *The Ordeal of the Constitution* 24, 74–75; Billias, *Elbridge Gerry* 209.

11. See Farrand II, 326, 356, 377, 412ff. See Ford, *Essays* 125–33, 150–60, 172–77, 182–88, 337–83; Gerry's second letter in this series, taken by Ford from a reprint in the *New York Journal*, was first published in the Boston *American Herald* 18 April 1788. See also McDonald, *We the People* 105–6; Beard, *An Economic Interpretation of the Constitution of the United States* 98, n. 1; Billias, *Elbridge Gerry* 189–90.

12. *The Life and Correspondence of Rufus King*, ed. Charles R. King (New York 1894) I, 303–8. Other replies to Gerry include those by A Federalist, *Boston Gazette* 5 November 1787; One of the People, *Massachusetts Centinel* 17 November 1787; and Atticus, Boston *Independent Chronicle* 22 November 1787.

Hon. Mr. Gerry's objections to signing the National Constitution.

(The following Letter, on the subject of the American Constitution, from the Hon ELBRIDGE GERRY, *Esq. one of the Delegates representing this Commonwealth in the late Federal Convention, to the Legislature, was on Wednesday last read in the Senate and sent down to the House of Representatives, where it was yesterday read and sent up. As it contains opinions on a subject of the first importance to our country at this day, we have obtained a copy of it for insertion—and are happy to have it in our power thus early to communicate it to the publick.)*

New-York, 18th October, 1787.

Gentlemen,

2.1.1 I have the honour to inclose, pursuant to my commission, the constitution proposed by the federal Convention.

To this system I gave my dissent, and shall submit my objections to the honourable Legislature.

It was painful for me, on a subject of such national importance, to differ from the respectable members who signed the constitution: But conceiving as I did, that the liberties of America were not secured by the system, it was my duty to oppose it.—

2.1.2 My principal objections to the plan, are, that there is no adequate provision for a representation of the people—that they have no security for the right of election—that some of the powers of the Legislature are ambiguous, and others indefinite and dangerous—that the Executive is blended with and

will have an undue influence over the Legislature—that the judicial department will be oppressive—that treaties of the highest importance may be formed by the President with the advice of two thirds of a *quorum* of the Senate—and that the system is without the security of a bill of rights. These are objections which are not local, but apply equally to all the States.

2.1.3 As the Convention was called for "the *sole* and *express* purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions as shall render the Federal Constitution adequate to the exigencies of government and the preservation of the union," I did not conceive that these powers extended to the formation of the plan proposed, but the Convention being of a different *opinion*, I acquiesced in *it*, being fully convinced that to preserve the union, an efficient government was indispensibly necessary; and that it would be difficult to make proper amendments to the articles of Confederation.

2.1.4 The Constitution proposed has few, if any *federal* features, but is rather a system of *national* government: Nevertheless, in many respects I think it has great merit, and by proper amendments, may be adapted to the "exigencies of government," and preservation of liberty.

2.1.5 The question on this plan involves others of the highest importance—1st. Whether there shall be a dissolution of the *federal* government? 2dly. Whether the several State Governments shall be so altered, as in effect to be dissolved? and 3dly, Whether in lieu of the *federal* and *State* Governments, the *national* Constitution now proposed shall be substituted without amendment? Never perhaps were a people called on to decide a question of greater magnitude—Should the citizens of America adopt the plan as it now stands, their liberties may be lost: Or should they reject it altogether Anarchy may ensue. It is evident therefore, that they should not be precipitate in their decisions; that the subject should be well understood, lest they should refuse to *support* the government, after having *hastily* accepted it.

2.1.6 If those who are in favour of the Constitution, as well as those who are against it, should preserve moderation, their discussions may afford much information and finally direct to an happy issue.

2.1.7 It may be urged by some, that an *implicit* confidence should be placed in the Convention: But, however respectable the members may be who signed the Constitution, it must be admitted, that a free people are the proper guardians of their rights and liberties—that the greatest men may err—and that their errours are sometimes, of the greatest magnitude.

Others may suppose, that the Constitution may be safely adopted, because therein provision is made to *amend* it: But cannot *this object* be better attained before a ratification, than after it? And should a *free* people adopt a form of Government, under conviction that it wants amendment?

And some may conceive, that if the plan is not accepted by the people, they will not unite in another: But surely whilst they have the power to amend, they are not under the necessity of rejecting it.

2.1.8 I have been detained here longer than I expected, but shall leave this place in a day or two for Massachusetts, and on my arrival shall submit the reasons (if required by the Legislature) on which my objections are grounded.[1]

I shall only add, that as the welfare of the union requires a better Constitution than the Confederation, I shall think it my duty as a citizen of Massachusetts, to support that which shall be finally adopted, sincerely hoping it will secure the liberty and happiness of America.

I have the honour to be, Gentlemen, with the highest respect for the honourable Legislature and yourselves, your most obedient, and very humble servant,

E. Gerry.

The Hon. Samuel Adams, Esq.
President of the Senate; and
The Hon. James Warren, Esq.
Speaker of the House of Representatives,
of Massachusetts.

1. While Gerry played no major role in the ratification debates and was not a member of the ratifying convention, he was invited to sit with the convention to answer questions of fact that might be put to him. Gerry accepted but caused a flurry of controversy when he attempted to correct what he thought were misstatements of fact regarding his part in the compromise resulting in an equal representation of the states in the Senate. Gerry wrote a letter to the vice-president of the Convention explaining his view of the altercation, enclosing a "State of Facts" regarding the pertinent deliberations. These, together with the exchanges with A Landholder (Ford, *Essays* 161), are of value to the historian of the formation of the Constitution but contribute little or nothing to the Anti-Federalist argument. The letter to the convention and "State of Facts" are printed in *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts Held in the Year 1788 and Which Finally Ratified the Constitution of the United States* (Boston 1856) 65–71. See Billias, *Elbridge Gerry* 211–13.

George Mason's Objections to the Constitution of Government Formed by the Convention

1787

George Mason was described by George Ticknor Curtis as "one of the most profound and able of all the American statesmen opposed to the Constitution, while . . . inferior in general powers and resources to not more than two or three of those who framed or advocated it,"[1] a judgment shared by his contemporaries. He was distinguished by the genuineness of his preference for private life and for the significance of his contributions when called to public duty. Active in the revolutionary agitation in Virginia, Mason participated in the framing of the Virginia constitution and wrote the widely copied Virginia Declaration of Rights. Although fearful of augmentation of power in the general government, Mason accepted an appointment to the Philadelphia Convention, where he took an active part. Toward the end of the Philadelphia deliberations, however, he became increasingly critical, objecting especially to the compromise dealing with navigation acts and the slave trade, and finally refused to sign the Constitution. Mason framed his objections during the last few days of the Philadelphia Convention.[2] They were circulated in manuscript among Mason's friends before being published in newspapers and as a broadside in November 1787. They were supposed by Washington to have provided a guide for the Sixteen Seceding Members of the Pennsylvania Assembly; but the similarities are not very great, and it is scarcely accurate to say, as Washington does, that Mason's objections were "detailed" in the Pennsylvanians' address.[3]

The publication history of the Objections is complex and somewhat obscure. Robert Rutland, the editor of Mason's papers, speculates that they were printed in the Philadelphia press about 4 October. No such printing has been found, but Rutland thinks that it must have existed, since James Wilson's "Statehouse speech" of 6 October was a "frank refutation" of Mason's remarks.[4] It is true that George Washington praised the Wilson speech as placing "the most of Col. Mason's objections in their true point of light . . . ,"[5] but again Washington's reading seems to have been rather casual. Although Mason and Wilson both begin with the question of a bill of rights,

they follow quite different lines and treat different issues. The evidence for an early October publication does not seem to be very persuasive.

The Objections were accurately printed by a Federalist writer, Brutus, who followed with a detailed reply, in the Alexandria *Virginia Journal* of 22 November and 6 December 1787. Brutus objected to what he called the clandestine circulation of the objections of so influential a man, and he defended his unauthorized publication as necessary to permit a general examination and as the foundation for his own reply. The day before, on 21 November, the Objections were printed in the *Massachusetts Centinel*, which appears to have been the first publication. They were subsequently printed in other New England papers. Thus, manuscript copies of the Objections made their way north and south from Philadelphia at about the same time. The New England versions, however, omitted the paragraph in which Mason complained of the power of Congress to pass commercial regulations by a simple majority,[6] and it was presumably to this that Mason referred when he told Jefferson that his objections "were first printed very incorrectly, without my Approbation or Privity; which laid me under some kind of Necessity of publishing them afterwards, myself."[7] Unfortunately, the printing that Mason had done has now been lost. It was presumably the basis for Paul Leicester Ford's reprint, which was taken from a broadside said to be printed by Thomas Nicholas (probably Thomas Nicholson, a Richmond printer).[8] Nothing of substance hinges on the question since all versions of the Objections (save the New England ones, with their omitted paragraph) are substantially the same. Printed here is the manuscript version sent by Mason to George Washington and dated 7 October 1787.[9]

Mason's Objections are sufficiently brief as to require no summary. Partly for that reason, together with their early appearance and the fame and position of their author, the Objections gave rise to a number of thoughtful replies. Madison wrote a reply to the manuscript version in a letter to Washington, 18 October 1787.[10] James Iredell presented a learned refutation in detail in his Marcus letters.[11] Other replies include a sharp and often personal criticism in the letters of A Landholder, by Oliver Ellsworth,[12] and sober point-by-point refutations by two unknown Virginians, Brutus, mentioned above, and Civis Rusticus.[13] The Objections were widely republished in various parts of the country, with the omission in the Middle and Eastern states of the paragraph regarding the damage to the South from commercial regulations.

Another contribution by George Mason, his speech to the Virginia ratifying convention, appears in volume 5 (5.17).

1. Curtis, *Constitutional History* I, 633. See generally Rowland, *The Life of George Mason*, and Helen Hill Miller, *George Mason, Constitutionalist* (Cambridge, Mass., 1938).

2. Rowland, *The Life of George Mason* II, 182–83, 387–90.

3. See Letter to Madison, 10 October 1787, quoted by Rowland, *George Mason* II, 187. See Pennsylvania House Minority 3.2, intro.

4. *The Papers of George Mason, 1725–1792*, ed. Robert Rutland (Chapel Hill 1970) III, 993 n; the Wilson speech is printed in McMaster and Stone 142–49.

5. Letter to David Stuart, 17 October 1787, Washington, *Writings* XXIX, 290.
6. See A Landholder, Ford, *Essays* 162, 172–73. See, e.g., the *Massachusetts Centinel* 21 November 1787; the Boston *Independent Chronicle* 22 November 1787; the *Connecticut Courant* 26 November 1787; the Pennsylvania *Freeman's Journal* 5 December 1787. At least one Southern paper reprinted the Objections from the Boston *Independent Chronicle*, thus omitting this paragraph directed specifically to the interests of the Southern states. See *State Gazette of South Carolina* 7 January 1788.
7. *Papers of George Mason* (ed. Rutland) III, 1045.
8. Ford, *Pamphlets*, 327.
9. This copy is among the Washington Papers in the Library of Congress.
10. Farrand III, 129–31; *Documentary History of the Constitution* IV, 334–36.
11. Ford, *Pamphlets* 333–70.
12. *Connecticut Courant* 10 December 1787; Ford, *Essays* 161–66.
13. *Virginia Journal and Alexandria Advertiser* 22 November, 6 December 1787 (see also *Philanthropos'* defense of Mason in the latter number); *Virginia Independent Chronicle* 30 January 1788.

Objections to the Constitution of Government formed by the Convention.—(1787)

There is no Declaration of Rights; and the Laws of the general Government being paramount to the Laws and Constitutions of the several States, the Declaration of Rights in the separate States are no Security.[1] Nor are the people secured even in the Enjoyment of the Benefits of the common-Law: which stands here upon no other Foundation than it's having been adopted by the respective Acts forming the Constitutions of the several States. 2.2.1

In the House of Representatives there is not the Substance, but the Shadow only of Representation; which can never produce proper Information in the Legislature, or inspire Confidence in the People: the Laws will therefore be generally made by Men little concern'd in, and unacquainted with their Effects and Consequences.* 2.2.2

The Senate have the Power of altering all Money-Bills, and of originating Appropriations of Money and the Sallerys of the Officers of their own Appointment in Conjunction with the President of the United States; altho' they are not the Representatives of the People, or amenable to them. 2.2.3

These with their other great Powers (vizt. their Power in the Appointment of Ambassadors and all public Officers, in making Treaties, and in trying all Impeachments) their Influence upon and Connection with the supreme Executive from these Causes, their Duration of Office, and their being a constant existing Body almost continually sitting, joined with their being one compleat Branch of the Legislature, will destroy any Balance in the Government, and enable them to accomplish what Usurpations they please upon the Rights and Libertys of the People. 2.2.4

*This Objection has been in some Degree lessened by an Amendment, often before refused, and at last made by an Erasure, after the Engrossment upon Parchment, of the word *forty*, and inserting *thirty*, in the 3d Clause of the 2d Section of the 1st Article.[2]

2.2.5 The Judiciary of the United States is so constructed and extended, as to absorb and destroy the Judiciarys of the several States; thereby rendering Law as tedious[,] intricate and expensive, and Justice as unattainable, by a great part of the Community, as in England, and enabling the Rich to oppress and ruin the Poor.[3]

2.2.6 The President of the United States has no constitutional Council (a thing unknown in any safe and regular Government) he will therefore be unsupported by proper Information and Advice; and will generally be directed by Minions and Favourites—or He will become a Tool to the Senate—or a Council of State will grow out of the principal Officers of the great Departments; the worst and most dangerous of all Ingredients for such a Council, in a free Country; for they may be induced to join in any dangerous or oppressive Measures, to shelter themselves, and prevent an Inquiry into their own Misconduct in Office;[4] whereas had a constitutional Council been formed (as was proposed) of six Members; vizt. two from the Eastern, two from the Middle, and two from the Southern States, to be appointed by Vote of the States in the House of Representatives, with the same Duration and Rotation of Office as the Senate, the Executive wou'd always have had safe and proper Information and Advice, the President of such a Council might have acted as Vice President of the United States, pro tempore, upon any Vacancy or Disability of the chief Magistrate; and long continued Sessions of the Senate wou'd in a great Measure have been prevented.[5]

2.2.7 From this fatal Defect of a constitutional Council has arisen the improper Power of the Senate, in the Appointment of public Officers, and the alarming Dependence and Connection between that Branch of the Legislature, and the supreme Executive.

2.2.8 Hence also sprung that unnecessary and dangerous Officer, the Vice President; who for want of other Employment, is made President of the Senate; thereby dangerously blending the executive and legislative Powers; besides always giving to some one of the States an unnecessary and unjust Pre-eminence over the others.

2.2.9 The President of the United States has the unrestrained Power of granting Pardon for Treason; which may be sometimes exercised to screen from Punishment those whom he had secretly instigated to commit the Crime, and thereby prevent a Discovery of his own Guilt.

2.2.10 By declaring all Treaties supreme Laws of the Land, the Executive and the Senate have in many Cases, an exclusive Power of Legislation; which might have been avoided by proper Distinctions with Respect to Treaties, and requiring the Assent of the House of Representatives, where it cou'd be done with Safety.

2.2.11 By requiring only a Majority to make all commercial and navigation Laws,[6] the five Southern States (whose Produce and Circumstances are totally different from that of the eight Northern and Eastern States) will be ruined; for such rigid and premature Regulations may be made, as will enable the Merchants of the Northern and Eastern States not only to de-

mand an exorbitant Freight, but to monopolize the Purchase of the Commodities at their own Price, for many years: to the great Injury of the landed Interest, and Impoverishment of the People: and the Danger is the greater, as the Gain on one Side will be in Proportion to the Loss on the other. Whereas requiring two thirds of the Members present in both Houses wou'd have produced mutual moderation, promoted the general Interest, and removed an insuperable Objection to the Adoption of the Government.

Under their own Construction of the general Clause at the End of the enumerated powers the Congress may grant Monopolies in Trade and Commerce, constitute new Crimes, inflict unusual and severe Punishments, and extend their Power as far as they shall think proper; so that the State Legislatures have no Security for the Powers now presumed to remain to them; or the People for their Rights. 2.2.12

There is no Declaration of any kind for preserving the Liberty of the Press, the Tryal by Jury in civil Causes; nor against the Danger of standing Armys in time of Peace.[7] 2.2.13

The State Legislatures are restrained from laying Export Duties on their own Produce. 2.2.14

The general Legislature is restrained from prohibiting the further Importation of Slaves for twenty odd Years; tho' such Importations render the United States weaker, more vulnerable, and less capable of Defence.

Both the general Legislature and the State Legislatures are expressly prohibited making ex post facto Laws; tho' there never was, or can be a Legislature but must and will make such Laws, when necessity and the public Safety require them; which will hereafter be a Breach of all the Constitutions in the Union, and afford precedents for other Innovations.

This Government will commence in a moderate Aristocracy; it is at present impossible to foresee whether it will, in it's Operation, produce a Monarchy, or a corrupt oppressive Aristocracy; it will most probably vibrate some Years between the two, and then terminate in the one or the other. 2.2.15

(By George Mason)

1. The Federalist replies generally denied the need of a Bill of Rights: Ellsworth contended that bills of rights were introduced in England as grants by the king to the people and have no place in a government that is considered as originating from the people. Ford, *Essays* 163. Iredell added that in England there was no constitution granting specific authority to the government. Ford, *Pamphlets* 335–36. Civis Rusticus argued that "the proposed government is thoroughly popular" and that "a government thus constituted stands in need of no bill or rights; the liberties of the people never can be lost, until they are lost to themselves, in a vicious disregard of their dearest interests, a sottish indolence, a wild licentiousness, a dissoluteness of morals, and a contempt of all virtue." *Virginia Independent Chronicle* 30 January 1788. For other Federalist claims that a bill of rights is not necessary, see Federal Farmer IV, 2.8.50 and nn. 38–40. The deepest and most comprehensive argument against the need for a bill of rights was presented by James Madison in his post-Convention letters to Jefferson of 24 October 1787, 15 March 1788, and 17 October 1788. Madison, *Writings* (ed. Hunt) V, 17–41, 269–75. (For Jefferson's response, see his letter to Madison of 15 March 1789, *The Writings of Thomas Jefferson,* ed. H. A.

Washington [Washington, D.C., 1853] III, 3–5.) Not all the Anti-Federalists thought the absence of a bill of rights was a major defect. Thus Samuel Chase wrote to John Lamb, "A declaration of rights alone will be of no essential service. Some of the powers must be abridged, or public liberty will be endangered, and, in time, destroyed." Samuel Chase to John Lamb, 13 June 1788, Leake, *Memoir of the Life and Times of General John Lamb* 310. See also Philadelphiensis 3.9.18 and DeWitt 4.3.7.

2. Farrand II, 643–44 (17 September). On the general subject of representation, see Federal Farmer VII–IX, 2.8.97–118; X, 2.8.133–37; Brutus III–IV, 2.9.42–48.

3. Iredell contended that the only alternative to an ineffective coercive authority over States was coercive authority over individuals. Some dependence must be placed on future legislatures. He gave this example of the ridiculous implications of Mason's fears: "Suppose an objection should be made that the future legislature should not ascertain salaries, because they might divide among themselves and their officers all the revenue of the Union. Will not every man see how irrational it is to expect that any government can exist which is to be fettered in its most necessary operations for fear of abuse?" Ford, *Pamphlets* 343–44. However, Iredell's ironical objection was in fact made by several Anti-Federalists. See DeWitt 4.3.23; [New Hampshire] Farmer 4.17.6; Albany Antifederal Committee 6.10.6.

4. See Iredell's extended discussion of the councils to the King of England and their implications for the matters at issue here. Ford, *Pamphlets* 344–50.

5. Mason had made such a proposal in the Philadelphia Convention, 7 September; Farrand II, 537–38, 541–42.

6. This is the paragraph omitted in the Northern newspapers.

7. Iredell: ". . . the Convention surely can be only answerable for the propriety of the powers given, not for the future virtues of all with whom those powers may be intrusted." "Men may be sure to suggest dangers from any thing, but it may truly be said that those who can seriously suggest the danger of a premeditated attack on the liberties of people from such a government as this, could with ease assign reasons equally plausible for mistrusting the integrity of any government formed in any manner whatever; and really it does seem to me, that all their reasons may be fairly carried to this position, that inasmuch as any confidence in any men would be unwise, as we can give no power but what may be grossly abused, we had better give none at all, but continue as we are, or resolve into total anarchy at once, of which indeed our present condition falls very little short." Ford, *Pamphlets* 357, 364.

Robert Yates and John Lansing
Reasons of Dissent

NEW YORK JOURNAL
14 January 1788

This letter was written by Robert Yates and John Lansing to the Anti-Federalist Governor of New York, George Clinton, explaining their reasons for dissenting from the Constitution and, indeed, leaving the Philadelphia Convention before its work was finished. Yates and Lansing were members of the Clinton party in New York, the former a justice of the New York Supreme Court, the latter a member and (in 1786 and 1788) Speaker of the New York Assembly. The letter is dated 21 December 1787 and was first published in the *New York Journal*, 14 January 1788, from which it is taken here; it was reprinted in newspapers in various parts of the country during the ratification controversy.

Yates and Lansing object on two grounds: (1) that the Convention exceeded its authority in forming a consolidated government, subversive of the states, and (2) that a general government extending its prohibitions and benefits equally over the extensive territory of the whole United States was impracticable. Both contentions are well, though briefly, argued. It may be noted that there is no objection to the absence of a bill of rights.

Late yesterday evening we were favored, by a correspondent, with the following COPY *of a* LETTER *from the Hon.* ROBERT YATES, *jun. and* JOHN LANSING, *Esquires, members of the general convention, lately held in the city of Philadelphia, assigning their reasons for giving their dissent to the constitution, agreed upon by that body, and which was laid before the legislature by his excellency the Governor, at the opening of the session, on Friday last.—From a consideration of the* very interesting nature *of this* LETTER *to the public, notwithstanding the late hour of its receipt, the editor thus expeditiously presents it to the public view.*

Reasons of Dissent.

Albany, Dec. 21, 1787.

Sir,

2.3.1 We do ourselves the honor to advise your excellency, that in pursuance of concurrent resolutions of the honorable senate and assembly, we have, together with Mr. Hamilton, attended the convention, appointed for revising the articles of confederation, and reporting amendments to the same.

2.3.2 It is with the sincerest concern we observe, that in the prosecution of the important objects of our mission, we have been reduced to the disagreeable alternative, of either exceeding the powers delegated to us, and giving our assent to measures which we conceived distructive of the political happiness of the citizens of the United States, or opposing our opinion to that of a body of respectable men, to whom those citizens had given the most unequivocal proofs of confidence.—Thus circumstanced, under these impressions, to have hesitated, would have been to be culpable: we therefore, gave the principles of the constitution, which has received the sanction of a majority of the convention, our decided and unreserved dissent: but we must candidly confess, that we should have been equally opposed to any system, however modified, which had in object the consolidation of the United States into one government.

2.3.3 We beg leave briefly to state some cogent reasons, which, among others, influenced us to decide against a consolidation of the states. These are reducible into two heads.

1st. The limited and well-defined powers under which we acted, and which could not, on any posible construction, embrace an idea of such magnitude, as to assent to a general constitution, in subversion of that of the state.

2dly. A conviction of the impracticability of establishing a general government, pervading every part of the United States, and extending essential benefits to all.

2.3.4 Our powers were explicit, and confined to the *sole and express purpose of revising the articles of confederation,* and reporting such alterations and provisions therein, as should render the federal constitution adequate to the exigencies of government, and the preservation of the Union.

2.3.5 From these expressions we were led to believe, that a system of consolidated government could not, in the remotest degree, have been in contemplation of the legislature of this state; for that so important a trust as the adopting measures which tended to deprive the state government of its most essential rights of sovereignty, and to place it in a dependent situation, could not have been confided by implication; and the circumstance, that the acts of the convention were to receive a state approbation in the last resort, forcibly corroborated the opinion, that our powers could not involve the

subversion of a constitution, which being immediately derived from the people, could only be abolished by their express consent, and not by a legislature, possessing authority vested in them for its preservation. Nor could we suppose, that if it had been the intention of the legislature, to abrogate the existing confederation, they would, in such pointed terms, have directed the attention of their delegates to the revision and amendment of it, in total exclusion of every other idea.

Reasoning in this manner, we were of opinion, that the leading feature of every amendment, ought to be the preservation of the individual states, in their uncontrouled constitutional rights, and that in reserving these, a mode might have been devised of granting to the confederacy, the monies arising from a general system of revenue; the power of regulating commerce, and enforcing the observance of foreign treaties, and other necessary matters of less moment. 2.3.6

Exclusive of our objections, originating from the want of power, we entertained an opinion, that a general government, however guarded by declarations of rights, or cautionary provisions, must unavoidably, in a short time, be productive of the destruction of the civil liberty of such citizens who could be effectually coerced by it; by reason of the extensive territory of the United States, the dispersed situation of its inhabitants, and the insuperable difficulty of controuling or counteracting the views of a set of men (however unconstitutional and oppressive their acts might be) possessed of all the powers of government; and who, from their remoteness from their constituents, and necessary permanency of office, could not be supposed to be uniformly actuated by an attention to their welfare and happiness; that however wise and energetic, the principles of the general government might be, the extremities of the United States could not be kept in due submission and obedience to its laws, at the distance of many hundred miles from the seat of government; that if the general legislature was composed of so numerous a body of men, as to represent the interests of all the inhabitants of the United States, in the usual and true ideas of representation, the expence of supporting it would become intolerably burthensome; and that, if a few only were vested with a power of legislation, the interests of a great majority of the inhabitants of the United States, must necessarily be unknown; or if known, even in the first stages of the operations of the new government, unattended to. 2.3.7

These reasons were, in our opinion, conclusive against any system of consolidated government: To that recommended by the convention, we suppose most of them very forcibly apply. 2.3.8

It is not our intention to pursue this subject farther than merely to explain our conduct in the discharge of the trust which the honorable the legislature reposed in us—Interested, however, as we are, in common with our fellow citizens, in the result, we cannot forbear to declare, that we have the

strongest apprehensions, that a government so organized, as that recommended by the convention, cannot afford that security to equal and permanent liberty which we wished to make an invariable object of our pursuit.

2.3.9 We were not present at the completion of the new constitution; but before we left the convention, its principles were so well established as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety. A persuasion, that our further attendance would be fruitless, and unavailing, rendered us less solicitous to return.

We have thus explained our motives for opposing the adoption of the national constitution, which we conceived it our duty to communicate to your Excellency, to be submitted to the consideration of the honorable legislature.

We have the honor to be,
With the greatest respect,
Your Excellency's
Most obedient, and
Very humble servant,
Robert Yates,
John Lansing, jun.

His Excellency Governor Clinton.

The Genuine Information Delivered to the Legislature of the State of Maryland Relative to the Proceedings of the General Convention Lately Held at Philadelphia; By Luther Martin, Esquire

Together with a Letter to the Hon. Thomas C. Deye and An Address to the Citizens of the United States

1788

No student of the Anti-Federalists can fail to sympathize with William Pierce's characterization of Luther Martin as possessing "a good deal of information" (and, it may be added, argument), but at the same time "so extremely prolix, that he never speaks without tiring the patience of all who hear him."[1] Slovenly, often drunk and in debt, Martin had neither the personal characteristics nor the background that might seem necessary for success in aristocratic Maryland. Yet he became a lawyer, and long-term attorney general of Maryland, widely respected and feared.[2] Chief Justice Roger Taney regarded him as "a profound lawyer," whose defects "arise in some measure from the fulness of his legal knowledge"; he "never missed the strong points of his case; and although much might generally have been better omitted, everybody who listened to him would agree that nothing could be added. . . ."[3]

In addition to his Genuine Information, reproduced here, Martin wrote a number of letters during the early part of 1788 in reply to Oliver Ellsworth's The Landowner, in defense of his and Elbridge Gerry's activities in the Convention, and in criticism of the Constitution.[4] Although helpful to the student of the Convention, the letters add little or nothing to the argument of the Genuine Information and are not printed here except for two or three points included in the notes. The Genuine Information is an expanded ver-

sion of remarks made by Martin to the Maryland legislature, to which he reported, by invitation, on 29 November 1787.[5] It was first printed in the *Maryland Gazette* and *Baltimore Advertiser* beginning 28 December 1787.[6] It was then published in 1788 as a pamphlet, from which it is reprinted here,[7] and was later included with Robert Yates' Secret Proceedings of the Convention Debates, first published in 1821. Widely read and commented on at the time, the Genuine Information is a major source of Anti-Federalist thought and of information about the Convention.

The first third of the Genuine Information (2.4.5–37) presents a description of the proceedings of the Philadelphia Convention from the introduction of the Virginia Resolutions to the adoption of the "Great Compromise" settling the mode of representation in the legislature. In the course of this description, Martin presents what is perhaps the most comprehensive and persuasive argument that exists in favor of equality of representation of the states (2.4.29–34).[8] In this section Martin presents his well-known analysis of the three major parties in the Convention—those who wished to annihilate all state governments and to establish a national monarchy, those who wished merely to establish a system that would give their own states predominance, and those whose objects were truly federal and republican—and the combination of the first two against the third to defeat the New Jersey resolutions (2.4.23–28).

Following this historical account, Martin turns to a systematic treatment of the Constitution. He is still largely concerned with the question of equal representation and the departure of the Constitution from the true principles of federalism. Indeed, Martin's Information is distinguished by its preoccupation with these themes. Many of the small states' representatives who made the arguments in Philadelphia that Martin emphasizes here became enthusiastic proponents of the Constitution once they had achieved the best representation they could get. The typical opposition to the Constitution was at least as much concerned with the powers and structure of the general government and the absence of a bill of rights as with the failure of the new Constitution to preserve the principles of true federalism.[9] Thus Martin was, in one sense, something of an anachronism among Anti-Federalists; but he was, in another sense, a truer Anti-Federalist, because a truer federalist, than many of his allies.

What follows is an extended table of contents of this part of Martin's argument.

Examination of the System Proposed (2.4.38–118)

I. Article I—Legislature (2.4.38–79)

A. Sec. 1—A Congress to consist of two branches (2.4.38–44).

1. Two branches of the legislature are proper in the case of a single state but unnecessary and improper in a federal government (2.4.38).

2. This system is not a federal but a national government (2.4.39–41).
3. Senate as constituted is no security for the states (2.4.42–43).
4. Republics, which are best calculated to preserve freedom and happiness of citizens, must be confined to a small territory, connected together, where necessary, by a strong federal government (2.4.44).

B. Sec. 2—Apportionment of representation and direct taxation (2.4.45).
1. Objections to counting slaves in apportioning representation.
2. The initial representation of large states is "artfully lessened" to conceal the undue influence they will have when the subsequent apportionment is made.
3. The natural weight and influence and the greater ease of combining of the large states give them an even stronger position than their proportion of representation would suggest, and the small states a relatively weaker position.
4. Since inhabitants of commercial states will pay most of the duty on imports, it is unjust that they should pay also same proportion of direct tax as others.

C. Sec. 6—The prohibition on members of Congress holding federal office should be extended (2.4.46–48).

D. Sec. 7
1. Revenue bills. It is wrong to confine origination of revenue bills to House of Representatives; House of Lords analogy does not apply; the Senate will be the most experienced, select body, but will be rendered almost useless (2.4.49–52).
2. Presidential negative is unnecessary and improper (2.4.53–54).

E. Sec. 8—Powers of Congress (2.4.55–62).
1. Power to tax. General government given power to drain country by all means, including stamp duties. Federal government ought not to have power to lay direct taxes except in cases of state delinquency (2.4.55–56).
2. Power to borrow money. Clause permitting emission of bills of credit eliminated, over opposition of Martin and friends, out of excessive fear of paper money (2.4.57).
3. Power to constitute inferior federal courts. There is no need for such bodies, which would increase federal influence and tend to undermine the state judiciaries (2.4.58).
4. Military power. Congressional powers to raise and support armies, call forth militia, are dangerous and unlimited, tend to introduce arbitrary power, and are aimed at the destruction of the states (2.4.59–62).

F. Sec. 9—Restrictions (2.4.63–74).
   1. "the importation of such persons." By avoiding the odious expression "slaves," the clause permits Congress to impose duties on every foreigner who comes here. Description of slave trade/navigation act compromise. Lengthy account of strong anti-slavery arguments (2.4.63–71).
   2. Suspension of writ of habeas corpus. Not necessary, as states have this power; federal government could use it to send advocates of freedom to distant states (2.4.72).
   3. No preference to be given to ports of one state, and vessels bound from one state not to be obliged to clear in another. Purpose of this destroyed by power of general government to establish whatever ports of entry it chooses (2.4.73–74).

G. Sec. 10—Restrictions on states (2.4.75–79).
   1. States prohibited from issuing bills of credit. Should not totally prohibit paper money, which may sometimes be necessary (2.4.75).
   2. States prohibited from making anything but gold and silver legal tender or passing laws impairing contracts. There may be times of great distress when these would be necessary (2.4.76–78).
   3. States prohibited from laying imposts without permission of general government. Should leave them at least duties on exports; also state duties on imports might sometimes be necessary (2.4.79).

II. Article II—Executive (2.4.80–88)

A. Election and tenure.
   1. Disagreement in Convention between those who favored limited duration and rotation and those who favored appointment during good behavior (2.4.81–82).
   2. After repeated failures, the latter party succeeded in making President reeligible and in instituting present mode of election which gives undue influence to large states (2.4.82–83).

B. Vice President will come from a large state which will thus have undue influence (2.4.84).

C. Presidential powers. Make President a king in all but name (2.4.85–86).

D. Impeachment (2.4.87–88).
   This provision gives only an appearance of responsibility—unlikely that President will ever be impeached or, if impeached, found guilty or, if found guilty, removed from office.

III. Article III—Judiciary (2.4.89–98)

A. Jurisdiction. Federal judiciary will have exclusive right to decide all questions within its jurisdiction (2.4.89–91).

B. Jury trial. Not provided for in civil cases; taken away even in crimi-

nal cases by provision for appeal to Supreme Court on questions of law and fact (2.4.92–94).

C. Treason against the United States. This provision may put the citizen in peril of committing treason against either the state or the federal government (2.4.95–98).

IV. Miscellaneous provisions (2.4.99–112)

A. Article IV, sec. 3—No creation of new states within the jurisdiction of existing state without the consent of that state (2.4.99–107).

1. This is contrary to every principle of justice and sound policy, which require dismemberment of large states and maintenance of states of moderate size (2.4.100–103).
2. The large states cannot use the argument that free and independent states ought not to be dismembered without their consent, having abandoned this ground in forcing the small states to give up their equality (2.4.104–5).
3. As the Constitution protects the large states from the natural disintegrative tendencies of their size, so it ought to permit Congress to divide them where appropriate (2.4.106).
4. Much of the land claimed by states was acquired by the common blood and treasure and ought to be part of the common stock (2.4.107).

B. Article VI—Absence of religious test (2.4.108). Some distinction at least should have been made between Christianity and infidelity or paganism.

C. Article VII—Ratification by nine states (2.4.109–12). While majority must rule in ordinary circumstances, unanimous consent is required for framing and dissolving a constitution. There can be no alteration of the Articles of Confederation without unanimous consent of state legislatures; only states are entitled to agree to alterations of a federal government.

V. Conclusion regarding Martin's own part in the Convention and his opposition to the Constitution (2.4.113–18)

1. Farrand III, 93.

2. See Henry P. Goddard, *Luther Martin: The Federal Bull Dog* (Baltimore 1887). Altogether appropriately, Martin was counsel for the state of Maryland in *McCulloch v. Maryland*, 4 Wheat. 316 (1819).

3. Samuel Tyler, *Memoir of Roger Brooke Taney* (Baltimore 1872) 66–67.

4. These are reprinted in Ford, *Essays* 341–83, and, in somewhat abridged form, in Farrand III, 276–95.

5. A reprint of the manuscript copy of the speech as taken down by the clerk of the Maryland House of Representatives can be found in Farrand III, 151–59.

6. This version is printed in Farrand III, 172–232.

7. The original pamphlet included a letter to the Speaker of the Maryland House of Delegates vindicating Martin's report of the conduct of Messrs. Yates and Lansing at

Philadelphia, which adds nothing to their own account and is omitted here. For other material in the original pamphlet, see below, 2.4.115 n. 45.

8. See also Martin's discussion of ratification, 2.4.39–44.

9. Martin touches on these more usual Anti-Federalist concerns in his later letters. On the Bill of Rights, he wrote on 21 March 1788: "With respect to a bill of rights, had the government been formed upon principles truly federal, as I wished it, legislating over and acting upon the states only in their collective or political capacity, and not on individuals, there would have been no need of a bill of rights, as far as related to the rights of individuals, but only as to the rights of states. But the proposed constitution being intended and empowered to act not only on states, but also immediately on individuals, it renders a recognition and a stipulation in favour of the rights both of states and of men, not only proper, but in my opinion absolutely necessary." Ford, *Essays* 364–65. And on the extensive powers of the federal government, he wrote on 4 April 1788: "If those, my fellow citizens, to whom the administration of our government was about to be committed, had sufficient wisdom never to err, and sufficient goodness always to consult the true interest of the governed, and if we could have a proper security that their successors should to the end of time be possessed of the same qualifications, it would be impossible that power could be lavished upon them with too liberal a hand. Power absolute and unlimited, united with unerring wisdom and unbounded goodness, is the government of the Deity of the universe. But remember, my fellow citizens, that the persons to whom you are about to delegate authority are and will be weak, erring mortals, subject to the same passions, prejudices and infirmities with yourselves; and let it be deeply engraven on your hearts, that from the first history of government to the present time, if we begin with Nimrod and trace down the rulers of nations to those who are now invested with supreme power, we shall find few, very few, who have made the beneficent Governor of the universe the model of their conduct, while many are they who, on the contrary, have imitated the demons of the darkness. We have no right to expect that our rulers will be more wise, more virtuous, or more perfect than those of other nations have been, or that they will not be equally under the influence of ambition, avarice and all that train of baleful passions, which have so generally proved the curse of our unhappy race. We must consider mankind such as they really are,—such as experience has shown them to be heretofore, and bids us expect to find them hereafter,—and not suffer ourselves to be misled by interested deceivers or enthusiastick visionaries; and therefore in forming a system of government, to delegate no greater power than is clearly and certainly necessary, ought to be the first principle with every people who are influenced by reason and a regard for their safety, and in doing this, they ought most solicitously to endeavour so to qualify even that power, by such checks and restraints, as to produce a perfect responsibility in those who are to exercise it, and prevent them from its abuse with a chance of impunity;—since such is the nature of man, that he has a propensity to abuse authority and to tyrannize over the rights of his fellowmen; and to whomsoever power is given, not content with the actual deposit, they will ever strive to obtain an increase." Ford, *Essays* 378–79. Cf. volume 1 above, chapter 8.

To the Honorable Thomas Cockey Deye, Speaker of the House of Delegates of Maryland.

Sir,

2.4.1 I flatter myself the subject of this letter will be a sufficient apology for thus publicly addressing it to you, and through you to the other members of the house of delegates. It cannot have escaped your or their recollection, that

when called upon as the servant of a free State, to render an account of those transactions in which I had had a share, in consequence of the trust reposed in me by that State, among other things, I informed them, "that some time in July, the Honorable Mr. Yates and Mr. Lansing of New-York, left the convention; that they had uniformly opposed the system, and that I believe, despairing of getting a proper one brought forward, or of rendering any real service, they returned no more." You cannot, Sir, have forgot, for the incident was too remarkable not to have made some impression, that upon my giving this information, the zeal of one of my honorable colleagues, in favour of a system which I thought it my duty to oppose, impelled him to interrupt me, and in a manner which I am confident his zeal alone, prevented him from being convinced was not the most delicate, to insinuate pretty strongly, that the statement which I had given of the conduct of those gentlemen, and their motives for not returning were not candid.

Those honorable members have officially given information on this subject, by a joint letter to his Excellency Governor Clinton—it is published.—Indulge me, Sir, in giving an extract from it, that it may stand contrasted in the same page with the information I gave, and may convict me of the want of candor of which I was charged, if the charge was just—if it will not do that, then let it silence my accusers. 2.4.2

"Thus circumstanced, under these impressions, to have hesitated would have been to be culpable;—we therefore gave the principles of the constitution, which has received the sanction of a majority of the convention, our decided and unreserved dissent. We were not present at the completion of the new constitution: but before we left the convention, its principles were so well established as to convince us, that no alteration was to be expected to conform it to our ideas of expediency and safety. A persuasion that our further attendance would be fruitless and unavailing rendered us less solicitous to return." 2.4.3

These, Sir, are their words; on this I shall make no comment; I wish not to wound the feelings of any person, I only wish to convince. 2.4.4

I have the honor to remain,
With the utmost respect,
Your very obedient servant,
Luther Martin.

Baltimore, January 27, 1788.

To the Citizens of the United States.

The following sheets contain the information given by me to the legislature of Maryland, when officially called before them for that purpose:—No 2.4.5

friend to his country will think that they require an apology; I should have been unworthy the trust reposed in me, and guilty of the blackest ingratitude to a State, which has given me the most distinguishing marks of its confidence, had I not been explicit.—No *fact* has been intentionally misstated by me, I aimed to be perfectly correct; and, though in some measure obliged to depend on my memory, I believe I have in no instance, given malice an opportunity to charge me with misrepresentation. No writer, with his name, has denied the information to be just—I think they never will—though we differ in politics, should it be necessary, there are men of honor who were in the convention, who are ready to decide in my favour; and I can, with confidence, appeal to a *Washington*, a *Franklin*, and other respectable members of the convention, for the veracity of my information. Few, very few, even of the *anonymous* publications have *insinuated* the information to be in any respect uncandid; and those few have confined themselves to generals, without daring to descend to particulars.—The lowest *scurrility* in the form of *Extracts of letters*, coined at the mint of meanness and falsehood, I have experienced; it is what I expected; I know myself, and I am known by others, to be infinitely above them, and have read them with a smile of contempt.—Me they *cannot* injure;—but they disgrace their authors, and the cause in which they are engaged.—This is a trifling sacrifice—In the cause of freedom, were it necessary, I am ready to make a much greater.[1]

2.4.6 As far as I have expressed my opinions of the views of the framers of the constitution, I have followed the fullest conviction of my mind, founded on my own observations made on their conduct while in convention, and confirmed by the conduct of the friends of the system since that time.—They were my sentiments while there; I at that time expressed them freely, and then found many who perfectly corresponded with me in sentiment, although some of them may not now choose to avow it, or, no doubt from a conviction of their error, may now advocate the system they there condemned and opposed. But as to myself, so far from having any reason to change the opinion I there formed, every circumstance which has since taken place has confirmed it.

2.4.7 The conduct adopted by the convention, rendered the dissemination of these sheets the more necessary: Could there possibly be a greater indignity and insult offered to the majesty of the free States, and the free citizens of America, than for the very men who were entrusted with powers for the preservation and security of their rights, and for the establishment of a permanent system to promote their happiness, to make use of that power to destroy both the one and the other?—For this purpose, in time of profound peace, to shut themselves up in mystery and darkness; to keep all their deliberations an absolute secret from their constituents, who were to be affected thereby; to prevent the publication of their journals; to deprive the free citizens of America of every means of information: to attempt to pass

upon them, as meeting with their unanimous approbation, that which did not in reality meet with the perfect approbation of perhaps one individual in the convention; to give you no other alternative but to accept of it as proposed, without alteration, or to reject it entirely, while at the same time some of them were resounding, from one end of the continent to the other, the necessity of its acceptance, and that none but the enemies of their country would reject it—And to abuse your confidence in them, by endeavouring to hurry you into a hasty adoption, under that delusion, before you could obtain information, and be able to form a proper judgement for yourselves.

Such a conduct in any other country, or even in this, at any other time, 2.4.8
would have drawn down upon them the indignation and resentment of those who were thus attempted to be abused and enslaved.

To counteract the views of ambition and interest has been my aim—To 2.4.9
this I devoted every effort while in convention—The same motives have directed my conduct since—Should my exertions in the smallest degree assist in effecting the rejection of this detestable system of slavery, I shall enjoy the highest possible gratification, that of rendering my country an essential benefit.

But should the system be adopted, I shall even then enjoy the highest 2.4.10
possible consolation which a good citizen can enjoy in the public calamity, that of having conscientiously discharged my duty to my country, by endeavouring to avert it.

Luther Martin.

Baltimore, March 30, 1788.

Mr. Martin's Information to the General Assembly of the State of Maryland.

Mr. Martin, when called upon, addressed the House nearly as follows:

Since I was notified of the resolve of this Honourable House, that we should 2.4.11
attend this day, to give information with regard to the proceedings of the late convention, my time has necessarily been taken up with business, and I have also been obliged to make a journey to the Eastern Shore: These circumstances have prevented me from being as well prepared as I could wish, to give the information required—However, the few leisure moments I could spare, I have devoted to refreshing my memory, by looking over the papers and notes in my possession; and shall with pleasure, to the best of my abilities, render an account of my conduct.

It was not in my power to attend the convention immediately on my 2.4.12
appointment—I took my seat, I believe, about the 8th or 9th of June. I found that Governor Randolph, of Virginia, had laid before the convention certain

propositions for their consideration, which have been read to this House by my honourable colleague,[2] and I believe, he has very faithfully detailed the substance of the speech with which the business of the convention was opened, for though I was not there at the time, I saw notes which had been taken of it.

2.4.13 The members of the convention from the States, came there under different powers; the greatest number, I believe, under powers nearly the same, as those of the delegates of this State—Some came to the convention under the former appointment, authorising the meeting of delegates merely to regulate trade.—Those of Delaware were *expressly instructed to agree to no system which should take away from the States, that equality of suffrage secured by the original articles of confederation.* Before I arrived, a number of rules had been adopted to regulate the proceedings of the convention, by one of which, seven States might proceed to business, and consequently four States the majority of that number, might eventually have agreed upon a system which was to affect the whole union. By another, *the doors were to be shut,* and *the whole proceedings were to be kept secret;* and so far did this rule extend, that we were thereby prevented from corresponding with gentlemen in the different States upon the subjects under our discussion—a circumstance, Sir, which I confess I greatly regretted—I had no idea, that all the wisdom, integrity, and virtue of this State, or of the others, were centered in the convention—I wished to have corresponded freely, and confidentially, with eminent political characters in my own, and other States, not implicitly to be dictated to by them, but to give their sentiments due weight and consideration. So *extremely solicitous* were they, that their proceedings should not transpire, that *the members were prohibited even from taking copies of resolutions, on which the convention were deliberating, or extracts of any kind from the journals without formally moving for, and obtaining permission, by a vote of the convention for that purpose.*

2.4.14 You have heard, Sir, the resolutions which were brought forward by the honourable member from Virginia; let me call the attention of this House to the conduct of Virginia, when our confederation was entered into—that State then proposed, and obstinately contended, *contrary to the sense of, and unsupported by the other States, for an inequality of suffrage* founded on *numbers, or some such scale,* which should give *her,* and certain other States, *influence in the Union over the rest;* pursuant to that spirit which then characterized her, and uniform in her conduct, the very second resolve, is calculated expressly for that purpose *to give her a representation proportioned to her numbers,* as if the *want of that* was *the principle defect* in our original system, and this alteration the great means of remedying the evils we had experienced under our present government.

2.4.15 The object of *Virginia,* and *other large States, to encrease their power and influence over the others,* did not escape observation: the subject, however, was discussed with great coolness in the committee of the whole

House (for the convention had resolved itself into a committee of the whole to deliberate upon the propositions delivered in by the honourable member from Virginia). Hopes were formed, that the farther we proceeded in the examination of the resolutions, the better the House might be satisfied of the impropriety of adopting them, and that they would finally be rejected by a majority of the committee; if on the contrary, a majority should report in their favour, it was considered, that it would not preclude the members from bringing forward and submitting any other system to the consideration of the convention; and accordingly, while those resolves were the subject of discussion in the committee of the whole House, a number of the members who disapproved them, were preparing *another system*, such as *they thought more conducive to the happiness and welfare of the States*—The propositions originally submitted to the convention having been debated, and undergone a variety of alterations in the course of our proceedings, the committee of the whole House by a *small majority* agreed to a *report*, which I am happy, Sir, to have in my power to lay before you; it was as follows:[3]

1. *Resolved*, That it is the opinion of this committee, that a *national* government ought to be established, consisting of a supreme, legislative, judiciary and executive. 2.4.16

2. That the legislative ought to consist of *two branches*.

3. That the members of the first branch of the national legislature ought to be elected by the people of the several States, for the term of three years, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury, to be ineligible to any office established by a particular State, or under the authority of the United States, except those particularly belonging to the functions of the first branch, during the term of service, and under the national government, for the space of one year after its expiration.

4. That the members of the second branch of the legislature ought to be chosen by the individual legislatures, to be of the age of thirty years at least, to hold their offices for a term sufficient to ensure their independency, namely, seven years, one third to go out biennially, to receive fixed stipends, by which they may be compensated for the devotion of their time to public service, to be paid out of the national treasury, to be ineligible to any office by a particular State, or under the authority of the United States, except those peculiarly belonging to the functions of the second branch, during the term of service, and under the national government, for the space of one year after its expiration.

5. That each branch ought to possess the right of originating acts.

6. That the national legislature ought to be empowered to enjoy the legislative rights vested in Congress by the confederation, and *moreover to legislate in all cases to which the separate States are incompetent*, or in which the *harmony of the United States may be interrupted, by the exercise of individual legislation;* to *negative* all laws passed by the *several States*,

contravening, in the *opinion* of the *legislature* of the *United States*, the articles of union, or any treaties subsisting under the authority of the Union.

7. That the *right of suffrage* in the *first* branch of the national legislature, *ought not to be according to the rule established in the articles of confederation*, but according to some equitable rate of representation, namely, *in proportion to the whole number of white, and other free citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three-fifths of all other persons*, not comprehended in the foregoing description, except Indians not paying taxes in each State.

8. That the *right of suffrage* in the *second branch* of the national legislature, *ought to be according to the rule established in the first.*

9. That a national executive be instituted to consist of a single person, *to be chosen by the national legislature* for the term of seven years, with power to carry into execution the national laws, *to appoint to offices* in cases not otherwise provided for, to be ineligible a second time, and to be removeable on impeachment and conviction of malpractice or neglect of duty, to receive a fixed stipend, by which he may be compensated for the devotion of his time to public service—to be paid out of the national treasury.

10. That the national executive shall have a right to *negative any legislative act which shall not afterwards be passed, unless by two third parts of each branch of the national legislature.*

11. That a national judiciary be established, to consist of one supreme tribunal, the Judges of which, to be appointed by the *second branch* of the national legislature, to hold their offices during good behaviour, and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons actually in office at the time of such increase or diminution.

12. That the *national legislature* be empowered to appoint *inferior tribunals.*

13. That the jurisdiction of the *national* judiciary shall extend to cases which respect the collection of the national revenue; cases arising under the laws of the United States, impeachments of any national officer, *and questions which involve the national peace and harmony.*

14. *Resolved,* That provision ought to be made for the admission of States lawfully arising within the limits of the United States, whether from a voluntary junction of government, territory, or otherwise, with the consent of a number of voices in the national legislature less than the whole.

15. *Resolved,* That provision ought to be made for the continuance of Congress, and their authority and privileges, until a given day after the reform of the articles of union shall be adopted, and for the completion of all their engagements.

16. That a republican constitution and its existing laws ought to be guaranteed to each State by the United States.

17. That provision ought to be made for the amendment of the articles of union, whensoever it shall seem necessary.

18. That the legislative, executive and judiciary powers, within the several States, ought to be bound by oath to support the articles of the union.

19. That the amendments which shall be offered to the confederation by this convention, ought, at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies, recommended by the legislatures, to be expressly chosen by the people to consider and decide thereon.

These propositions, Sir, were *acceded to* by a *majority of the members of the committee*—a system by which the *large States were to have not only an inequality of suffrage in the first branch*, but also *the same inequality* in the *second branch*, or senate; however, it was not designed the second branch should consist of the same *number* as the first. It was proposed that the senate should consist of *twenty-eight members*, formed on the following scale—Virginia to send *five*, Pennsylvania and Massachusetts each *four*, South-Carolina, North-Carolina, Maryland, New-York, and Connecticut *two* each, and the States of New-Hampshire, Rhode-Island, Jersey, Delaware, and Georgia each of them *one;* upon this plan, the three large States, Virginia, Pennsylvania and Massachusetts, would have *thirteen* senators out of *twenty-eight*, almost *one half of the whole number*—Fifteen senators were to be a quorum to proceed to business; those *three States* would, therefore, have *thirteen* out of that quorum. Having this inequality *in each branch* of the legislature, it must be evident, Sir, that *they would make what laws they pleased, however injurious or disagreeable to the other States*, and that *they would always prevent the other States from making any laws, however necessary and proper, if not agreeable to the views of those three States*—They were not only, Sir, by this system, to have such an undue superiority in making laws and regulations for the Union, but to have the same superiority in the *appointment* of the *President*, the *Judges*, and all *other officers* of government. Hence, these three States, would in reality have the appointment of the President, Judges, and all the other officers. This President, and these Judges, so appointed, we may be morally certain, would be citizens of one of those three States; and the President, as appointed by them, and a citizen of one of them, would espouse their interests and their views, when they came in competition with the views and interests of the other States. This President, so appointed by the three large States, and so unduly under their influence, was to have a negative upon every law that should be passed, which, if negatived by him, was not to take effect, unless assented to by two-thirds of each branch of the legislature, a provision which deprived ten States of even the faintest shadow of liberty; for if

2.4.17

they, by a miraculous unanimity, having all their members present, should outvote the other three, and pass a law contrary to their wishes, those three large States need only procure the President to negative it, and thereby prevent a possibility of its ever taking effect, because the representatives of those three States would amount to much more than one third (almost one half) of the representatives in each branch. And, Sir, this government, so organized with all this undue superiority in those three large States, was as you see to have a power of negativing the laws passed by every state legislature in the Union. Whether, therefore, laws passed by the legislature of Maryland, New-York, Connecticut, Georgia, or of any other of the ten States, for the regulation of their internal police, should take effect, and be carried into execution, was to depend on the good pleasure of the representatives of Virginia, Pennsylvania, and Massachusetts.

2.4.18 This system of slavery, which bound hand and foot ten States in the Union, and placed them at the mercy of the other three, and under the most abject and servile subjection to them, was approved by a majority of the members of the convention, and reported by the committee.

2.4.19 On this occasion, the House will recollect, that the convention was resolved into a committee of the whole—of this committee Mr. Gorham was chairman—The honorable Mr. Washington was then on the floor, in the same situation with the other members of the convention, at large to oppose any system he thought injurious, or to propose any alterations or amendments he thought beneficial, to these propositions so reported by the committee, no opposition was given by that illustrious personage, or by the President of the State of Pennsylvania. They both appeared cordially to approve them, and to give them their hearty concurrence; yet this system, I am confident, Mr. Speaker, there is not a member in this House would advocate, or who would hesitate one moment in saying it ought to be rejected. I mention this circumstance in compliance with the duty I owe this honorable body, not with a view to lessen those exalted characters, but to shew how far the greatest and best of men may be led to adopt very improper measures, through error in judgment, state influence, or by other causes, and to shew that it is our duty not to suffer our eyes to be so far dazzled by the splendor of names, as to run blindfolded into what may be our destruction.

2.4.20 Mr. Speaker, I revere those illustrious personages as much as any man here. No man has a higher sense of the important services they have rendered this country. No member of the convention went there more disposed to pay a deference to their opinions: but I should little have deserved the trust this State reposed in me, if I could have sacrificed its dearest interests to my complaisance for their sentiments.

2.4.21 When contrary to our hopes it was found, that a majority of the members of the convention had in the committee agreed to the system, I have laid before you, we then thought it necessary to bring forward the propositions,

which such of us who disapproved the plan before had prepared—The members who had prepared these resolutions were principally of the Connecticut, New-York, Jersey, Delaware, and Maryland delegations. The honorable Mr. Patterson, of the Jerseys, laid them before the convention; of these propositions I am in possession of a copy, which I shall beg leave to read to you.

These propositions were referred to a committee of the whole House: unfortunately the New-Hampshire delegation had not yet arrived, and the sickness of a relation of the honorable Mr. M'Henry, obliged him still to be absent, a circumstance, Sir, which I considered much to be regretted, as Maryland thereby was represented by only two delegates, and they unhappily differed very widely in their sentiments. 2.4.22

The result of the reference of these last propositions to a committee, was a speedy and hasty determination to reject them—I doubt not, Sir, to those who consider them with attention, so sudden a rejection will appear surprising; but it may be proper to inform you, that on our meeting in convention, it was soon found there was among us three parties of very different sentiments and views. 2.4.23

One party, whose object and wish it was to abolish and annihilate all State governments, and to bring forward one general government over this extensive continent, of a monarchical nature, under certain restrictions and limitations: Those who openly avowed this sentiment were, it is true, but few, yet it is equally true, Sir, that there was a considerable number who did not openly avow it, who were by myself, and many others of the convention, considered as being in reality favourers of that sentiment, and acting upon those principles, covertly endeavouring to carry into effect what they well knew openly and avowedly could not be accomplished. 2.4.24

The second party was not for the abolition of the State governments, nor for the introduction of a monarchical government under any form; but they wished to establish such a system as could give their own States undue power and influence in the government over the other States. 2.4.25

A third party was what I considered truly federal and republican; this party was nearly equal in number with the other two, and were composed of the delegations from Connecticut, New-York, New-Jersey, Delaware, and in part from Maryland; also of some individuals from other representations.—This party, Sir, were for proceeding upon terms of *federal equality;* they were for taking our present *federal system* as the basis of their proceedings, and as far as experience had shewn us that there were defects, to remedy those defects, as far as experience had shewn that other powers were necessary to the federal government, to give those powers—They considered this the object for which they were sent by their States, and what their States expected from them; they urged, that if after doing this, experience should shew that there still were defects in the system (as no doubt there would be) the same good sense that induced this convention to be 2.4.26

called, would cause the States when they found it necessary to call another; and if that convention should act with the same moderation, the members of it would proceed to correct such errors and defects as experience should have brought to light—That by proceeding in this train, we should have a prospect at length of obtaining as perfect a system of federal government, as the nature of things would admit. On the other hand, if we, contrary to the purpose for which we were entrusted, considering ourselves as master-builders, too proud to amend our original government, should demolish it entirely, and erect a new system of our own, a short time might shew the new system as defective as the old, perhaps more so: should a convention be found necessary again, if the members thereof acting upon the same principles, instead of amending and correcting its defects, should demolish that entirely, and bring forward a third system that also might soon be found no better than either of the former, and thus we might always remain young in government, and always suffering the inconveniencies of an incorrect, imperfect system.

2.4.27 But, Sir, the favourers of monarchy, and those who wished the total abolition of State governments, well knowing that a government founded on *truly federal principles*, the basis of which were the *Thirteen State governments, preserved in full force and energy*, would be destructive of their views; and knowing they were too weak in numbers, openly to bring forward their system, conscious also that the people of America would reject it if proposed to them, joined their interest with that party, who wished a system, giving *particular States* the *power* and *influence over the others*, procuring in return mutual sacrifices from them, in giving the government *great* and *undefined powers* as to its *legislative* and *executive*, well knowing that by *departing from a federal system*, they paved the way for their favourite object, the *destruction of the State governments*, and the *introduction of monarchy*—And hence, Mr. Speaker, I apprehend, in a great measure, arose the objections of those honorable members, Mr. Mason and Mr. Gerry. In every thing that tended to give the *large States power* over the *smaller*, the *first* of those gentlemen could not forget he belonged to the *ancient dominion*, nor could the *latter* forget that he represented Old Massachusetts; that part of the system which tended to give those States power over the others met with their *perfect approbation;* but when they viewed it charged with *such powers* as *would destroy all State Governments*, their *own* as well as the *rest*—when they saw a President so constituted as to differ from a monarch, scarcely but in name, and having it in his power to become such in reality when he pleased; they being *republicans* and *federalists* as far as an attachment to their own States would permit them, they warmly and zealously opposed those parts of the system. From these different sentiments, and from this combination of interest, *I apprehend*, Sir, proceeded the fate of what was called the Jersey resolutions, and the report made by the committee of the whole House.

The Jersey propositions being thus rejected, the convention took up those reported by the committee, and proceeded to debate them by paragraphs; it was now that they who disapproved the report found it necessary to make a *warm* and *decided opposition*, which took place upon the discussion of the seventh resolution, which related to the *inequality* of representation in the *first* branch.[4] Those who advocated this inequality, urged, that when the articles of confederation were formed, it was *only* from *necessity* and *expediency* that the States were admitted *each* to have an *equal vote;* but that our situation was *now altered*, and therefore those States who considered it contrary to their interest, would *no longer abide* by it. They said no State ought to wish to have influence in government, except in proportion to what it contributes to it; that if it contributes but little, it ought to have but a small vote; that taxation and representation ought always to go together; that if one State had *sixteen times as many inhabitants* as another, or was *sixteen times as wealthy*, it ought to have *sixteen times as many votes;* that an inhabitant of Pennsylvania ought to have as much weight and consequence as an inhabitant of Jersey or Delaware; that it was contrary to the feelings of the human mind; what the *large States* would *never* submit to; that the *large States* would have *great objects* in view, in which they would never permit the *smaller States* to thwart them; that *equality of suffrage* was the rotten part of the constitution, and that this was a happy time to get clear of it. In fine, that it was the poison which contaminated our whole system, and the source of all the evils we experienced. 2.4.28

This, Sir, is the substance of the arguments, if arguments they may be called, which were used in favour of *inequality of suffrage*.—Those who advocated the *equality of suffrage*, took the matter up on the original principles of government; they urged, that all men considered in a state of nature, before any government formed, are equally free and independent, no one having any right or authority to exercise power over another, and this *without any regard to difference in personal strength, understanding, or wealth*—That when such individuals enter into government, they have *each* a *right* to an *equal voice* in its first formation, and afterwards have *each* a right to an *equal vote* in every matter which relates to their government—That if it could be done conveniently, they have a right to exercise it in person—Where it cannot be done in person but for convenience, representatives are appointed to act for them, *every person* has a *right* to an *equal vote*, in choosing that representative who is entrusted to do for the whole, that which the whole, if they could assemble, might do in person, and in the transacting of which each would have an equal voice—That if we were to admit, because a man was *more wise, more strong*, or *more wealthy*, he should be entitled to *more votes* than another, it would be *inconsistent with the freedom and liberty of that other*, and would reduce him to *slavery*—Suppose, for instance, ten individuals in a state of nature, about to enter into government, *nine* of whom are *equally wise, equally strong, and equally* 2.4.29

wealthy, the *tenth* is *ten times as wise, ten times as strong,* or *ten times as rich;* if for this reason he is to have *ten votes* for *each vote of either of the others,* the *nine* might as well *have no vote at all,* since though the *whole nine* might assent to a measure, yet the *vote* of the *tenth* would *countervail,* and *set aside all their votes*—If this *tenth* approved of what *they* wished to adopt, it would be well, but if he disapproved, he could prevent it, and in the same manner he could carry into execution *any measure he wished, contrary to the opinion of all the others, he* having *ten votes,* and the *other* altogether but *nine*—It is evident that on these principles, *the nine* would have *no will nor discretion of their own,* but must be *totally dependent* on the *will* and *discretion* of the *tenth,* to *him they* would be as *absolutely slaves* as *any negro* is to his *master*—If *he* did not attempt to carry into execution any measures injurious to the *other nine,* it could only be said that they had a *good master,* they would not be the *less slaves,* because *they* would be *totally dependent* on the *will of another,* and not on *their own will*—They might not *feel their chains,* but they would notwithstanding *wear them,* and whenever their *master* pleased he might draw them so tight as to gall them to the bone. Hence it was urged the *inequality of representation,* or giving to one man more votes than another on account of his wealth, etc. was *altogether inconsistent with the principles of liberty,* and in the *same proportion as it should be adopted,* in favour of *one* or *more,* in *that proportion are the others inslaved*—It was urged, that though every individual should have an equal voice in the government, yet, even the superior wealth, strength, or understanding, would give great and undue advantages to those who possessed them. That wealth attracts respect and attention; superior strength would cause the weaker and more feeble to be cautious how they offended, and to put up with small injuries rather than to engage in an unequal contest—In like manner superior understanding would give its possessor many opportunities of profiting at the expence of the more ignorant. Having thus established these principles with respect to the *rights* of *individuals* in a *state of nature,* and what is due to *each* on entering into government, principles established by every writer on liberty, they proceeded to shew that *States,* when *once formed,* are considered *with respect* to *each other* as *individuals* in a state of nature; that, like individuals, each *State* is considered *equally free* and *equally independent,* the *one* having no right to exercise authority over the *other,* though *more strong, more wealthy,* or *abounding with more inhabitants*—That when a number of *States* unite themselves under a *federal government,* the *same principles apply* to *them* as when a *number* of *individual men* unite themselves under a *State government*[5]—That every argument which shews *one man* ought not to have *more votes* than *another,* because he is *wiser, stronger* or *wealthier,* proves that *one State* ought not to have *more votes* than *another,* because it is *stronger, richer,* or *more populous*—And that by *giving one State,* or *one or two States more votes* than the *others,* the *others* thereby are *enslaved to*

such State or States, having the *greater number of votes*, in the *same manner* as in the case before put of *individuals* where *one* has *more votes than the others*—That the reason why each individual man in forming a State government should have an equal vote is, because each individual before he enters into government is *equally free* and *independent*—So *each State*, when *States enter* into a *federal government*, are entitled to an *equal vote*, because before they entered into such federal government, *each State* was *equally free* and *equally independent*—That *adequate* representation of *men formed into a State government*, consists in *each man* having an *equal voice*, either personally, or if by representatives, that he should have an equal voice in choosing the representative—So adequate representation of *States* in a *federal government*, consists in *each State* having an *equal voice* either in person or by its representative in every thing which relates to the federal government—That this *adequacy of representation* is *more important* in a *federal*, than in a *State* government, because the members of a State government, the *district* of which is *not very large*, have generally such a *common interest*, that laws can scarcely be made by *one* part *oppressive* to the *others*, without *their suffering in common;* but the *different States* composing an *extensive federal empire*, widely distant *one* from the *other*, may have *interests so totally distinct*, that the *one* part might be be greatly *benefited* by what would be *destructive* to the *other*.

They were not satisfied by resting it on principles; they also appealed to history—They shewed that in the Amphyctionic confederation of the Grecian cities, *each city* however *different* in *wealth*, *strength*, and other *circumstances*, sent the same *number* of deputies, and had *each* an *equal voice* in every thing that related to the common concerns of Greece. It was shewn that in the seven Provinces of the United Netherlands, and the confederated Cantons of Switzerland, *each Canton* and *each province* have an *equal vote*, although there are as great distinctions of wealth, strength, population, and extent of territory among *those provinces* and *those Cantons*, as among *these States*. It was said, that the maxim that taxation and representation ought to go together, was true so far, that no person ought to be *taxed* who is not *represented*, but not in the extent insisted upon, to wit, that the *quantum* of *taxation* and *representation* ought to be the *same;* on the contrary, the *quantum* of *representation* depends upon the quantum of *freedom*, and therefore *all*, whether *individual States*, or individual *men*, who are *equally free*, have a right to *equal representation*—That to those who insist that he who pays the greatest share of taxes, ought to have the greatest number of votes; it is a sufficient answer to say, that *this rule* would be *destructive* of the *liberty* of the *others*, and would render *them slaves* to the *more rich* and *wealthy*—That if one man pays *more taxes* than another, it is because he has *more wealth* to be protected by government, and he receives greater benefits from the government—So if one State pays more to the federal government, it is because as a State, she enjoys greater blessings from it; she

2.4.30

has more wealth protected by it, or a greater number of inhabitants, whose rights are secured, and who share its advantages.

2.4.31 It was urged, that upon these principles the Pennsylvanian, or inhabitant of a large State, was of as much consequence as the inhabitant of Jersey, Delaware, Maryland, or any other State—That *his consequence* was to be decided by *his situation* in his *own State;* that if he was *there* as *free,* if he had as great share in the forming of his own government, and in the making and executing its laws, as the inhabitants of those other States, then was he equally important and of equal consequence—Suppose a confederation of States had never been adopted, but every State had remained absolutely in its independent situation, no person could with propriety, say that the citizen of the large State was not as important as the citizen of the smaller, the confederation of the States cannot alter the case. It was said, that in all transactions *between State and State,* the freedom, independence, importance and consequence, even the individuality of each citizen of the different States, might with propriety be said to be swallowed up, or concentrated in the independence, the freedom and the individuality *of the State* of which they are citizens—That the *Thirteen States* are *thirteen distinct political individual existences* as to each other; that the *federal* government is or *ought to be* a government *over these thirteen political individual existences,* which form the members of that government; and that as the *largest State* is only a *single individual* of this government, it ought to have only *one vote;* the *smallest State* also being *one individual member* of this government, ought also to have *one vote*—To those who urged that the States have equal suffrage, was contrary to the feelings of the human heart, it was answered, that it was admitted to be contrary to the feelings of *pride* and *ambition;* but those were feelings which ought not to be gratified at the expence of *freedom.*

2.4.32 It was urged, that the position that great States would have great objects in view, in which they would not suffer the less states to thwart them, was one of the strongest reasons why inequality of representation ought not to be admitted. If those great objects were not *inconsistent* with the interest of the *less States,* they would readily concur in them, but if they were *inconsistent* with the *interest* of a *majority of the States* composing the government, in that case *two* or *three States* ought not to have it in their power to *aggrandize themselves* at the *expence of all the rest*—To those who alledged that equality of suffrage in our federal government, was the poisonous source from which all our misfortunes flowed, it was answered, that the allegation was not founded in fact—That *equality of suffrage* had *never been complained of by the States* as a *defect* in our federal system—That among the eminent writers, foreigners and others, who had treated of the defects of our confederation, and proposed alterations, *none had proposed an alteration in this part of the system:* And members of the convention both in and out of Congress, who advocated the equality of suffrage,

called upon their opponents both in and out of Congress, and challenged them to produce *one single instance* where a *bad measure* had been adopted, or a *good measure* had failed of adoption in consequence of the States having an *equal vote;* on the contrary, they urged, that all our evils flowed from the *want of power* in the federal head, and that let the *right of suffrage* in the States be *altered in any manner whatever,* if no *greater powers were given* to the government, the *same inconveniences would continue.*

It was denied that the *equality of suffrage* was *originally* agreed to on principles of *necessity* or *expediency,* on the contrary, that it was adopted on the principles of the *rights of men* and the *rights of States* which were *then* well known, and which then influenced our conduct although *now* they seem to be *forgotten*—For this the journals of Congress were appealed to; it was from them shewn, that when the Committee of Congress reported to that body the articles of confederation, the very first article which became the subject of discussion, was that respecting equality of suffrage—That Virginia proposed divers modes of suffrage, all on the principle of inequality, which were *almost unanimously* rejected; that on the question for adopting the article, it passed, Virginia being the *only* State which voted in the *negative*—That after the articles of confederation were submitted to the States by them to be ratified, almost every State proposed certain amendment, which they instructed their delegates to endeavour to obtain before ratification, and that among all the amendments proposed, *not one State,* not even Virginia, proposed an amendment of that *article, securing the equality of suffrage*—the most convincing proof it was agreed to and adopted, not from *necessity,* but *upon a full conviction,* that according to the principles of free government, the States had a *right to that equality of suffrage.* 2.4.33

But, Sir, it was to no purpose that the futility of their objections were shewn—when driven from the *pretence* that the *equality of suffrage* had been originally agreed to on principles of *expediency* and *necessity,* the representatives of the *large States* persisting in a declaration, that they would never agree to admit the *smaller States* to an *equality* of suffrage—In answer to this, they were informed, and informed in terms the *most strong* and *energetic* that could *possibly be used,* that *we never would agree* to a system giving them the *undue influence* and *superiority* they proposed—That we would risque every possible consequence—That from anarchy and confusion *order might arise*—That *slavery* was the *worst* that could ensue, and we considered the *system* proposed to be the *most complete, most abject* system of *slavery* that the wit of man ever devised, under the *pretence* of forming a government for free States—That we never would submit tamely and servilely to a *present certain evil* in dread of a *future,* which might be *imaginary;* that we were sensible the eyes of our country and the world were upon us—That we would not labour under the *imputation* of 2.4.34

being *unwilling* to *form a strong* and *energetic federal government;* but we would publish the system which we *approved,* and also that which we *opposed,* and leave it to our country and the world at large to judge between us, who *best understood* the rights of *free men* and *free States,* and who *best advocated them;* and to the same tribunal we would submit, who ought to be answerable for all the consequences which might arise to the union from the convention breaking up, without proposing any system to their constituents.—During this debate we were *threatened,* that if we did not agree to the system proposed, we *never* should have an *opportunity* of *meeting in convention* to deliberate on *another,* and this was frequently urged—In answer, we called upon them to shew *what was to prevent it,* and from what quarter was our danger to proceed; was it from a *foreign enemy?* Our *distance* from Europe, and the *political situation* of that country, left us but little to fear: Was there any *ambitious State* or *States, who in violation of every sacred obligation* was preparing to *enslave* the *other* States, and raise *itself* to *consequence* on the *ruin* of the *others?* Or was there any such *ambitious individual?* We did not apprehend it to be the case: but suppose it to be true, it rendered it the *more necessary* that *we* should *sacredly guard against a system* which might enable *all those ambitious views to be carried into effect, even under the sanction of the constitution and government:* In fine, Sir, *all these threats* were treated with *contempt,* and they were told that we apprehended but *one reason* to prevent the States meeting again in convention; that when they discovered the part *this* convention had acted, and how much its members were *abusing the trust* reposed in them, the States would never trust *another* convention. At length, Sir, after every argument had been exhausted by the advocates of equality of representation, the question was called, when a majority decided in favour of the inequality—Massachusetts, Pennsylvania, Virginia, North-Carolina, South-Carolina and Georgia voting for it—Connecticut, New-York, New-Jersey, and Delaware against it; Maryland divided.[6] It may be thought surprising, Sir, that Georgia, a State *now small* and comparatively *trifling* in the union, should advocate this system of *unequal representation,* giving up her *present* equality in the federal government, and sinking herself almost to total insignificance in the scale; but, Sir, it must be considered that Georgia has the *most extensive* territory in the union, being *larger* than the *whole island of Great-Britain,* and *thirty* times as large as *Connecticut.* This system being designed to *preserve to the States their whole territory unbroken,* and to prevent the erection of new States within the territory of any of them: Georgia looked forward *when her population,* being increased in some measure *proportioned to her territory,* she should *rise* in the scale and *give law* to the other States, and hence we found the delegation of Georgia warmly advocating the proposition of giving the States unequal representation. Next day the question came on with respect to the *inequality* of representation in the *second* branch, but little debate took place; the subject had been

exhausted on the former question. On the votes being taken, Massachusetts, Pennsylvania, Virginia, North-Carolina, and South-Carolina, voted for the inequality. Connecticut, New-York, New-Jersey, Delaware and Maryland* were in the negative. Georgia had only two representatives on the floor, *one* of whom (not I believe because he was against the measure, but from a conviction that we would go home, and thereby dissolve the convention before we would give up the question) voted also in the negative, by which that State was divided.[7]—Thus, Sir, on this *great* and *important* part of the system, the convention being equally divided, five States for the measure, five against, and one divided, there was a total stand, and we did not seem very likely to proceed any further. At length it was proposed, that a select committee should be balloted for, composed of a member from each State, which committee should endeavour to devise some mode of *conciliation* or *compromise;* I had the honor to be on that committee; we met and discussed the subject of difference; the *one side* insisted on the *inequality* of suffrage in *both branches,* the *other* insisted on the *equality* in both; each party was tenacious of their sentiments, when it was found that nothing could induce us to yield the inequality in both branches; they at length proposed by way of compromise, if *we* would *accede* to their wishes as to the *first* branch, *they* would *agree* to the equal representation in the *second.* To this it was answered, that there was no merit in the proposal, it was only consenting, after they had struggled to put *both their feet on our necks,* to take *one of them off,* provided we would consent to let them *keep the other on,* when they knew at the same time, that they could not put *one foot* on *our necks,* unless *we would consent to it,* and that by being permitted to keep on that one foot, they should *afterwards be able to place the other foot on whenever they pleased.*

They were also called on to inform us what *security* they could give us 2.4.35
should we agree to this compromise, that they would *abide* by the plan of government formed upon it, *any longer* than it *suited their interest,* or they found it *expedient.*—"The States have a *right* to an equality of representation. This *is secured* to *us* by our *present* articles of confederation, *we* are in *possession* of this right; *it is now* to be *torn from us.* What security can you give us, that, when you get the *power* the *proposed system* will give you, when you have *men* and *money,* that you will not *force from* the States that *equality* of suffrage in the *second branch,* which you *now* deny to be their right, and *only give up* from *absolute necessity?* Will you tell us we ought to trust you because you *now enter into a solemn compact with us?* This you

*On *this question,* Mr. Martin was the *only* delegate for Maryland *present,* which circumstance *secured* the State a *negative.* Immediately after the question had been taken, and the President had declared the votes, Mr. Jenifer came into the convention, when Mr. King, from Massachusetts, valuing himself on Mr. Jenifer to divide the State of Maryland on this question, as he had on the former, requested of the President that the question might be put again—however, the motion was *too extraordinary* in its nature to meet with success!

have done *before*, and *now* treat it with the *utmost contempt*. Will you *now* make an appeal to the Supreme Being, and call on him to guarantee your observance of this compact? The *same* you have *formerly done* for your observance of the articles of confederation, which you are *now violating* in the most *wanton* manner!

2.4.36 The same reasons which you *now* urge for destroying our *present* federal government, may be urged for *abolishing the system* which you now propose to adopt; and as the *method prescribed* by the *articles* of confederation is *now totally disregarded* by you, as *little regard* may be shewn by you to the *rules prescribed* for the amendment of the *new system*, whenever having obtained power by the government, you shall *hereafter* be pleased either to *discard it entirely*, or so to *alter it* as to give *yourselves* all that *superiority* which *you* have *now contended* for, and to *obtain which* you have shewn yourselves disposed to *hazard* the union."—Such, Sir, was the language used on that occasion, and they were told that as we could not *possibly* have a stronger tie on them for their observance of the new system than we had for their observance of the articles of confederation, which had proved *totally insufficient*, it would be *wrong* and *imprudent* to *confide in them*. It was further observed, that the inequality of the representation would be *daily increasing*—That many of the States whose territory was confined, and whose population was at this time large in proportion to their territory, would probably twenty, thirty, or forty years hence, have no more representatives than at the introduction of the government, whereas the States having extensive territory, where lands are to be procured cheap, would be daily encreasing in the number of their inhabitants, not only from propagation, but from the *emigration* of the inhabitants of the *other States*, and would have soon double, or perhaps treble the number of representatives that they are to have at first, and thereby enormously *increase* their *influence* in the national councils. However, the *majority* of the select committee at length agreed to a series of propositions by way of compromise, part of which related to the representation in the first branch nearly as the system is now published: and part of them to the second branch securing in that equal representation, and reported them as a compromise upon the *express terms* that they were *wholly* to be *adopted* or *wholly to be rejected;* upon this compromise, a great number of the members so far engaged themselves, that if the system was progressed upon agreeable to the terms of compromise, they would lend it their names, by signing it, and would not actively oppose it, if their States should appear inclined to adopt it—Some, however, in which number was myself, who joined in the report, and agreed to proceed upon those principles, and see *what kind of a system* would *ultimately* be formed upon it, yet reserved to themselves in the most *explicit manner* the right of *finally* giving a *solemn dissent* to the system, if it was thought by them *inconsistent* with the *freedom* and *happiness* of their country—This, Sir, will account why the members of the convention so

generally signed their names to the system; not because they thought it a *proper one;* not because they *thoroughly approved,* or were *unanimous* for it; but because they thought it *better* than the system attempted to be forced upon them. This report of the select committee was after long dissention adopted by a majority of the convention, and the system was proceeded in accordingly—I believe near a fortnight, perhaps more, was spent in the discussion of this business, during which, we were on the verge of dissolution, scarce held together by the strength of an hair, though the public papers were announcing our extreme unanimity.

Mr. Speaker, I think it my duty to observe, that during this *struggle* to 2.4.37
prevent the *large* States from having *all power* in their hands, which had nearly terminated in a dissolution of the convention: it did not appear to me, that either of those illustrious characters the Honorable Mr. *Washington,* or the President of the State of Pennsylvania, were disposed to favour the claims of the *smaller States,* against the *undue superiority* attempted by the *large States;* on the contrary, the Honorable President of Pennsylvania, was a *member* of the *committee* of *compromise,* and there *advocated* the *right* of the *large States* to an *inequality* in *both branches,* and only *ultimately conceded* it in the *second branch* on the *principle of conciliation;* when it was found no other terms would be accepted. This, Sir, I think it my duty to mention, for the *consideration of those* who endeavour to *prop up a dangerous* and *defective* system by *great names;* soon after this period, the Honourable Mr. *Yates* and Mr. *Lansing* of New-York, left us; they had uniformly opposed the system, and I *believe,* despairing of getting a *proper one* brought forward, or of *rendering any real service,* they returned no more. The *propositions* reported by the committee of the *whole house,* having been fully discussed by the convention, and with many alterations having been agreed to by a *majority,* a committee of five, were appointed to *detail* the system according to the principles contained in what had been agreed to by that majority; this was likely to require some time, and the convention adjourned for eight or ten days. Before the adjournment, I moved for liberty to be given to the different members to take *correct copies* of the *propositions,* to which the convention had then agreed, in order that during the recess of the convention, we might have an opportunity of *considering* them, and if it should be thought that any *alterations* or *amendments* were *necessary,* that we might be *prepared* against the convention met to bring them forward for discussion, But, Sir, the *same spirit* which caused *our doors to be shut*—our *proceedings to be kept secret—our journals to be locked up*—and *every avenue, as far as possible, to be shut* to *public information,* prevailed also in this case, and the proposal so *reasonable* and *necessary* was *rejected* by a *majority* of the convention; thereby *precluding even the members themselves, from the necessary means of information* and *deliberation* on the *important business in which they were engaged.*[8]

2.4.38 It has been observed, Mr. Speaker, by my honorable colleagues, that the debate respecting the mode of representation, was productive of considerable warmth, this observation is true; but, Sir, it is equally true, that if we could have *tamely* and *servilely* consented to be *bound in chains*, and *meanly condescended* to *assist* in *rivetting them fast*, we might have avoided all that warmth, and have proceeded with as much calmness and coolness as any stoick could have wished. Having thus, Sir, given the honorable members of this house, a short history of some interesting parts of our proceedings, I shall beg leave to take up the *system published* by the convention, and shall request your indulgence, while I make some observations on different parts of it, and give you such further information as may be in my power. [Here Mr. Martin read the *first section* of the *first article*, and then proceeded.] With respect to this part of the system, Mr. Speaker, there was a diversity of sentiment; those who were for *two* branches in the legislature, a house of representatives and a senate, urged the necessity of a *second* branch, to serve as a check upon the *first*, and used all those trite and common place arguments which may be proper and just, when applied to the formation of a *State government* over *individuals* variously distinguished in their habits and manners, fortune and rank; where a body chosen in a select manner, respectable for their wealth and dignity, may be necessary, frequently to prevent the hasty and rash measures of a representation more popular; but on the other side it was urged, that none of those arguments could with propriety be *applied* to the formation of a *federal government* over a number of *independent States*—That it is the *State governments* which are to watch over and protect the *rights* of the *individual*, whether *rich* or *poor*, or of *moderate circumstances*, and in which the *democratic* and *aristocratic* influence or principles are to be so *blended*, *modified*, and *checked*, as to prevent *oppression* and *injury*—That the *federal government* is to guard and protect the *States* and *their rights*, and to regulate *their common concerns*—That a *federal government* is formed by the *States*, as *States* that is in their *sovereign* capacities, in the same manner as *treaties* and *alliances* are formed—That a *sovereignty* considered as such, cannot be said to have jarring interests or principles, the one aristocratic, and the other democratic; but that the principles of a *sovereignty* considered as a sovereignty, are the *same*, whether that sovereignty is monarchical, aristocratical, democratical, or mixed—That the *history of mankind* doth not furnish *an instance* from its *earliest* period to the *present* time, of a *federal government* constituted of *two distinct branches*—That the *members* of the *federal government*, if appointed by the *States* in their *State capacities*, that is by their *legislatures*, as they *ought*, would be *select in their choice*, and coming from *different States*, having different *interests* and *views;* this difference of interests and views, would always be a *sufficient check* over the *whole;* and it was shewn, that even Adams, who the reviewers have justly observed, appears to be fond of

checks and *balances* as Lord Chesterfield of the *graces*, even *he* declares that a council consisting of *one* branch has always been found *sufficient* in a *federal* government.[9]

It was urged, that the government we were forming was not in reality a *federal* but a *national* government, not founded on the principles of the *preservation*, but the *abolition* or *consolidation* of all *State governments*—That we appeared *totally to have forgot* the business for which we were sent, and the situation of the country for which we were preparing our system—That we had not been sent to form a government over the *inhabitants* of America, considered as *individuals*, that as individuals they were all subject to their respective State governments, which governments would still remain, tho' the federal government should be dissolved—That the *system of government* we were *entrusted* to prepare, was a government over *these thirteen States;* but that in our proceedings, we adopted principles which would be right and proper, *only* on the supposition that there were *no State governments at all*, but that *all the inhabitants* of this *extensive continent* were in their *individual capacity, without government*, and in a *state of nature*—That accordingly the system proposes the legislature to consist of *two branches*, the *one* to be drawn from the *people at large*, immediately in their *individual capacity;* the *other* to be chose in a *more select manner*, as a *check* upon the *first*—It is in its very *introduction* declared to be a compact between the *people* of the United States *as individuals*, and it is to be *ratified* by the *people* at large in their capacity *as individuals;* all which it was said, would be quite right and proper, if there were *no State governments*, if *all the people* of this continent were in a *state of nature*, and we were forming one *national* government *for them as individuals*, and is nearly the same as was done in most of the *States*, when they formed their governments *over the people* who compose them. 2.4.39

Whereas it was urged, that the principles on which a *federal* government over *States* ought to be *constructed* and *ratified* are the *reverse;* that instead of the legislature consisting of *two branches*, *one* branch was sufficient, whether examined by the *dictates* of *reason*, or the *experience* of *ages*—That the representation instead of being drawn from the *people at large* as *individuals*, ought to be drawn from the *States* as *States* in their *sovereign* capacity—That in a *federal* government, the *parties* to the compact are not the *people* as *individuals*, but the *States* as *States*, and that it is by the *States* as *States* in their *sovereign* capacity, that the system of government ought to be *ratified*, and not by the *people* as *individuals*. 2.4.40

It was further said, that in a *federal* government over States *equally* free, sovereign, and independent, *every State* ought to have an equal share in *making* the *federal laws* or *regulations;* in *deciding* upon them, and in *carrying them into execution*, *neither* of which was the case in *this* system, but the *reverse*, the States not having an *equal voice* in the *legislature*, nor in the *appointment* of the *executive*, the *judges*, and the *other officers of govern-* 2.4.41

ment: it was insisted, that in the *whole* system there was but *one federal* feature, the appointment of the senators by the States in their sovereign capacity, that is by their legislatures, and the equality of suffrage in that branch; but it was said that *this feature* was only *federal in appearance.*

2.4.42 To prove *this,* and that the senate *as constituted* could not be a *security* for the *protection* and *preservation* of the *State* governments, and that the *senators* could not be justly considered the *representatives* of the *States* as *States,* it was observed, that upon *just principles of representation,* the *representative* ought to *speak* the sentiments of his *constitutents,* and ought to *vote* in the *same manner* that his *constituents* would do (as far as he can judge) provided his constituents were acting in *person,* and had the same knowledge and information with himself; and therefore that the *representative* ought to be *dependant* on his *constituents,* and *answerable* to them; that the connexion between the *representative* and the *represented,* ought to be as *near* and as *close* as possible; according to these principles, Mr. Speaker, in this State it is provided by *its constitution,* that the representatives in Congress, shall be chosen *annually,* shall be *paid* by the *State,* and shall be subject to *recall* even within the year; so *cautiously* has our *constitution* guarded against an *abuse* of the trust reposed in our representatives in the federal government; whereas by the *third* and *sixth* sections of the *first* article of this new system, the senators are to be chosen for *six* years instead of being chosen *annually;* instead of being paid by their *States* who send them, *they* in conjunction with the other branch, are to *pay themselves* out of the treasury of the United States; and are not liable to be *recalled* during the period for which they are chosen: Thus, Sir, for *six years* the *senators* are rendered totally and absolutely *independent* of *their States,* of *whom* they ought to be the *representatives,* without any *bond* or *tie* between them: During that time they may join in measures *ruinous* and *destructive* to *their States,* even such as should *totally annihilate* their *State governments,* and their States *cannot recall them,* nor *exercise any controul over them.* another consideration, Mr. Speaker, it was thought ought to have *great weight* to prove that the *smaller* States cannot *depend* on the *senate* for the *preservation* of *their rights,* either against *large* and *ambitious States,* or against an *ambitious, aspiring President.* The senate, Sir, is so constituted, that they are not only to compose one branch of the legislature, but by the second section of the second article, they are to *compose a privy council for the President;* hence, it will be necessary, that they should be, in a great measure, a *permanent* body, *constantly residing* at the seat of government. *Seven* years is esteemed for the life of a man;[10] it can hardly be supposed, that a senator, especially from the States remote from the seat of empire, will accept of an appointment which must *estrange* him for *six years from his State,* without giving up to a great degree his prospects in his *own State.* If he has a family, he will take his family with him to the place where the government shall be fixed, *that* will become his *home,* and there is every

reason to expect, that his *future* views and prospects will *centre* in the *favours* and *emoluments* either of the *general government*, or of the government of *that State* where the seat of empire is established:—In *either* case, he is *lost* to his *own State*. If he places his future prospects in the favours and emoluments of the *general government*, he will become the *dependant* and *creature* of the *President*, as the system *enables* a senator to be *appointed to offices*, and without the *nomination* of the *President*, *no appointment can take place;* as *such*, he will favour the wishes of the President, and concur in his measures, who, if he has no *ambitious views of his own* to gratify, may be *too favourable* to the *ambitious views* of the *large States*, who will have an *undue share* in his *original appointment*, and *on whom* he will be *more dependant* afterwards than on the States which are smaller. If the senator places his future prospects in that *State* where the seat of empire is fixed; from that time he will be in every question wherein its particular interest may be concerned the *representative* of *that State*, not of *his own*.

But even this provision *apparently* for the *security* of the *State governments, inadequate* as it is, is *entirely left* at the *mercy* of the general government, for by the fourth section of the first article, it is *expressly provided*, that the *Congress* shall have a power to *make* and *alter* all regulations concerning the *time* and *manner* of *holding elections for senators;* a provision, *expressly looking forward to*, and *I have no doubt designed for the utter extinction and abolition of all State governments;* nor will this, I believe, be doubted by any person, when I inform you that some of the warm advocates and patrons of the system in convention, *strenuously opposed* the *choice* of the senators by the *State legislatures*, *insisting* that the *State governments ought not to be introduced in any manner* so as to be *component parts of*, or *instruments for carrying into execution*, the general government: Nay, so far were the friends of the system from pretending that they meant it, or considered it as a *federal* system, that on the question being proposed, "that a union of the States, merely federal, ought to be the sole object of the exercise of the powers vested in the convention;" it was negatived by a majority of the members, and it was resolved, "that a *national* government ought to be formed"—afterwards the word *"national"* was struck out by them, because they thought the *word* might tend to *alarm:*[11] and although *now*, they who *advocate* the system, pretend to call themselves *federalists*, in convention the distinction was quite the reverse; those who *opposed* the system, were *there* considered and styled the *federal party*, those who *advocated* it, the *antifederal*.[12] 2.4.43

Viewing it as a *national*, not a *federal* government, as calculated and designed not to *protect* and *preserve*, but to *abolish* and *annihilate* the *State governments*, it was opposed for the following reasons, it was said, that this continent was *much too extensive* for *one national* government, which should have sufficient *power* and *energy* to *pervade* and hold in *obedience* 2.4.44

and subjection all its *parts*, consistent with the *enjoyment* and *preservation* of *liberty;* that the genius and habits of the people of America, were opposed to such a government—That during their connexion with Great-Britain, they had been accustomed to have all their concerns transacted within a narrow circle, their *colonial district;* they had been accustomed to have their seats of government near them, to which they might have access, without much inconvenience, when their business should require it—That at *this time* we find if a *county* is *rather large* the people complain of the inconvenience, and clamour for a division of their county, or for a removal of the place where their courts are held, so as to render it more central and convenient—That in those States, the territory of which is extensive, as soon as the population increases remote from the seat of government, the inhabitants are urgent for a removal of the seat of their government, or to be erected into a new State—As a proof of this, the inhabitants of the western parts of Virginia and North-Carolina, of Vermont and the Province of Main, were instances, even the inhabitants of the western parts of Pennsylvania, who it is said, already seriously look forward to the time when they shall either be erected into a new State, or have their seat of government removed to the Susquehanna.—If the inhabitants of the different States consider it as a grievance to attend a *country court* or the *seat* of their *own government,* when a little inconvenient, can it be supposed they would ever *submit* to have a *national government* established, the *seat* of which would be *more than a thousand miles removed from some of them?* It was insisted that governments of a *republican nature,* are those *best* calculated to *preserve* the *freedom* and *happiness* of the citizen—That governments of *this kind,* are *only calculated* for a territory but *small* in its extent; that the *only* method by which an extensive continent like America could be *connected* and *united* together consistent with the principles of freedom, must be by having a *number* of *strong* and *energetic State governments* for securing and protecting the rights of *individuals* forming those governments, and for regulating all their concerns; and a strong energetic *federal* government *over those States* for the protection and preservation, and for regulating the *common* concerns of the State. It was further insisted, that even if it was possible to effect a total abolition of the State governments at this time, and to establish one general government over the people of America, it *could not long subsist,* but in a *little time* would again be broken into a *variety* of governments of a *smaller extent,* similar in some manner to the present situation of this continent; the principal difference in all probability would be that the governments, *so established,* being affected by some *violent convulsion,* might not be formed on principles so *favourable* to *liberty* as those of our *present* State governments—That *this* ought to be an *important consideration* to such of the States who had *excellent* governments, which was the case with Maryland and most others, whatever it might be to persons who *disapproving* of their particular State government would be willing

to *hazard* every thing to *overturn* and *destroy* it. These reasons, Sir, influenced *me* to *vote* against *two* branches in the legislature, and against every part of the system which was *repugnant* to the principles of a *federal* government—Nor was there a single argument urged, or reason assigned, which to my mind was satisfactory, to prove that a good government on *federal* principles was unattainable, the whole of their arguments only proving, what none of us controverted, that our federal government as *originally formed* was *defective* and *wanted amendment*—However, a *majority* of the convention hastily and inconsiderately, without condescending to make a fair trial, in their great wisdom, decided that a kind of government which a Montesquieu and a Price have declared the best calculated of any to preserve internal liberty, and to enjoy external strength and security, and the only one by which a large continent can be connected and united, consistent with the principles of liberty[13] was totally impracticable, and they acted accordingly.

With respect to *that part* of the *second* section of the *first* article, which 2.4.45
relates to the *apportionment of representation* and *direct taxation*, there were considerable objections made to it, besides the great objection of inequality—It was urged, that no principle could justify taking *slaves* into computation in *apportioning* the number of *representatives* a State should have in the government[14]—That it involved the absurdity of *increasing* the power of a State in making laws for *free men* in *proportion* as that State *violated* the *rights of freedom*—That it might be proper to take slaves into consideration, when *taxes* were to be apportioned, because it had a tendency to *discourage slavery;* but to take them into account in *giving representation* tended to *encourage* the *slave trade*, and to make it the *interest* of the States to *continue* that *infamous traffic*—That slaves could not be taken into account as *men*, or *citizens*, because they were not admitted to the *rights of citizens*, in the States which adopted or continued slavery—If they were to be taken into account as *property*, it was asked, what peculiar circumstance should render this property (of *all others* the most *odious* in its nature) entitled to the *high privilege* of conferring *consequence* and *power* in the *government* to its possessors, rather than *any other* property: and why *slaves* should, as property be taken into account rather than *horses, cattle, mules,* or any *other species;* and it was observed by an honourable member from Massachusetts, that he considered it as dishonourable and humiliating to enter into compact with the *slaves* of the *southern States*, as it would with the *horses* and *mules* of the *eastern*.[15] It was also objected, that the *numbers* of representatives appointed by this section to be sent by the particular States to compose the *first* legislature, were not precisely *agreeable* to the *rule* of representation adopted by this system, and that the numbers in this section are *artfully lessened* for the *large* States, while the *smaller* States have their *full proportion* in order to prevent the *undue influence* which the *large* States will have in the government from being *too apparent;*[16] and I

think, Mr. Speaker, that this objection is *well founded.* I have taken some pains to obtain information of the number of free men and slaves in the different States, and I have reason to believe, that if the estimate was *now* taken, which is directed, and one delegate to be sent for every thirty thousand inhabitants, that Virginia would have at least *twelve* delegates, Massachusetts *eleven,* and Pennsylvania *ten,* instead of the number stated in *this section;* where the *other* States, I believe, would not have more than the number there allowed them, nor would Georgia, most probably at present, send more than *two*—If I am right, Mr. Speaker, upon the enumeration being made, and the representation being apportioned according to the rule prescribed, the *whole number* of delegates would be *seventy-one, thirty-six* of which would be a *quorum* to do business; the delegates of Virginia, Massachusetts, and Pennsylvania, would amount to *thirty-three* of that quorum—Those three States will, therefore, have *much more* than *equal* power and influence in *making* the laws and regulations, which are to affect this continent, and will have a *moral certainty* of *preventing* any laws or regulations which *they disapprove,* although they might be thought ever so *necessary* by a *great majority* of the States—It was further objected, that even if the States who had most inhabitants ought to have a greater number of delegates, yet the *number of delegates* ought not to be in *exact proportion* to the *number of inhabitants,* because the influence and power of those States whose delegates are numerous, will be *greater* when compared to the influence and power of the other States, than the *proportion* which the numbers of their delegates bear to each other; as for instance, though Delaware has *one* delegate, and Virginia but *ten,* yet Virginia has *more* than *ten times* as much *power* and *influence* in the government as Delaware; to prove this, it was observed, that *Virginia* would have a *much greater* chance to carry any measure than *any number of States,* whose delegates were altogether ten (suppose the States of Delaware, Connecticut, Rhode-Island, and New-Hampshire) since the *ten* delegates from Virginia in every thing that related to the interest of that State would *act in union,* and *move one solid and compact body,* whereas the *delegates of these four States,* though collectively *equal* in number to those from Virginia, coming from *different* States, having different *interests,* will be less likely to harmonize and move in concert. As a further proof it was said, that Virginia, as the system is now reported, by uniting with her the delegates of *four* other States, can carry a question *against* the sense and interest of *eight* States by *sixty-four* different combinations; the *four* States voting with Virginia, being every time *so far different* as not to be composed of the *same four;* whereas the State of Delaware can only, by uniting four other States with her, carry a measure against the sense of eight States by *two* different combinations—a mathematical proof that the State of *Virginia* has *thirty-two* times greater chance of carrying a measure against the sense of eight States than *Delaware,* although Virginia has only *ten times* as many delegates: It was also shewn,

that the idea was totally fallacious which was attempted to be maintained, that if a State had *one thirteenth* part of the *numbers composing the delegation in this system*, such State would have *as much influence* as under the articles of confederation; to prove the fallacy of this idea it was shewn, that under the articles of confederation the State of Maryland had but *one* vote in *thirteen*, yet no measure could be carried against her interests without *seven States*, a majority of the whole concurring in it; whereas in this system, though Maryland has *six* votes, which is *more* than the *proportion* of *one* in *thirteen*, yet *five* States may, in a *variety of combinations*, carry a question *against* her interest, tho' *seven* other States concur with her, and *six* States by a *much greater* number of combinations, may carry a measure against *Maryland*, united with *six other States*. I shall here, Sir, just observe, that as the committee of detail reported the system, the delegates from the different States were to be *one* for every *forty thousand* inhabitants; it was afterwards altered to one for every *thirty* thousand; this alteration was made after I left the convention, at the instance of whom I know not, but it is evident, that the alteration is in favour of the *States* which have large and extensive territory, to increase their power and influence in the government, and to the injury of the *smaller States*—Since it is the States of *extensive* territory, who will *most speedily* increase the number of their *inhabitants* as before has been observed, and will therefore, most speedily procure an increase to the number of their *delegates*—By this alteration Virginia, North-Carolina, or Georgia, by obtaining one hundred and twenty thousand additional inhabitants, will be entitled to *four* additional delegates, whereas such State would only have been entitled to *three*, if *forty thousand* had *remained* the number by which to apportion the delegation. As to that part of this section that relates to direct taxation, there was also an objection for the following reasons, it was said that a *large sum* of money was to be brought into the national treasury by the *duties* on commerce, which would be almost *wholly* paid by the *commercial States*, it would be *unequal* and *unjust* that the sum which was necessary to be raised by *direct taxation* should be apportioned *equally* upon all the States, obliging the commercial States to pay as large a share of the revenue arising therefrom, as the States from whom no revenue had been drawn by imposts; since the wealth and industry of the inhabitants of the commercial States will in the first place be severely taxed through their commerce, and afterwards be *equally taxed* with the industry and wealth of the inhabitants of the other States, *who have paid no part* of that *revenue*, so that by this provision, the inhabitants of the commercial States are in this system obliged to bear an unreasonable and disproportionate share in the expences of the union, and the payment of that foreign and domestic debt, which was incurred not more for the benefit of the commercial than of the other States.

In the *sixth* section of the *first* article, it is provided, that senators and representatives may be appointed to any civil office under the authority of 2.4.46

the United States, except such as shall have been created, or the emoluments of which have been increased during the time for which they were elected: upon this subject, Sir, there was a great diversity of sentiment among the members of the convention—As the propositions were reported by the committee of the whole house, a senator or representative could not be appointed to *any office* under a *particular State*, or under the *United States*, during the time for which they were chosen, nor to any office under the United States until one year after the expiration of that time.—It was said, and in my opinion justly, that no good reason could be assigned why a senator or representative should be incapacitated to hold an office in *his own* government, since it can only bind him more closely to his State, and attach him the more to its interests, which, as its representative, he is bound to consult and sacredly guard, as far as is consistent with the welfare of the union; and therefore, at most, would only add the additional motive of gratitude for discharging his duty; and according to this idea, the clause which prevented senators or delegates from holding offices in their own States, was rejected by a considerable majority; but, Sir, we sacredly endeavoured to preserve all that part of the resolution which prevented them from being *eligible* to *offices* under the *United States*, as we considered it *essentially necessary* to preserve the *integrity*, *independence*, and *dignity* of the legislature, and to secure its members from *corruption*.

2.4.47 I was in the number of those who were extremely solicitous to preserve this part of the report; but there was a powerful opposition made by such who wished the members of the legislature to be eligible to offices under the United States—*Three* different times did they attempt to procure an alteration, and *as often* failed, a majority firmly adhering to the resolution as reported by the committee; however, an alteration was at length by dint of perseverance, obtained even within the last twelve days of the convention, for it happened after I left Philadelphia[17]—As to the exception that they cannot be appointed to offices created by themselves, or the emoluments of which are by themselves increased, it is certainly of little consequence, since they may easily evade it by creating new offices, to which may be appointed the persons who fill the offices before created, and thereby vacancies will be made, which may be filled by the members who for that purpose have created the new offices.

2.4.48 It is true, the acceptance of an office vacates their seat, nor can they be re-elected during their continuance in office; but it was said, that the evil would first take place, that the price for the office would be paid before it was obtained; that vacating the seat of the person who was appointed to office, made way for the admission of a new member, who would come there as desirous to obtain an office as him whom he succeeded, and as ready to pay the price necessary to obtain it; in fine, that it would be only driving away the flies who were *filled*, to make room for the those that were *hungry*—And as the system is now reported, the *President* having the power

to *nominate* to *all offices*, it must be evident, that there is *no possible security* for the *integrity* and *independence* of the *legislature*, but that they are most *unduly* placed under the *influence* of the *President*, and exposed to *bribery* and *corruption*.

The *seventh* section of this article was also the subject of contest—It was thought by many members of the convention, that it was very wrong to confine the origination of all revenue bills to the house of representatives, since the members of the senate will be chosen by the people as well as the members of the house of delegates, if not *immediately*, yet *mediately*, being chosen by the members of the State legislature, which members are elected by the *people*, and that it makes no *real* difference whether we do a thing *in person*, or by a *deputy*, or agent, *appointed* by *us* for *that purpose*. 2.4.49

That no argument can be drawn from the House of Lords in the British constitution, since they are neither mediately nor immediately the representatives of the people, but are one of the *three estates*, composing that kingdom, having *hereditary right* and *privileges*, *distinct* from, and *independent* of, the *people*. 2.4.50

That it may, and probably will be a future source of dispute and controversy between the two branches, what are, or are not revenue bills, and the more so, as they are not *defined* in the constitution; which controversies may be difficult to settle, and may become serious in their consequences, their being no power in the constitution to decide upon, or authorised in cases of absolute necessity to terminate them by a prorogation or dissolution of either of the branches; a remedy provided in the British constitution, where the King has that power, which has been found necessary at times to be exercised in case of violent dissentions between the Lords and Commons on the subject of money bills. 2.4.51

That every regulation of commerce; every law relative to excises, stamps, the post-office, the imposing of taxes, and their collection, the creation of courts and offices; in fine, every law for the union, if enforced by any pecuniary sanctions, as they would tend to bring money into the continental treasury, might and no doubt would be considered a revenue act—That consequently the senate, the members of whom will it may be presumed, be the most select in their choice, and consist of men the most enlightened, and of the greatest abilities, who from the duration of their appointment and the permanency of their body, will probably be best acquainted with the common concerns of the States, and with the means of providing for them, will be rendered almost useless as a part of the legislature; and that they will have but little to do in that capacity, except patiently to wait the proceedings of the house of representatives, and afterwards examine and approve, or propose amendments. 2.4.52

There were also objections to that part of this section which relates to the *negative* of the *President*.—There were some who thought no good reason could be assigned for giving the President a negative of *any kind*—Upon the 2.4.53

principle of a check to the proceedings of the legislature, it was said to be unnecessary; that the two branches having a controul over each others proceedings; and the senate being chosen by the State legislatures, and being composed of members from the *different* States, there would always be a sufficient guard against measures being *hastily* or *rashly* adopted.

2.4.54 That the *President* was not likely to have *more wisdom* or *integrity* than the *senators*, or *any of them*, or to *better know* or *consult* the interest of the States, than *any member* of the senate, so as to be entitled to a negative on that principle—And as to the precedent from the British constitution (for we were eternally troubled with arguments and precedents from the British government) it was said it would not apply. The King of Great-Britain there composed *one* of the *three estates* of the kingdom; *he* was possessed of *rights* and *privileges*, as such, *distinct from* the Lords and Commons; *rights* and *privileges* which *descended* to his *heirs*, and were inheritable by them; that for the *preservation* of these it was necessary *he* should have a negative, but that this was not the case with the President of the United States, who was no more than an *officer* of government, the *sovereignty* was not in *him*, but in the *legislature:* And it was further urged, even if he was allowed a negative, it ought not to be of so great extent as that given by the system, since his *single voice* is to countervail the *whole* of *either* branch, and any number *less* than *two-thirds* of the other; however, a majority of the convention was of a different opinion, and adopted it as it now makes a part of the system.

2.4.55 By the *eighth* section of this article, Congress is to have power to *lay* and *collect taxes*, *duties*, *imposts*, and *excises*.—When we met in convention after our adjournment, to receive the report of the committee of detail, the members of that committee were requested to inform us, what powers were meant to be vested in Congress by the word *duties* in this section, since the word *imposts* extended to duties on goods *imported*, and by another part of the system no duties on *exports* were to be laid: In answer to this inquiry we were informed, that it was meant to give the general government the power of laying *stamp* duties on paper, parchment, and vellum. We then proposed to have the power inserted in *express words*, least disputes hereafter might arise on the subject, and that the meaning might be understood by *all* who were to be *affected* by it; but to this it was objected, because it was said that the word stamp would probably sound *odiously* in the ears of many of the inhabitants, and be a cause of objection.[18] By the power of imposing *stamp duties* the Congress will have a *right* to declare, that *no wills*, *deeds*, or other *instruments* of writing, shall be *good* and *valid*, without being *stamped*—that without being reduced to *writing*, and being *stamped*, no *bargain*, *sale*, *transfer of property*, or *contract* of any kind or nature whatsoever shall be *binding;* and also that no *exemplifications of records*, *depositions*, or *probates* of any kind shall be received in evidence, unless they have the same solemnity—They may likewise oblige all proceedings of a *judicial* nature to

be *stamped* to give them effect—Those stamp duties may be imposed to any amount they please, and under the pretence of *securing* the *collection* of these duties, and to prevent the laws which imposed them from being evaded, the Congress may bring the *decision* of all *questions* relating to the *conveyance, disposition* and *rights* of *property,* and *every question* relating to *contracts* between man and man into the *courts* of the *general government.*—Their *inferior* courts in the *first* instance and the *superior* court by *appeal.* By the power to lay and collect imposts, they may impose duties on *any* or *every* article of *commerce* imported into these States to what amount they please. By the power to lay *excises,* a power very odious in its nature, since it authorises officers to go into your *houses,* your *kitchens,* your *cellars,* and to examine into your *private concerns;* the Congress may impose *duties* on every *article* of *use* or *consumption,* on the *food* that we *eat,* on the *liquors* we *drink,* on the *clothes* that we *wear,* the *glass* which *enlighten* our *houses,* or the *hearths* necessary for our *warmth* and *comfort.* By the power to lay and collect taxes, they may proceed to *direct taxation* on *every individual* either by a *capitation* tax on their *heads,* or an *assessment* on their *property.* By this part of the section therefore, the government has a power to lay what duties they please on *goods imported;* to lay what duties they please afterwards on whatever we *use* or *consume;* to impose *stamp duties* to what amount they please, and in whatever case they please: afterwards to impose on the people *direct taxes,* by capitation tax, or by assessment, to what amount they choose, and thus to *sluice* them at *every vein* as long as they have a *drop* of blood, without any controul, limitation, or restraint; while *all the officers* for *collecting* these taxes, stamp duties, imposts, and excises, are to be appointed by the *general government,* under its directions, not accountable to the *States;* nor is there *even* a security that they shall be *citizens* of the *respective States,* in which they are to exercise their offices; at the same time the construction of *every* law *imposing* any and all these taxes and duties, and *directing* the collection of them, and *every question* arising thereon, and on the *conduct* of the *officers* appointed to execute these laws, and to collect these taxes and duties so various in their kinds, are *taken away* from the courts of justice of the *different States,* and *confined* to the courts of the *general government,* there to be *heard* and *determined* by judges holding their offices under the appointment *not* of the *States,* but of the *general government.*

Many of the members, and myself in the number, thought that the *States* were much *better judges* of the circumstances of their citizens, and what sum of money could be collected from them by *direct taxation,* and of the manner in which it could be raised, with the *greatest ease* and *convenience* to their citizens, than the *general government* could be; and that the general government *ought not* to have the power of laying direct taxes in any case, but in that of the *delinquency* of a State.—Agreeable to this sentiment, I brought in a proposition on which a vote of the convention was taken, the 2.4.56

proposition was as follows: "And wherever the legislature of the United States shall find it necessary that *revenue* should be raised by *direct taxation*, having apportioned the same by the above rule, *requisitions* shall be made of the respective States to pay into the continental treasury their respective quotas, *within a time* in the said requisition to be specified, and in case of any of the States *failing* to comply with such requisition, then and *then only*, to have power to devise and pass acts directing the mode and authorising the collection of the same."[19] Had this proposition been acceded to, the *dangerous* and *oppressive* power in the *general government* of imposing *direct taxes* on the inhabitants, which it now enjoys *in all cases*, would have been *only* vested in it, in case of the non-compliance of a State, as a *punishment* for its *delinquency*, and would have *ceased* the moment that the State *complied with the requisition*—But the proposition was rejected by a majority, consistent with their *aim* and *desire* of *increasing the power of the general government as far as possible, and destroying the powers and influence of the States*. And though there is a provision that all duties, imposts and excises shall be uniform, that is, to be laid to the same amount on the same articles in each State, yet this will not prevent Congress from having it in their power to cause them to fall *very unequal* and much hevier on *some* States than on *others*, because these duties may be laid on articles but *little* or *not at all used* in some States, and of *absolute necessity* for the use and consumption of others, in which case the *first* would pay *little* or *no part* of the revenue arising therefrom, while the *whole* or nearly the whole of it would be paid by the *last*, to wit, the States which use and consume the articles on which the imposts and excises are laid.

2.4.57 By our original articles of confederation, the Congress have a power to borrow money and emit bills of credit on the credit of the United States; agreeable to which was the *report on this* system as *made* by the *committee of detail*. When we came to this part of the report, a motion was made to strike out the words "to emit bills of credit;"[20] against the motion we urged, that it would be improper to *deprive* the Congress of that *power;* that it would be a novelty unprecedented to establish a government which should not have such authority—That it was impossible to look forward into futurity so far as to decide, that events might not happen that should render the *exercise* of such a power *absolutely* necessary—And that we doubted, whether if a war should take place it would be *possible* for this country to *defend* itself, without having recourse to *paper credit*, in which case there would be a *necessity* of becoming a *prey* to our *enemies*, or *violating* the *constitution* of our government; and that considering the administration of the government would be principally in the hands of the wealthy, there could be little reason to fear an *abuse* of the *power* by an unnecessary or injurious exercise of it—But, Sir, a majority of the convention, being wise beyond every event, and being willing to risque any political evil rather than admit the *idea* of a paper emission, in any *possible* case, refused to *trust* this

authority to a government, to which they were *lavishing* the most *unlimited* powers of *taxation*, and to the *mercy* of which they were willing *blindly* to *trust* the *liberty* and *property* of the *citizens* of *every State* in the union; and they *erased* that clause from the system.[21]

Among other powers given to this government in the eighth section, it has 2.4.58
that of appointing tribunals *inferior* to the *supreme court;* to this power there was an opposition. It was urged, that there, was no occasion for *inferior* courts of the *general government* to be appointed in the different States, and that such ought not to be admitted—That the different *State judiciaries* in the respective States would be *competent to*, and *sufficient for*, the cognizance in the *first instance* of all cases that should arise under the laws of the general government, which being by this system made the supreme law of the States, would be binding on the different State judiciaries—That by giving an *appeal* to the *supreme court* of the United States, the *general government* would have a *sufficient* check over their decisions, and security for the enforcing of their laws—That to have *inferior* courts appointed under the authority of Congress in the different States, would eventually *absorb* and *swallow up* the *State judiciaries*, by drawing all business from them to the courts of the general government, which the *extensive* and *undefined* powers, legislative and judicial, of which it is possessed, would *easily enable* it to do—That it would *unduly* and *dangerously* increase the *weight* and *influence* of Congress in the *several States*, be productive of a *prodigious number of officers*, and be attended with an *enormous* additional and unnecessary *expence*—That the judiciaries of the respective States not having power to decide upon the laws of the general government, but the determination on those laws being *confined* to the judiciaries appointed under the authority of Congress in the *first instance*, as well as on *appeal*, there would be a necessity for *judges* or magistrates of the general government, and those to a considerable number, in *each county* of *every State*—That there would be a necessity for courts to be holden by them in each county, and that these courts would stand in need of all the proper officers, such as *sheriffs*, *clerks* and others commissioned, under the authority of the general government: in fine, that the administration of justice, as it will relate to the laws of the general government would require in each State all the magistrates, courts, officers and expence, which is now found necessary in the respective States for the administration of justice as it relates to the laws of the State governments. But here again we were overruled by a majority, who *assuming* it as a *principle* that the general government and the State governments (as long as they should exist) would be at *perpetual variance* and *enmity*, and that their *interests* would constantly be *opposed* to each other, insisted for that reason that the *State judges* being citizens of their respective States, and holding their commissions under them, ought not, though *acting on oath*, to be *entrusted* in the administration of the laws of the general government.

2.4.59 By the eighth section of the first article, the Congress have also a power given them to raise and support *armies* without *any limitation* as to *numbers*, and without *any restriction* in *time of peace*. Thus, Sir, *this* plan of government, instead of *guarding against* a *standing army*, that *engine* of *arbitrary power*, which has so *often* and so *successfully* been used for the *subversion* of *freedom*, has in *its formation*, given it an *express* and *constitutional sanction*, and hath *provided for its introduction;* nor could this be prevented: I took the sense of the convention on a proposition, by which the Congress should not have power, *in time of peace*, to keep embodied more than a certain number of regular troops—*that number* to be ascertained by what should be considered a *respectable peace establishment*. This proposition was rejected by a majority, it being their determination, that the *power* of congress to keep up a *standing army*, even in *peace* should *only* be restrained by *their will* and *pleasure*.[22]

2.4.60 This section proceeds further to give a power to the Congress to provide for the calling forth the militia, to execute the laws of the union, suppress insurrections and repel invasions. As to *giving such a power* there was no objection; but it was thought by some, that this power *ought* to be given with certain *restrictions*. It was thought that not more than a certain *part* of the militia of any one State, ought to be obliged to *march out* of the same, or be *employed out* of the same, at any *one time*, without the consent of the legislature of such State. This *amendment* I endeavored to obtain; but it met with the same fate, which attended almost every attempt to *limit* the powers given to the general government, and *constitutionally* to guard against *their abuse*, it was not adopted.[23] As it now stands, the Congress will have the power, if they please, to march the *whole* militia of Maryland to the *remotest* part of the union, and keep them in service as long as they think proper, without being in any respect *dependent* upon the *government of Maryland* for this *unlimited exercise of power over its citizens. All of whom*, from the *lowest* to the *greatest*, may, during such service, be *subjected* to *military* law, and *tied up* and *whipped* at the *halbert* like the *meanest* of *slaves*.

2.4.61 By the *next* paragraph, Congress is to have the power to provide for *organizing, arming*, and *disciplining* the *militia*, and for *governing* such part of them as may be *employed in the service* of the United States.

2.4.62 For this *extraordinary* provision, by which the *militia*, the *only defence* and *protection* which the *State* can have for the security of *their rights* against *arbitrary encroachments* of the *general government*, is taken entirely *out of the power* of their *respective States*, and placed under the *power of Congress*, it was speciously assigned as a reason, that the general government would cause the militia to be better regulated and better disciplined than the State governments, and that it would be proper for the whole militia of the union to have a uniformity in their arms and exercise. To this it was answered, that the reason, however *specious*, was *not just;* that it would be

absurd the militia of the western settlements, who were exposed to an Indian enemy, should either be confined to the *same arms* or *exercise*, as the militia of the eastern or middle States; that the same penalties which would be sufficient to enforce an obedience to militia laws in some States, would be totally disregarded in others—That leaving the power to the several States, they would respectively best know the situation and circumstances of their citizens, and the regulations that would be necessary and sufficient to effect a well regulated militia in each—That we were satisfied the militia had heretofore been as well disciplined, as if they had been under the regulations of Congress; and that the States would now have an *additional* motive to keep their militia in proper order, and fit for service, as it would be the *only chance* to preserve their *existence* against a general government, armed with powers *sufficient* to destroy them. These observations, Sir, procured from some of the members an open avowal of those reasons, by which we believed before that they were actuated. They said, that as the States would be opposed to the general government, and at enmity with it, which, as I have already observed, they *assumed* as a *principle*, if the militia was under the controul and the authority of the respective States, it would *enable them* to *thwart* and *oppose* the general government:—They said the States ought to be at the mercy of the general government, and, therefore, that the militia ought to be put under its power, and not suffered to remain under the power of the respective States. In answer to these declarations, it was urged, that if after having obtained to the general government the great powers already granted, and among those, that of *raising and keeping up regular troops without limitation*, the *power* over the *militia* should be *taken away* from *the States*, and also given to the general government, it ought to be considered as the *last coup de grace* to the *State governments;* that it must be the most convincing proof, the advocates of this system design the *destruction* of the State governments, and that no *professions*, to the contrary, ought to be *trusted;* and that every State in the union ought to reject such a system with indignation, since, if the general government should attempt to oppress and enslave them, they could not have any possible means of self defence; because the proposed system, taking away from the States the right of organizing, arming and disciplining of the militia, the *first attempt* made by a *State* to put the militia in a situation to counteract the arbitrary measures of the general government, would be construed into an *act of rebellion*, or *treason;* and Congress would *instantly march* their *troops* into the State.—It was further observed, that when a government *wishes* to deprive their citizens of freedom, and reduce them to slavery, it *generally makes use of a standing army* for that purpose, and *leaves the militia in a situation as contemptible as possible, least they might oppose its arbitrary designs*—That in *this* system, we give the general government every provision it could wish for, and even *invite* it to *subvert* the *liberties* of the *States* and *their citizens*, since we give them the right to encrease and

keep up a standing army as numerous as *it* would wish, and by placing the militia under *its* power, enable it to leave the militia *totally unorganized, undisciplined,* and *even to disarm them;* while the *citizens,* so far from complaining of this *neglect,* might even esteem it a favor in the general government, as thereby they would be freed from the burthen of militia duties, and left to their own private occupations or pleasures. However, *all* arguments, and every reason that could be urged on *this* subject, as well as on many others, were obliged to yield to *one* that was *unanswerable,* a *majority* upon the division.

2.4.63 By the *ninth* section of this article, the importation of such persons as any of the States now existing, shall think proper to admit, shall not be prohibited prior to the year one thousand eight hundred and eight, but a duty may be imposed on such importation not exceeding ten dollars for each person.

2.4.64 The design of this clause is to prevent the general government from prohibiting the importation of slaves, but the same reasons which caused them to strike out the word "*national,*" and not admit the word "*stamps,*" influenced them here to guard against the word "*slaves,*" they anxiously sought to avoid the admission of expressions which might be odious in the ears of Americans, although they were willing to admit into their system those *things* which the *expressions* signified: And hence it is, that the clause is so worded, as really to authorise the general government to impose a duty of ten dollars on every foreigner who comes into a State to become a citizen, whether he comes *absolutely free,* or *qualifiedly* so as a servant; although this is contrary to the design of the framers, and the duty was only meant to extend to the importation of *slaves.*

2.4.65 This clause was the subject of a great diversity of sentiment in the convention;—as the system was reported by the committee of detail, the provision was general, that such importation should not be prohibited, without confining it to any particular period. This was rejected by eight States—Georgia, South-Carolina, and I think North-Carolina voting for it.[24]

2.4.66 We were then told by the delegates of the two first of those States, that their States would never agree to a system which put it in the power of the general government to prevent the importation of slaves, and that they, as delegates from those States, must withhold their assent from such a system.

2.4.67 A committee of one member from each State was chosen by ballot, to take this part of the system under their consideration, and to endeavour to agree upon some report, which should reconcile those States; to this committee also was referred the following proposition, which had been reported by the committee of detail, to wit, "No *navigation act* shall be passed without the assent of *two thirds* of the members present in each house;" a proposition which the *staple* and *commercial* States were solicitous to *retain,* lest their *commerce* should be placed too much under the power of the *eastern* States, but which these last States were as anxious to *reject.*—This

committee, of which also I had the honour to be a member, met and took under their consideration the subjects committed to them; I found the *eastern* States, notwithstanding their *aversion to slavery*, were very willing to indulge the southern States, at least with a temporary liberty to prosecute the *slave trade*, provided the southern States would in their turn gratify them, by laying no *restriction* on *navigation acts;* and after a very little time, the committee by a great majority, agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted.

This report was adopted by a majority of the convention, but not without 2.4.68
considerable opposition.—It was said, that we had but just assumed a place among independent nations, in consequence of our opposition to the attempts of Great-Britain to *enslave us;* that this opposition was grounded upon the *preservation* of *those rights*, to which God and Nature had entitled *us*, not in *particular*, but in *common* with *all the rest of mankind*—That we had *appealed* to the *Supreme being* for his *assistance*, as the *God of freedom*, who could not but *approve* our efforts to preserve the *rights* which he had thus *imparted to his creatures;* that now, when we scarcely had risen from our *knees*, from *supplicating* his *aid* and *protection*—in *forming our government* over *a free people*, a government formed pretendedly on the *principles* of *liberty* and for *its preservation*,—in *that* government to have a provision, not only putting it out *of its power* to *restrain* and *prevent* the *slave trade*, but *even encouraging that most infamous traffic*, by giving the *States power* and *influence* in the *union, in proportion* as they *cruelly and wantonly sport with the rights of their fellow creatures*, ought to be considered as a *solemn mockery of*, and *insult to, that God* whose protection we had then implored, and could not fail to hold us up in *detestation*, and render us *contemptible* to every *true friend* of liberty in the world. It was said, it ought to be considered that *national* crimes can *only be*, and *frequently are, punished* in this world by *national punishments*, and that the *continuance* of the slave trade, and thus giving it a *national sanction* and *encouragement*, ought to be considered as *justly exposing* us to the *displeasure* and *vengeance* of *Him*, who is equal Lord of all, and who views with equal eye, the poor *African slave* and his *American master!*

It was urged, that by this system, we were giving the general government 2.4.69
full and absolute power to regulate commerce, under which general power it would have a right to *restrain, or totally prohibit* the *slave trade:* it must therefore, appear to the world absurd and disgraceful to the last degree, that we should *except* from the exercise of that power, the *only branch* of *commerce* which is *unjustifiable in its nature*, and *contrary* to the *rights* of *mankind*—That on the contrary, we ought *rather to prohibit expressly* in our *constitution*, the *further importation* of *slaves;* and to *authorise* the general government from time to time, to make such regulations as should be

thought most advantageous for the *gradual abolition* of *slavery*, and the *emancipation* of the *slaves* which are already in the States.

2.4.70 That *slavery* is *inconsistent* with the *genius* of *republicanism*, and has a tendency to *destroy* those *principles* on which it is *supported*, as it *lessens the sense* of the *equal rights* of *mankind*, and habituates us to *tyranny* and *oppression*. It was further urged, that by this system of government, every State is to be protected both from *foreign invasion* and from *domestic insurrections;* that from this consideration, it was of the *utmost importance* it should have a power to restrain the importation of slaves, since in proportion as the number of slaves were increased in any State, in the same proportion the State is *weakened* and *exposed* to foreign invasion, or domestic insurrection, and by *so much the less* will it be able to protect itself against *either;* and therefore will by so much the more, want aid from, and be a burthen to, the union. It was further said, that as in this system we were giving the general government a power under the idea of national character, or national interest, to regulate even our *weights* and *measures*, and have prohibited all possibility of *emitting paper money*, and *passing instalment laws*, *&c*. It must appear still more extraordinary, that we should prohibit the government from interfering with the slave trade, than which *nothing* could so *materially affect* both our *national honour* and *interest*.—These reasons influenced me both on the committee and in convention, most decidedly to oppose and vote against the clause, as it now makes a part of the system.

2.4.71 You will perceive, Sir, not only that the general government is prohibited from interfering in the slave trade *before* the year eighteen hundred and eight, but that there is no provision in the constitution that it shall *afterwards* be prohibited, nor any security that such prohibition will ever take place; and I think there is great reason to believe, that if the importation of slaves is permitted until the year eighteen hundred and eight, it will not be prohibited afterwards: At *this time* we do not generally hold this commerce in so *great* abhorrence as we have done—When our liberties were at stake, we *warmly* felt for the *common rights of men*—The danger being thought to be past, which threatened ourselves, we are daily growing *more insensible* to those rights—In those States who have restrained or prohibited the importation of slaves, it is only done by legislative acts which may be repealed—When those States find that they must in their *national character* and *connexion* suffer in the *disgrace*, and share in the *inconveniencies* attendant upon that detestable and iniquitous traffic, they may be desirous also to share in the *benefits* arising from it, and the odium attending it will be greatly effaced by the sanction which is given to it in the general government.

2.4.72 By the next paragraph, the general government is to have a *power* of *suspending* the *habeas corpus act*, in cases of *rebellion* or *invasion*.

As the State governments have a power of suspending the habeas corpus act in those cases, it was said, there could be no reason for giving such a power to the general government, since, whenever the *State* which is invaded, or in which an insurrection takes place, finds its safety requires it, *it* will make use of that power—*And* it was urged, that if we gave this power to the general government, it would be an engine of oppression in its hands, since whenever a State should oppose its views, however arbitrary and unconstitutional, and refuse submission to them, the general government may declare it to be *an act of rebellion,* and suspending the habeas corpus act, may *seize* upon the persons of those *advocates of freedom,* who have had *virtue* and *resolution* enough to excite the opposition, and may *imprison* them during its pleasure in the *remotest* part of the union, so that a citizen of Georgia might be *bastiled* in the furthest part of New-Hampshire; or a citizen of New-Hampshire in the furthest extreme to the south, cut off from their family, their friends, and their every connexion—These considerations induced me, Sir, to give my negative also to this clause.[25]

In this same section there is a provision that no preference shall be given 2.4.73
to the ports of one State over another, and that vessels bound to or from one State shall not be obliged to enter, clear, or pay duties in another. This provision, as well as that which relates to the uniformity of impost duties and excises, was introduced, Sir, by the delegation of this State.[26]—Without such a provision, it would have been in the power of the general government to have compelled all ships sailing into, or out of the Cheseapeak, to clear and enter at Norfolk, or some port in Virginia—a regulation which would be extremely injurious to our commerce, but which would if considered merely as to the interest of the union, perhaps not be thought unreasonable, since it would render the collection of the revenue arising from commerce more certain and less expensive.

But, Sir, as the system is now reported, the general government have a 2.4.74
power to *establish what ports they please in each State,* and to ascertain at what ports in every State ships shall clear and enter in such State, a power which *may* be so used as to *destroy* the *effect* of that provision, since by it may be established a port in such a place, as shall be so *inconvenient* to the State, as to render it *more eligible* for their shipping to clear and enter in *another* than in their *own State;* suppose, for instance, the general government should determine that all ships which cleared or entered in Maryland, should clear and enter at George-Town, on Potowmack, it would oblige all the ships which sailed from, or were bound to, any other port of Maryland, to clear or enter in some port in *Virginia.* To prevent such a use of the power which the general government now has of *limiting the number of ports* in a State, and *fixing the place or places where they shall be,* we endeavoured to obtain a provision, that the general government should only, in the first instance, have authority to ascertain the *number* of ports proper to be

established in each State, and transmit information thereof to the several States, the legislatures of which, respectively, should have the power to fix the *places* where those ports should be, according to their idea of what would be most advantageous to the *commerce* of their State, and most for the *ease* and *convenience* of their *citizens;* and that the general government should not interfere in the establishment of the *places,* unless the legislature of the State should neglect or refuse so to do; but we could not obtain this alteration.[27]

2.4.75 By the tenth section every State is *prohibited* from *emitting bills of credit*—As it was reported by the committee of detail, the States were *only* prohibited from emitting them *without the consent of Congress;* but the convention was so *smitten* with the *paper money dread,* that they insisted the prohibition should be *absolute.* It was my opinion, Sir, that the States ought not not to be *totally deprived of the right to emit bills of credit,* and that as we had *not given* an *authority* to the *general government* for that purpose, it was the *more necessary* to *retain* it in the *States*—I considered that *this State,* and *some others,* have *formerly received great benefit* from paper emissions, and that if public and private credit should once more be restored, such emissions may *hereafter be equally advantageous;* and further, that it is impossible to foresee that events may not take place which shall render paper money of *absolute necessity;* and it was my opinion, if this power was not to be exercised by a State without the permission of the general government, it ought to be satisfactory even to those who were the *most haunted* by the apprehensions of paper money; I therefore, thought it my duty to vote against this part of the system.[28]

2.4.76 The same section also, puts it out of the power of the States, to make any thing but gold and silver coin a tender in payment of debts, or to pass any law impairing the obligation of contracts.

2.4.77 I considered, Sir, that there might be times of such *great public calamities* and *distress,* and of such *extreme scarcity* of *specie* as should render it the *duty* of a government, for the *preservation* of even the *most valuable part* of its citizens in some measure to interfere in their favour, by passing laws *totally* or *partially stopping* the courts of justice, or authorising the debtor to pay by *instalments,* or by delivering up his property to his creditors at a *reasonable* and *honest* valuation. The times have been such as to render regulations of this kind necessary in most, or all of the States, to prevent the *wealthy creditor* and the *monied man* from *totally* destroying the *poor* though even *industrious* debtor—*Such times* may *again* arrive. I therefore, voted against depriving the States of this power, a power which I am decided they ought to possess, but which I admit ought only to be exercised on very important and urgent occasions.[29] I apprehend, Sir, the principal cause of complaint among the people at large is, the public and private debt with which they are oppressed, and which, in the present scarcity of cash,

threatens them with destruction, unless they can obtain so much indulgence in point of time that by industry and frugality they may extricate themselves.

This *government proposed*, I apprehend, so *far from removing* will greatly *encrease* those complaints, since grasping in its all powerful hand the citizens of the respective States, it will by the imposition of the variety of *taxes, imposts, stamps, excises,* and *other duties, squeeze* from them the little money they may acquire, the hard earnings of their industry, as you would squeeze the juice from an orange, till not a drop more can be extracted, and then let *loose* upon them their *private creditors,* to whose *mercy* it *consigns* them, by *whom* their property is to be *seized upon* and *sold* in this *scarcity* of *specie* at a *sheriff's sale,* where nothing but *ready cash* can be received, for a *tenth part* of its *value,* and *themselves* and their *families* to be consigned to *indigence* and *distress,* without *their governments* having a *power* to *give them a moment's indulgence,* however *necessary* it might be, and however *desirous* to grant them aid. 2.4.78

By this same section, every State is also prohibited from laying any imposts, or duties on imports or exports, without the permission of the general government. It was urged, that as almost all sources of taxation were given to Congress, it would be but reasonable to leave the States the power of bringing revenue into their treasuries, by laying a duty on exports, if they should think proper, which might be so *light* as not to injure or discourage industry, and yet might be productive of considerable revenue—Also, that there might be cases in which it would be proper, for the purpose of encouraging manufactures, to lay duties to prohibit the exportation of raw materials, and even in addition to the duties laid by Congress on *imports* for the sake of *revenue,* to lay a duty to discourage the importation of particular articles into a State, or to enable the *manufacturer here* to supply us on as *good terms* as they could be obtained from a *foreign market;* however, the most we could obtain was, that this power might be exercised by the States with, and *only* with the consent of Congress, and subject to its controul—And so anxious were they to seize on *every shilling* of our money for the general government, that they insisted *even* the *little revenue* that might thus arise, should not be appropriated to the use of the respective States where it was collected, but should be paid into the treasury of the United States; and accordingly it is so determined. 2.4.79

The *second article* relates to the executive—his mode of election—his powers—and the length of time he should continue in office. 2.4.80

On these subjects there was a great diversity of sentiment; many of the members were desirous that the President should be elected for seven years, and not to be eligible a second time; others proposed that he should not be absolutely ineligible, but that he should not be capable of being chosen a second time, until the expiration of a certain number of years—The sup- 2.4.81

porter of the above propositions, went upon the idea that the best security for liberty was a limited duration and a rotation of office in the chief executive department.

2.4.82 There was a party who attempted to have the President appointed during good behaviour, without any limitation as to time, and not being able to succeed in that attempt, they then endeavoured to have him re-eligible without any restraint. It was objected that the choice of a President to continue in office during good behaviour, would be at once rendering our system an elective monarchy; and, that if the President was to be re-eligible without any interval of disqualification, it would amount nearly to the same thing, since with the powers that the President is to enjoy, and the interest and influence with which they will be attended, he will be almost absolutely certain of being re-elected from time to time, as long as he lives: As the propositions were reported by the committee of the whole house, the President was to be chosen for seven years, and not to be eligible at any time after—In the same manner the proposition was agreed to in convention, and so was it reported by the committee of detail, although a variety of attempts were made to alter that part of the system by those who were of a contrary opinion, in which they repeatedly failed; but, Sir, by never losing sight of their object, and choosing a proper time for their purpose, they succeeded at length in obtaining the alteration, which was not made until within the last twelve days before the convention adjourned.[30]

2.4.83 As the propositions were agreed to by the committee of the whole house, the President was to be appointed by the national legislature, and as it was reported by the committee of detail, the choice was to be made by ballot, in such a manner, that the States should have an equal voice in the appointment of this officer, as they, of right, ought to have; but those who wished as far as possible to establish a *national* instead of a *federal* government, made repeated attempts to have the President chosen by the people at large; on this the sense of the convention was taken, I think not less than three times while I was there, and as often rejected; but within the last fortnight of their session, they obtained the alteration in the manner it now stands, by which the large States have a very undue influence in the appointment of the President. There is no case where the States will have an equal voice in the appointment of the President, except where two persons shall have an equal number of votes, and those a majority of the whole number of electors, a case very unlikely to happen, or where no person has a majority of the votes; in these instances the house of representatives are to choose by ballot, each State having an equal voice, but they are confined in the last instance to the five who have the greatest number of votes, which gives the largest States a very unequal chance of having the President chose under their nomination.

2.4.84 As to the Vice-President, that great officer of government, who is in case of death, resignation, removal, or inability of the President, to supply his

place, and be vested with his powers, and who is officially to be the President of the senate, there is no provision by which a majority of the voices of the electors are necessary for his appointment, but after it is decided who is chosen President, that person who has the next greatest number of votes of the electors, is declared to be legally elected to the vice-presidency, so that by this system it is very possible, and not improbable, that he may be appointed by the electors of a *single large State;* and a very undue influence in the senate is given to that State of which the Vice-President is a citizen, since in every question where the senate is divided that State will have two votes, the President having on those occasions a casting voice. Every part of the system which relates to the vice-president, as well as the present mode of electing the President, was introduced and agreed upon after I left Philadelphia.[31]

Objections were made to that part of this article, by which the President is appointed commander in chief of the army and navy of the United States, and of the militia of the several States, and it was wished to be so far restrained, that he should not command in person; but this could not be obtained.[32] The power given to the President of granting reprieves and pardons, was also thought extremely dangerous, and as such opposed—The President thereby has the power of pardoning those who are guilty of treason, as well as of other offences; it was said that no treason was so likely to take place as that in which the President himself might be engaged—The attempt to assume to himself powers not given by the constitution, and establish himself in regal authority; in which attempt a provision is made for him to secure from punishment the creatures of his ambition, the associates and abettors of his treasonable practices, by granting them pardons should they be defeated in their attempts to subvert the constitution. 2.4.85

To that part of this article also, which gives the President a right to *nominate*, and with the consent of the senate to appoint all the officers, civil and military, of the United States, there were considerable opposition—it was said that the person who *nominates*, will always in reality *appoint*, and that this was giving the President a power and influence, which together with the other powers, bestowed upon him, would place him above all restraint or controul. In fine, it was urged, that the President as here constituted, was a KING, in every thing but the name; that though he was to be chosen for a limited time, yet at the expiration of that time if he is not re-elected, it will depend entirely upon his own moderation whether he will resign that authority with which he has once been invested—that from his having the appointment of all the variety of officers in every part of the civil department for the union, who will be very numerous—in them and their connexions, relations, friends and dependants, he will have a formidable host devoted to his interest, and ready to support his ambitious views. That the army and navy, which may be encreased without restraint as to numbers, the officers of which, from the highest to the lowest, are all to be 2.4.86

appointed by him, and dependant on his will and pleasure, and commanded by him in person, will, of course, be subservient to his wishes, and ready to execute his commands; in addition to which, the militia also are entirely subjected to his orders—That these circumstances, combined together, will enable him, when he pleases, to become a *King* in *name*, as well as in *substance*, and establish himself in office not only for his own life, but even if he chooses, to have that authority perpetuated to his family.

2.4.87 It was further observed, that the only appearance of responsibility in the President, which the system holds up to our view, is the provision for impeachment; but that when we reflect that he cannot be impeached but by the house of delegates, and that the members of this house are rendered dependant upon, and unduly under the influence of the President, by being appointable to offices of which he has the sole nomination, so that without his favour and approbation, they cannot obtain them, there is little reason to believe, that a majority will ever concur in impeaching the President, let his conduct be ever so reprehensible, especially too, as the final event of that impeachment will depend upon a different body, and the members of the house of delegates will be certain, should the decision be ultimately in favour of the President, to become thereby the objects of his displeasure, and to bar to themselves every avenue to the emoluments of government.

2.4.88 Should he, contrary to probability, be impeached, he is afterwards to be tried and adjudged by the senate, and without the concurrence of two-thirds of the members who shall be present, he cannot be convicted—This senate being constituted a privy council to the President, it is probable many of its leading and influential members may have advised or concurred in the very measures for which he may be impeached; the members of the Senate also are by the system, placed as unduly under the influence of, and dependant upon the President, as the members of the other branch, since they also are appointable to offices, and cannot obtain them but through the favour of the President—There will be great, important and valuable offices under this government, should it take place, more than sufficient to enable him to hold out the expectation of one of them to *each* of the senators—Under these circumstances, will any person conceive it to be difficult for the President always to secure to himself more than one-third of that body? Or, can it reasonably be believed, that a criminal will be convicted, who is constitutionally empowered to bribe his judges, at the head of whom is to preside on those occasions the chief Justice. Which officer in his original appointment, must be *nominated* by the President, and will therefore, probably, be appointed so much for his eminence in legal knowledge and for his integrity, as from favouritism and influence, since the President knowing that in case of impeachment the chief Justice is to preside at his trial, will naturally wish to fill that office with a person of whose voice and influence he shall consider himself secure. These are reasons to induce a belief, that there will be but little probability of the President ever being either im-

peached or convicted; but it was also urged, that vested with the powers which the system gives him, and with the influence attendant upon those powers, to him it would be of little consequence whether he was impeached or convicted, since he will be able to set both at defiance. These considerations occasioned a part of the convention to give a negative to this part of the system establishing the executive as it is now offered for our acceptance.

2.4.89 By the *third article*, the judicial power of the United States is vested in *one supreme court*, and in such *inferior courts*, as the Congress may from time to time ordain and establish: These courts, and *these only*, will have a right to decide upon the laws of the United States, and all questions arising upon their construction, and in a judicial manner to carry those laws into execution; to which the courts both superior and inferior of the respective States and their judges and other magistrates are rendered incompetent.[33] To the courts of the general government are also *confined* all cases in law or equity, arising under the proposed constitution, and treaties made under the authority of the United States—all cases affecting ambassadors, other public ministers and consuls—all cases of admiralty and maritime jurisdiction—all controversies to which the United States are a party—all controversies between two or more States—between a State and citizens of another State—between citizens of the same State, claiming lands under grants of different States, and between a State or the citizens thereof, and foreign States, citizens, or subjects. Whether therefore, any *laws* or *regulations* of the *Congress*, or *any acts* of *its President* or *other officers* are *contrary to*, or not *warranted by* the constitution, rests *only* with the judges, who are *appointed* by Congress to *determine;* by whose determinations *every State* must be *bound*. Should any question arise between a foreign consul and any of the citizens of the United States, however remote from the seat of empire, it is to be heard before the judiciary of the general government, and in the *first* instance to be heard in the supreme court, however inconvenient to the parties, and however trifling the subject of dispute.

2.4.90 Should the mariners of an American or foreign vessel, while in any American port, have occasion to sue for their wages, or in any other instance a controversy belonging to the admiralty jurisdiction should take place between them and their masters or owners, it is in the courts of the general government the suit must be instituted; and either party may carry it by appeal to its supreme court; the injury to commerce and the oppression to individuals which may thence arise need not be enlarged upon. Should a citizen of Virginia, Pennsylvania, or any other of the United States be indebted to, or have debts due from, a citizen of this State, or any other claim be subsisting on one side or the other, in consequence of commercial or other transactions, it is only in the courts of Congress that either can apply for redress. The case is the same should any claim subsist between

citizens of this State and foreigners, merchants, mariners, and others, whether of a commercial or of any other nature, they must be prosecuted in the same courts; and though in the first instance they may be brought in the inferior, yet an appeal may be made to the supreme judiciary, even from the remotest State in the union.

2.4.91 The inquiry concerning, and trial of every offence against, and breach of the laws of Congress, are also *confined* to its courts; the same courts also have the *sole* right to inquire concerning and try every offence, from the lowest to the highest, committed by the citizens of any other State, or of a foreign nation, against the laws of this State within its territory—and in *all these cases* the decision may be ultimately brought before the supreme tribunal, since the *appellate jurisdiction* extends to *criminal* as well as to civil cases.

2.4.92 And in all those cases where the general government has jurisdiction in civil questions, the proposed constitution *not only* makes *no provision for the trial by jury* in the *first* instance, but by its appellate jurisdiction *absolutely takes away that inestimable privilege,* since it expressly declares the supreme court shall have appellate jurisdiction both as to law and *fact.*—Should therefore, a jury be adopted in the *inferior* court, it would only be a *needless expence,* since on an appeal the *determination* of that *jury, even on questions of fact,* however honest and upright, is to be of *no possible effect*—the supreme court is to take up *all questions of fact*—to *examine the evidence relative* thereto—to *decide upon* them in the *same manner* as if they had *never been tried by a jury*—nor is *trial by jury secured in criminal cases;* it is true, that in the first instance, in the inferior court the trial is to be by jury, in this and in this only, is the difference between criminal and civil cases; but, Sir, the *appellate jurisdiction extends,* as I have observed, to cases *criminal* as well as to civil, and on the *appeal* the *court* is to *decide not only* on the law but on the *fact,* if, therefore, *even* in *criminal* cases the general government is not satisfied with the verdict of the jury, its officer may remove the prosecution to the supreme court, and *there* the *verdict of the jury is to be of no effect,* but the *judges of this court* are to *decide upon the fact* as well as the law, the *same as in civil cases.*[34]

2.4.93 Thus, Sir, *jury trials,* which have ever been the *boast* of the English constitution, which have been by our several *State constitutions* so *cautiously secured* to us—*jury trials* which have so long been considered the *surest barrier* against *arbitrary power,* and the *palladium* of *liberty,*—with the *loss* of *which* the *loss* of our *freedom* may be dated, are *taken away* by the proposed form of government, not *only* in a *great variety* of questions between *individual* and *individual,* but in *every case* whether *civil* or *criminal* arising *under the laws* of the United States, or the *execution* of those laws.—It is *taken away* in *those very cases* where of *all others* it is *most essential for our liberty,* to have it *sacredly guarded* and *preserved,* in *every case,* whether *civil* or *criminal,* between *government* and *its officers* on the

one part, and the *subject* or *citizen* on the other.—Nor was this the effect of inattention, nor did it arise from any real difficulty in establishing and securing jury trials by the proposed constitution, if the convention had wished so to do: but the *same reason* influenced *here* as in the case of the establishment of inferior courts; as they could not trust *State Judges*, so would they not confide in *State juries*.—They alledged that the general government and the State governments would always be at variance; that the citizens of the different States would enter into the views and interests of their respective States, and therefore ought not to be trusted in determining causes in which the general government was any way interested, without giving the general government an opportunity, if it disapproved the verdict of the jury, to appeal, and to have the *facts examined into again* and *decided upon* by *its own judges*, on whom it was thought a reliance might be had by the general government, they being appointed under its authority.

Thus, Sir, in consequence of this *appellate jurisdiction* and its *extension* 2.4.94
to facts as well as to law, every *arbitrary act* of the general government, and every *oppression* of all those *variety of officers* appointed under its authority for the *collection* of *taxes*, *duties*, *impost*, *excise*, and other *purposes*, must be *submitted* to by the *individual*, or must be *opposed* with *little prospect* of *success*, and almost *a certain prospect of ruin*, at least in those cases where the *middle* and *common class* of citizens are interested: Since to *avoid* that *oppression*, or to *obtain redress*, the application must be made to one of the courts of the United States—by good fortune should this application be in the *first* instance attended with success, and should damages be recovered equivalent to the injury sustained, an *appeal* lies to the *supreme court*, in which case the citizen must at once give up his cause, or he must attend to it at the distance of perhaps more than a thousand miles from the place of his residence, and must take measures to procure before that court on the appeal all the evidence necessary to support his action, which even if ultimately prosperous must be attended with a *loss of time*, a *neglect of business*, and an *expence* which will be *greater* than the *original grievance*, and *to which* men in *moderate* circumstances would be *utterly unequal*.

By the *third* section of this article, it is declared, that treason against the 2.4.95
United States, shall consist in levying war against them, or in adhering to their enemies, giving them aid or comfort.

By the *principles* of the American revolution, *arbitrary power may* and 2.4.96
ought to be resisted even by *arms* if necessary—The time may come when it shall be the *duty* of a *State*, in order to preserve itself from the oppression of the general government, to have recourse to the sword—In which case the proposed form of government declares, that the *State* and every of *its citizens* who *act under its authority* are guilty of a direct act of treason; reducing by this provision the different States to this alternative, that they must *tamely* and *passively yield to despotism*, or *their citizens* must *oppose it* at the *hazard* of the *halter* if unsuccessful—and reducing the citizens of the

State which shall take arms, to a situation in which they must be *exposed to punishment*, let them *act as they will*, since if they *obey* the authority of their *State government*, they will be *guilty of treason against the United States*—if they *join* the *general government* they will be *guilty of treason* against *their own State*.

2.4.97 To save the citizens of the respective States from this disagreeable dilemma, and to secure them from being punishable as *traitors* to the *United States*, when *acting* expressly in *obedience* to the authority of *their own State*, I wished to have obtained as an amendment to the third section of this article the following clause: "Provided that no act or acts done by *one* or *more* of the States against the United States, or by *any citizen* of any *one* of the United States *under the authority* of *one* or *more* of the *said States*, shall be deemed *treason*, or *punished as such;* but in case of war being levied by one or more of the States against the United States, the conduct of each party towards the other, and their adherents respectively, shall be regulated by the *laws of war* and of *nations*."[35]

2.4.98 But this provision was not adopted, being too much opposed to the great object of many of the leading members of the convention, which was by all means to *leave the States* at the *mercy* of the *general government*, since they could not succeed in their *immediate* and *entire* abolition.

2.4.99 By the third section of the fourth article, no new State shall be formed or erected within the jurisdiction or any other State, without the consent of the legislature of such State.[36]

2.4.100 There are a number of States which are so circumstanced, with respect to themselves and to the other States, that every principle of justice and sound policy require their dismemberment or division into smaller States.—Massachusetts is divided into two districts, totally separated from each other by the State of New-Hampshire, on the north-east side of which lies the provinces of Main and Sagadohock, more extensive in point of territory, but less populous than old Massachusetts, which lies on the other side of New-Hampshire.: No person can cast their eye on the map of that State but they must in a moment admit, that every argument drawn from convenience, interest, and justice require that the provinces of Main and Sagadohock should be erected into a new State, and that they should not be compelled to remain connected with old Massachusetts under all the inconveniences of their situation.

2.4.101 The State of Georgia is larger in extent than the whole island of Great-Britain, extending from its sea coast to the Missisippi, a distance of eight hundred miles or more; its breadth for the most part, about three hundred miles. The States of North-Carolina and Virginia in the same manner reach from the sea coast unto the Missisippi.

2.4.102 The hardship, the inconvenience, and the injustice of compelling the inhabitants of those States who may dwell on the western side of the mountains and along the Ohio and Missisippi rivers to remain connected with the

inhabitants of those States respectively, on the atlantic side of the mountains, and subject to the same State governments, would be such, as would in my opinion, justify even recourse to arms, to free themselves from, and to shake off, so ignominous a yoke.

This representation was made in convention, and it was further urged, 2.4.103
that the territory of these States were too large, and that the inhabitants thereof would be too much disconnected for a *republican government* to extend to them its benefits, *which* is only suited to a small and compact territory: That a regard also for the peace and safety of the union, ought to excite a desire that those States should become in time divided into separate States, since when their population should become proportioned in any degree to their territory, they would from their strength and power become *dangerous members* of a *federal* government. It was further said, that if the general government was not by its constitution to interfere, the inconvenience would soon remedy itself, for that as the population increased in those States, their legislatures would be obliged to consent to the erection of new States to avoid the evils of a civil war; but as by the proposed constitution the general government is obliged to protect each State against domestic violence, and consequently will be obliged to assist in suppressing such commotions and insurrections as may take place from the struggle to have new States erected, the general government ought to have a power to decide upon the propriety and necessity of establishing or erecting a new State, even without the approbation of the legislature of such States, within whose jurisdiction the new State should be erected, and for this purpose I submitted to the convention the following proposition;—"That on the application of the inhabitants of any district of territory within the limits of any of the States, it shall be lawful for the legislature of the United States, if they shall under all circumstances think it reasonable, to erect the same into a new State, and admit it into the union *without the consent* of the State of which the said district may be a part."[37] And it was said, that we surely might trust the general government with *this power* with *more propriety* than with *many others* with which they were proposed to be entrusted—and that as the general government was bound to suppress all insurrections and commotions which might arise on this subject, it ought to be in the power of the general government to decide upon it, and not in the power of the legislature of a single State, by obstinately and unreasonably opposing the erection of a new State to prevent its taking effect, and thereby extremely to *oppress* that part of its citizens which live remote from, and inconvenient to, the seat of its government, and even to involve the union in war to support its injustice and oppression.—But, upon the vote being taken, Georgia, South-Carolina, North-Carolina, Virginia, Pennsylvania and Massachusetts, were in the *negative*. New-Hampshire, Connecticut, Jersey, Delaware and Maryland, were in the *affirmative*. New-York was absent.[38]

That it was inconsistent with the rights of free and independent States, to 2.4.104

have their territory dismembered without their consent, was the principle argument used by the opponents of this proposition. The truth of the objection we readily admitted, but at the same time, insisted that it was not *more inconsistent* with the rights of free and independent States than *that inequality* of *suffrage* and *power* which the *large States* had *extorted* from the *others;* and that if *the smaller States* yielded up *their rights* in *that instance,* they were *entitled* to demand from the States of extensive territory a *surrender* of their rights in *this instance;* and in a particular manner, as it was *equally necessary* for the true interest and happiness of the *citizens* of *their own States,* as of *the Union.* But, Sir, although when the large States demanded *undue* and *improper* sacrifices to be made to their *pride* and *ambition,* they treated the rights of free States with more contempt than ever a British Parliament treated the rights of her colonial establishments, yet when a *reasonable* and *necessary sacrifice* was asked *from them* they spurned the idea with ineffable disdain. They *then perfectly understood* the *full value* and the *sacred obligation* of *State rights,* and at the least attempt to infringe them *where they were concerned,* they were tremblingly alive and agonized at every pore.

2.4.105 When we reflect how *obstinately* those States contended for that *unjust superiority* of power in the government, which they have *in part* obtained, and for the establishment of this superiority by the constitution. When we reflect that they appeared willing to hazard the existence of the union rather than not to succeed in their unjust attempt—That should their legislatures consent to the erection of new States within their jurisdiction, it would be an immediate sacrifice of that power, to obtain which they appeared disposed to sacrifice every other consideration.

2.4.106 When we further reflect that they *now* have a *motive* for desiring to preserve their territory entire and unbroken, which *they never had before—the gratification of their ambition in possessing and exercising superior power over their sister States*—and that this constitution is to give them the *means* to *effect* this desire *of which* they were *formerly destitute—the whole force of the United States pledged to them for restraining intestine commotions,* and *preserving to them the obedience and subjection of their citizens,* even in the *extremest part of their territory:*—I say, Sir, when we consider these things, it would be too absurd and improbable to deserve a serious answer, should any person suggest that *these States* mean ever *to give their consent* to the *erection of new States within their territory:* Some of them it is true, have been for some time past *amusing* their inhabitants in those districts that wished to be erected into new States, but should this constitution be adopted, *armed with a sword and halter* to compel their obedience and subjection, they will no longer act with indecision; and the State of Maryland may, and probably will be called upon to assist with her wealth and her blood in subduing the inhabitants of Franklin, Kentucky, Vermont, and the provinces of Main and Sagadohock,

and in compelling them to continue in subjection to the States which respectively claim jurisdiction over them.

2.4.107 Let it not be forgotten at the same time, that a great part of the territory of these large and extensive States, which they now hold in possession, and over which they now claim and exercise jurisdiction, were crown lands, unlocated and unsettled when the American revolution took place—Lands which were *acquired* by the *common blood and treasure*, and which *ought* to have been the *common stock*, and for the *common benefit* of the Union. Let it be remembered that the State of Maryland was so deeply sensible of the injustice that these lands should be held by particular States for their own emolument, even at a time when *no superiority* of *authority* or *power* was *annexed to extensive territory*, that in the *midst of the late war* and all the *dangers* which *threatened us, it* withheld for a long time its assent to the articles of confederation for that reason, and when it ratified those articles it entered a *solemn protest* against what it considered so *flagrant injustice:*— But, Sir, the question is not *now* whether those States shall hold that territory unjustly to themselves, but whether by *that act of injustice* they shall *have superiority of power and influence over the other States*, and *have a constitutional right* to *domineer* and *lord it* over them—Nay, more, whether we will *agree* to a *form of government* by which we *pledge* to *those States* the *whole force* of the *union* to *preserve* to them that *extensive territory entire* and *unbroken*, and with *our blood and wealth to assist them*, whenever they please to demand it, to *preserve the inhabitants thereof under their subjection*, for the *purpose* of *encreasing their superiority over us*—of *gratifying their unjust ambition*—in a word, for the *purpose of giving ourselves masters*, and of *rivetting our chains!*

2.4.108 The part of the system, which provides that *no religious test* shall ever be required as a qualification to any office or public trust under the United States, was adopted by a great majority of the convention, and without much debate,—however, there were some members *so unfashionable* as to think that a *belief of the existence of a Deity*, and of a *state of future rewards and punishments* would be some security for the good conduct of our rulers, and that in a Christian country it would be at *least decent* to hold out some distinction between the professors of Christianity and downright infidelity or paganism.

2.4.109 The seventh article declares, that the ratification of *nine States* shall be sufficient for the establishment of this constitution between the States ratifying the same.

2.4.110 It was attempted to obtain a resolve that if seven States, whose votes in the first branch should amount to a majority of the representation in that branch, concurred in the adoption of the system, it should be sufficient, and this attempt was supported on the principle, that a majority ought to govern the minority;[39]—but to this it was objected, that although it was true, after a constitution and form of government is agreed on, in every act done under

and consistent with that constitution and form of government, the act of the majority, unless otherwise agreed in the constitution, should bind the minority, yet it was directly the *reverse* in *originally forming* a constitution, or *dissolving it*—That in originally forming a constitution, it was necessary that *every individual* should agree to it to become bound thereby—and that when *once adopted* it could not be *dissolved* by consent, unless with the consent of *every individual* who was party to the original agreement—That in forming our original federal government *every member* of that government, that is each State, expressly consented to it; that it is a *part* of the *compact* made and entered into in the *most solemn manner*, that there should be no *dissolution* or *alteration* of that federal government without the consent of *every State*, the members of, and parties to the original compact; that therefore *no alteration* could be made by a consent of a *part* of these States, or by the consent of the *inhabitants* of a *part of the States*, which could either *release* the States so consenting, from the obligation they are under to the other States, or which could in any manner become *obligatory* upon those States that should not ratify such alterations. Satisfied of the *truth* of these positions, and not holding ourselves at liberty to *violate* the *compact*, which this state had *solemnly entered into* with the others, by *altering* it in a *different* manner from that which by the same compact is provided and stipulated, a number of the members and among those the *delegation* of *this State* opposed the ratification of this system in *any other manner* than by the *unanimous consent* and agreement of all the States.

2.4.111 By our original articles of confederation any alterations proposed, are in the first place to be *approved* by Congress.—Accordingly as the resolutions were originally adopted by the convention, and as they were reported by the committee of detail, it was proposed that this system should be laid before Congress *for their approbation;* but, Sir, the warm advocates of this system fearing it would not meet with the approbation of Congress, and determined, even though Congress and the respective State legislatures should disapprove the same, to force it upon them, if possible, through the intervention of the people at large, moved to strike out the words "for their approbation" and succeeded in their motion; to which, it being directly in violation of the mode prescribed by the articles of confederation for the alteration of our federal government, a part of the convention, and myself in the number, thought it a duty to give a decided negative.[40]

2.4.112 Agreeable to the articles of confederation entered into in the most *solemn manner*, and for the *observance* of which the States *pledged* themselves to each other, and called upon the *Supreme Being* as a *witness* and *avenger* between them, *no alterations* are to be made in those articles unless after they are approved by Congress, they are agreed to and ratified by the *legislature* of *every* State; but by the resolve of the convention this constitution is not to be ratified by the legislatures of the respective States, but is to

be submitted to conventions chosen by the people, and if ratified by them is to be binding.

This resolve was opposed among others by the delegation of 2.4.113
Maryland;—your delegates were of opinion, that as the form of government proposed was, if adopted, most essentially to *alter* the *constitution* of *this State*, and as our constitution had pointed out a mode by which, and by which *only*, alterations were to be made therein, a convention of the people could not be called to agree to and ratify the said form of government without a *direct violation* of our constitution, which it is the duty of every individual in this State to protect and support;—In this opinion all your delegates who were attending were unanimous; I, Sir, opposed it also upon a more extensive ground, as being directly *contrary* to the mode of altering our federal government *established* in our original compact, and as such being a *direct violation* of the mutual faith plighted by the States to each other, I gave it my negative.[41]

I also was of opinion, that the States considered as States, in their politi- 2.4.114
cal capacity, are the members of a federal government; that the States in their political capacity, or as Sovereignties, are entitled, and *only entitled* originally to agree upon the form of, and submit themselves to, a federal government, and afterwards by mutual consent to dissolve or alter it—That every thing which relates to the formation, the dissolution or the alteration of a *federal government* over States equally free, sovereign and independent is the *peculiar* province of the *States* in their *sovereign* or *political* capacity, in the same manner as what relates to forming alliance or treaties of peace, amity or commerce, and that the people at large in their individual capacity, have no more right to interfere in the one case than in the other:[42] That according to these principles we originally acted in forming our confederation; it was the States as States, by their representatives in Congress, that formed the articles of confederation; it was the States as States, by their legislatures, ratified those articles, and it was there established and provided that the States as States, that is by their legislatures, should agree to any alterations that should hereafter be proposed in the federal government, before they should be binding—and any alterations agreed to in any other manner cannot release the States from the obligation they are under to each other by virtue of the original articles of confederation. The people of the different States never made any objection to the manner the articles of confederation were formed or ratified, or to the mode by which alterations were to be made in that government—with the rights of their respective States they wished not to interfere—Nor do I believe the people in their individual capacity, would ever have expected or desired to have been appealed to on the present occasion, in violation of the rights of their respective States, if the favourers of the proposed constitution, imagining they had a better chance of forcing it to be adopted by a *hasty* appeal to the

people at large, who could not be so good judges of the dangerous consequence, had not insisted upon this mode—nor do these positions in the least interfere with the principle, that all power originates from the people, because when once the people have *exercised their power* in *establishing* and *forming* themselves into a *State government*, it never devolves *back* to them, nor have they a *right* to *resume* or *again to exercise that power* until such events takes place as will amount to a *dissolution* of their *State government:*—And it is an established principle that a dissolution or alteration of a *federal* government doth not dissolve the *State* governments which compose it. It was also my opinion, that upon *principles of sound policy*, the agreement or disagreement to the proposed system ought to have been by the State legislatures, in which case, let the event have been what it would, there would have been but little prospects of the *public peace* being *disturbed* thereby—Whereas the attempt to force down this system, although Congress and the respective State legislatures should disapprove, by appealing to the people, and to procure its establishment in a manner totally unconstitutional, has a tendency to set the *State governments* and their *subjects* at *variance* with each other—to *lessen* the *obligations* of *government*—to *weaken* the *bands* of *society*—to introduce *anarchy* and *confusion*—And to *light* the *torch* of *discord* and *civil war* throughout this continent. All these considerations weighed with me most forcibly against giving my assent to the mode by which it is resolved this system is to be ratified, and were urged by me in opposition to the measure.[43]

2.4.115 I have now, Sir, in discharge of the duty I owe to this house, given such information as hath occured to me, which I consider most material for them to know; and you will easily perceive from this detail that a great portion of that time, which ought to have been devoted calmly and impartially to consider what alterations in our federal government would be most likely to procure and preserve the happiness of the union, was employed in a *violent struggle* on the one side to obtain *all power* and *dominion* in their own hands, and on the other to prevent it; and that the *aggrandizement* of particular States and particular individuals appears to have been much more the object sought after, than the welfare of our country.

2.4.116 The interest of this State, not confined merely to itself, abstracted from all others, but considered relatively; as far as was consistent with the common interest of the other States, I thought it my duty to pursue according to the best opinion I could form of it.

2.4.117 When I took my seat in the convention, I found them attempting to bring forward a system, which I was sure never had entered into the contemplation of those I had the honor to represent, and which upon the fullest consideration, I considered not only injurious to the interest and the rights of this State, but also incompatible with the political happiness and freedom of the States in general; from that time until my business compelled me to leave the convention, I gave it every possible opposition in every stage of its

progression. I opposed the system there with the same explicit frankness with which I have here given you a history of our proceedings, and an account of my own conduct, which in a particular manner I consider you as having a right to know—While there, I endeavoured to act as became a free man, and the delegate of a free State. Should my conduct obtain the approbation of those who appointed me, I will not deny it would afford me satisfaction; but to me that approbation was at most no more than a *secondary* consideration—my *first* was to *deserve* it;—left to myself to act according to the best of my discretion, my conduct should have been the same, had I been even sure your censure would have been my only reward, since I hold it sacredly my duty to dash the cup of poison, if possible, from the hand of a State, or an individual, however anxious the one or the other might be to swallow it.

Indulge me, Sir, in a single observation further:—There are persons who 2.4.118
endeavour to hold up the idea that this system is only opposed by the officers of government;[44] I, Sir, am in that predicament, I have the honor to hold an appointment in this State. Had it been considered any objection, I presume I should not have been appointed to the convention; if it could have any effect on my mind, it would only be that of warming my heart with gratitude, and rendering me more anxious to promote the true interest of that State, which has conferred on me the obligation, and to heighten my guilt had I joined in sacrificing its essential rights: But, Sir, it would be well to remember, that this system is not calculated to *diminish* the *number* or the *value* of *offices;* on the contrary, if adopted, it will be productive of an enormous encrease in their number; many of them will be also of great honor and emoluments. Whether, Sir, in this variety of appointments, and in the scramble for them, I might not have as good a prospect to advantage myself as many others, is not for me to say; but this, Sir, I can say with truth, that so far was I from being influenced in my conduct by interest, or the consideration of office, that I would cheerfully resign the appointment I now hold, I would bind myself never to accept another, either under the general government or that of my own State: I would do more, Sir, so destructive do I consider the present system to the happiness of my country, I would cheerfully sacrifice that share of property with which Heaven has blessed a life of industry,—I would reduce myself to indigence and poverty, and those who are dearer to me than my own existence I would entrust to the care and protection of that Providence who hath so kindly protected myself, if on *those terms only* I could procure my country to reject those chains which are forged for it.[45]

1. See A Landholder, Ford, *Essays* 185–86, and generally Martin's defense of his conduct in letters to the *Maryland Journal* in March and April 1788, Ford, *Essays* 339–83.

2. Farrand I, 20–22 (29 May). Martin took his seat in the Convention on 9 June,

was absent between 7 and 12 August, and left the Convention on 4 September. Farrand III, 589.

3. See Farrand I, 235–37 (13 June).

4. The Jersey proposals were rejected on 19 June. The debate on the seventh resolution, of which Martin gives an account here, occurred on 27–29 June. Farrand I, 436–79. The "warm and decided opposition" to the Virginia proposals was provided preeminently by Martin's own speech extending over two days. On Martin's part in these proceedings, see his and Gerry's exchange with Oliver Ellsworth, Ford, *Essays* 130, 183, 356–57.

5. Cf. James Wilson's important speech of 8 June where he says, inter alia, "Federal liberty is to states, what civil liberty, is to private individuals." Farrand I, 166. For similar Federalist views see McMaster and Stone 189 (Plain Truth); Ford, *Pamphlets* 38, 55 (A Citizen of America), 176–79 (Fabius), 251–52 (Aristides), 373 (Ramsay); *Carlisle Gazette* 24 October 1787 (A Citizen). The concession is as problematic for the Federalists as it is widespread. See Herbert J. Storing, "The 'Other' Federalist Papers," *Political Science Reviewer* Fall 1976.

6. Farrand I, 468 (29 June).

7. The delegate referred to is Abraham Baldwin. This vote was taken on 2 July. Farrand I, 510.

8. Farrand II, 115 (25 July).

9. John Adams, *Defence of the Constitutions of Government of the United States of America* (1786–87) I, letter 53 (John Adams, *Works* IV, 579–80). In his compilation of his grandfather's works, Charles Francis Adams corrected numerous errors in the *Defence* and changed what he regarded as "the original, unmeaning, and arbitrary division of the subject into letters addressed to a friend" to "a more natural one of chapters, embracing the whole or a certain portion of some one topic." Ibid., p. 275. The mode of citation adopted here preserves reference to the "letters" of the early editions, while providing a specific citation to the *Defence* as printed in the *Works*.

10. Martin's meaning here is obscure. Elliot makes it read, "Seventy years are esteemed for the life of a man . . ." (Elliot I, 361), but this makes little sense.

11. Farrand I, 33–35 (30 May); 335–36 (20 June). Regarding the first of these, Martin probably refers to the proposal by Read for a general statement of intention more in line with the principles of the Articles of Confederation, although Martin's language is taken from the nationalists' proposal rather than from Read's.

12. In a reply to A Landholder, Martin says that he has been unable to discover anywhere anything "to warrant or countenance the motley mixture of the system proposed: a system which is an innovation in government of the most extraordinary kind; a system neither wholly federal, nor wholly national—but a strange hotch-potch of both—just so much federal in appearance as to give its advocates in some measure, an opportunity of passing it as such upon the unsuspecting multitude, before they had time and opportunity to examine it, and yet so predominantly national as to put it in the power of its movers, whenever the machine shall be set agoing, to strike out every part that has the appearance of being federal, and to render it wholly and entirely a national government. . . ." Luther Martin letter, *Maryland Journal* 21 March 1788; Ford, *Essays* 367–68. On the confusion of names see Federal Farmer VI, 2.8.72; I, 2.8.10 and n. 9; None of the Well Born Conspirators 3.15.1–2; Columbian Patriot 4.28.4; [Maryland] Farmer 5.1.50; Impartial Examiner 5.14.25–26; Countryman 6.7.4; Smith 6.12.5.

13. See Montesquieu, *The Spirit of Laws* IX, ch. 1; Richard Price, *Observations on the Nature of Civil Liberty* . . . (London and Philadelphia, 1776) sec. 2. For other Anti-Federalist arguments in defense of the small republic, see references in Cato II, 2.6.10–21 and n. 8.

14. See Farrand I, 561 (9 July), 580–88 (11 July); Farrand II, 219–22 (8 August).

15. Elbridge Gerry. Cf. Farrand II, 205–6, 208 (11 June).

16. Such a disproportion was noted, though the other reports of the deliberations do not contain the suggestion that the representation of the larger states was artfully lessened for this reason. See Farrand I, 559–61 (9 July), 566–68 (10 July), 601 (13 July).

17. Farrand II, 217 (12 June), 375–77 (22 June), 386–90 (23 June); Farrand II, 283–90 (14 August), 484 (1 September), 489–92 (3 September).

18. Martin raised a question about this matter on 16 August, but there is no record of any such proposal or reply to it. See Farrand II, 305.

19. Farrand II, 359 (21 August).

20. Farrand II, 308–10 (16 August).

21. This is not a new paragraph in the original.

22. Farrand II, 330 (18 August).

23. Farrand II, 384–88 (23 August); see 330–33 (18 August).

24. See Farrand II, 364–65 (21 August), 369–74 (22 August), 400 (24 August), 414–17 (25 August). The strong antislavery discussion that follows may be compared with other Anti-Federal criticisms of the "slave trade" clause: Centinel III, 2.7.76; Brutus III, 2.9.39; Deliberator 3.13.5; Gentleman in a Neighboring State 4.2.9; Friend to the Rights of the People 4.23.3(5); Consider Arms et al. 4.26.8–15; Phileleutheros 4.27.3–5; Republicus 5.13.14; Countryman from Dutchess County 6.6.2–4, 9–14; Countryman 6.7.6; Adelos, Northampton, Mass., *Hampshire Gazette* 6 February 1788. Some Anti-Federalists conceded the main Federalist defense of the provision, that it was a step towards freedom; cf. the argument of The Federal Farmer XVIII, 2.8.229, and Tench Coxe, Ford, *Pamphlets* 146, and James Wilson, McMaster and Stone 347. But see A Federal Republican (3.6.22) who denied that abolishing the slave trade implied the abolition of slavery. While there was little or no attempt on either side to justify the slave trade (but see Lowndes 5.12.1), the terms of discussion in the South were of course rather different. See Elliot IV, 285 (C. C. Pinckney), 296 (Barnwell); Ford, *Pamphlets* 378 (Ramsay). On the slave trade and the commerce power see Cincinnatus II, 6.1.12 n. 10.

25. See Farrand II, 438 (28 August).

26. Farrand II, 417–18 (25 August).

27. Farrand II, 418 (25 August).

28. Farrand II, 439 (28 August).

29. Ibid.

30. Farrand I, 236 (13 June); Farrand II, 51–121 passim (19 July–26 July), 185–86 (6 August), 496–529 passim (4 September–6 September).

31. Martin left the Convention on 4 September. See above, n. 2.

32. The Paterson plan contained such a prohibition. Farrand I, 244 (15 June).

33. On the question of exclusive versus concurrent jurisdiction, see *The Federalist* no. 82; *Martin* v. *Hunter's Lessee*, 1 Wheat. 333–42, 372–82 (1816); Joseph Story, *Commentaries on the Constitution of the United States*, 2d ed. (Boston 1851) sec. 1754ff.

34. See Democratic Federalist 3.5.6 n. 6.

35. There is no record in Farrand of Martin's having put such a proposal before the Convention. See Farrand II, 345–50 (20 August).

36. Martin's opposition to this provision is, at first sight, inconsistent with his strict federalism (see above, 2.4.29–34). His discussion here (to 2.4.107) deserves particular attention because of the light it throws on the *basis* of Martin's (and the Anti-Federalists') federalism and the *application* of the principles of that federalism under the circumstances that would be created by the Constitution's rejection of these principles.

37. According to both the Journal and Madison's notes, the language (if not the intention) of Martin's proposal was quite different from that given here, namely: "The Legislature of the United States shall have power to erect new States within as well as without the territory claimed by the several States or either of them and admit the same into the Union: Provided that nothing in this Constitution shall be construed to affect the claim of the United States to vacant lands ceded to them by the late treaty of Peace." Farrand II, 457–58, 464 (30 August); see also 454–55, 461–64.

38. According to the Journal, New Hampshire and Connecticut voted against the motion. Farrand II, 458 n. 3, 460, 464 n. 15 (30 August).

39. Farrand II, 475 (31 August). The proposal was Madison's, and he defended it

on the ground that it "would require the concurrence of a majority of both the States and people."

40. Farrand II, 478 (31 August).

41. Farrand I, 341 (20 June); Farrand II, 211–12 (7 August), 475–79 (31 August).

42. Farrand I, 340–41 (20 June), 437 (27 June); Farrand II, 476 (31 August).

43. Farrand II, 475–77 (31 August).

44. The charge that the heart of the opposition to the Constitution was to be found among petty state politicians and "placemen" was very widespread. See McMaster and Stone 88 (An Independent Citizen), 114 (One of the Four Thousand), 149 (Wilson), 449 (A True Whig), 451 (E.G.O.): Ford, *Essays* 144–45 (A Landholder), 216 (A Countryman); Ford, *Pamphlets* 250–51 (Aristides); *The Federalist* no. 1. Anti-Federalist replies to this charge include Centinel II, 2.7.57–58; Yeomanry of Massachusetts 4.19.1–2; Brutus, Jr., 6.3.12; and John Tyler, Elliot III, 640.

45. The pamphlet as originally published concluded with some brief "Remarks on a Standing Army," taken from A [Maryland] Farmer, *Maryland Gazette* 29 February 1788 (5.1 below) and some anonymous "Remarks Relative to a Bill of Rights," which do not add materially to the discussion of this subject in other Anti-Federal writings printed here.

Letter from Edmund Randolph Giving His Reasons for Refusing His Signature To the Proposed Federal Constitution

10 October 1787

Edmund Randolph's political career was marked by early and continued success, though he never entirely escaped something of a reputation for insubstantiality. He was the youngest member of the convention that adopted the Virginia constitution of 1777; he was elected governor of Virginia at the age of 33; he took an active part in the deliberations of the Philadelphia Convention; and he was later chosen by Washington, who knew him well, as the first Attorney General of the United States.

Almost literally, Randolph opened and closed the debates of both the Constitutional Convention and the Virginia ratifying convention. He opened the main business at Philadelphia, presenting the Virginia Plan which served as the basis of its deliberations, and he gave major speeches during the final two days of the convention, explaining his reasons for not signing.[1] In Richmond, Randolph seconded Wilson Nicholas in opening the debate for the proponents of the Constitution and closed the debate with "one parting word" in explanation of his apparently vacillating behavior.[2] Without here trying to resolve the question whether there was an underlying consistency in his behavior—except to say that his own explanation has never been taken seriously enough by historians[3]—Randolph certainly gave the appearance of weakness and inconsistency. While the letter printed here was written to the Virginia House of Delegates on 10 October, it was not sent. Later in 1787, it was printed in Richmond as a pamphlet, with Randolph's permission, by a group of Anti-Federalists;[4] and in the early months of 1788 it was reprinted in newspapers in Virginia and around the country.[5] The pamphlet version is printed here. The letter was criticized by A Plain Dealer, who was mainly concerned to show Randolph's inconsistency and who was supposed by Randolph to have been Spencer Roane.[6]

But is this letter really part of the Anti-Federal corpus? In many respects, surely, the principles expressed in it are more Federal than Anti-Federal. One Federalist writer remarked that Randolph "appears to surmount all the

leading objections which have been so profusely raised against the Constitution—he advocates with great ingenuity and precision all its essential principles, and then (to the astonishment of his friends, and as a strong instance of the weakness of human reason) he appears to refuse his assent on some of the lesser and very immaterial parts of its structure."[7] Nevertheless, Randolph did refuse to sign the Constitution; he expressed objections to it which were relied on by the opponents and which had to be answered by the proponents. He was unusual among Anti-Federalists in the strength of his (as it were) Federal principles, but he was by no means unique.

The first two-thirds of Randolph's letter is similar to the speech he gave at the outset of the Philadelphia Convention. He describes the objects of the Union as protection against foreign hostility, protection against domestic commotion, and promotion of trade and prosperity. He shows how incapable is the government under the Articles to secure these objects, because of its weaknesses in the military, taxation, and commercial fields. The government is unable to reach directly to the individual to enforce national engagements with foreign powers, to arbitrate effectively among the states, to protect the states against domestic violence, and to stand superior to ordinary laws. He concludes that an essential change in the government is necessary; "the confederation must be thrown aside." The general government must be remodeled to make it a fit instrument for increased powers, and this new government should "grow out of a consolidation of the union"—that term so generally hated by the Anti-Federalists—"so far, as the circumstances of the states will allow."

The alternatives to consolidation are disunion or partial confederacies; and Randolph describes, with great force, the dangers of any kind of disunion, especially to the South. Preservation of the Union, Randolph always insisted, was the great end guiding all of his political action.[8]

Randolph concludes by arguing in favor of a second convention, to consult again the opinions of the people, thus both improving the constitution and strengthening the indispensable popular support for the constitution ultimately decided upon. In particular, he would modify some of the aristocratic qualities that he thought had been introduced into the plan as the Philadelphia deliberations proceeded. In addition to clearing up ambiguities, he suggests making the President ineligible after a number of years and reducing his power; drawing clearer lines between the power of the Congress and the powers of the states, reducing the powers of the Senate regarding treaties and impeachments and of Congress in determining their salaries and defining the judicial powers.

1. Farrand I, 18–28 (29 May); Farrand II, 631 (15 September), 644–46 (17 September).

2. Elliot III, 23–29, 652.

3. See, however, Moncure Daniel Conway, *Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph* (New York 1888) chs. 9–12; and Burnet

V. Davis, "Edmund Randolph and the U.S. Constitution: A Study in Statesmanship" (M.A. thesis, University of Chicago, 1969), where a useful beginning has been made.

4. Evans, *Early American Imprints* no. 20669. See Conway, *Omitted Chapters of History* 97–98. Randolph's letter to Washington, 27 December 1787, Bancroft, *History of the Formation of the Constitution* II, 455.

5. The first newspaper publications were in the *Virginia Independent Chronicle* (2 January 1788) and the Richmond *Virginia Gazette* (3 and 10 January 1788).

6. Ford, *Essays* 385–92.

7. *The Country Journal and the Poughkeepsie Advertiser* 22 April 1788, a review by A Federalist of an Anti-Federalist pamphlet entitled *Observations on the Proposed Constitution for the U.S.A., clearly showing it to be a complete System of Aristocracy and Tyranny. . . .* As the reviewer pointed out, the Anti-Federalist editor of the pamphlet omitted Randolph's penultimate paragraph, in which he affirmed his commitment to a strong energetic government and to union and his intention to support the Constitution even if no amendments were attained. See below, 2.5.43. Cf. Madison to Washington, 25 January 1788, *Documentary History of the Constitution* IV, 485.

8. Elliot III, 652.

To the Printer

Sir,

The inclosed letter contains the reasons of his Excellency Governor Randolph for refusing his signature to the proposed Foederal Constitution of Government submitted to the several states by the late Convention at Philadelphia. The manner in which we have obtained it, and the authority by which we convey it to the Public, through the channel of your Press, will be explained by the letter herewith sent to you, which, we request may precede his Excellency's letter to the Speaker of the House of Delegates in your publication of them.

M. Smith.
Charles M. Thruston.
John H. Briggs.
Mann Page, jun.

To his Excellency Edmund Randolph, Esquire.

Sir, *December 2, 1787.*

It has been reported in various parts of the state, that the reasons which governed you in your disapprobation of the proposed Foederal Constitution, no longer exist; and many of the people of this Commonwealth have wished to know what objections could induce you to refuse your signature to a measure so flattering to many principal characters in America, and which is so generally supposed to contain the seeds of prosperity and happiness to the United States.

We are satisfied, sir, that the time is passed, when you might with pro-

priety have been requested to communicate your sentiments to the General Assembly on this subject; but, as you have been pleased to favor us with your observations in private, and we conceive they would not only afford satisfaction to the public, but also be useful by the information and instruction they will convey, we hope, you can have no objection to enable us to make them public through the medium of the Press. We have the honor to be, with respectful esteem, Sir, your most obedient servants,

M. Smith
Charles M. Thruston
John H. Briggs
Mann Page, jun.

To M. Smith, Charles M. Thruston, John H. Briggs, and Mann Page, jun. Esquires.

Gentlemen, *December 10, 1787.*

Your favor of the second instant, requesting permission to publish my letter on the new Constitution, gives me an opportunity of making known my sentiments, which, perhaps I ought not to decline. It has been written ever since its date, and was intended for the General Assembly. But I have hitherto been restrained from sending it to them, by motives of delicacy arising from two questions depending before that body, the one respecting the Constitution, the other myself. At this day too I feel an unwillingness to bring it before the Legislature, lest in the diversity of opinion, I should excite a contest unfavorable to that harmony with which I trust the great subject will be discussed. I therefore submit the publication of the letter to your pleasure.

I beg leave however, to remind you, that I have only mentioned my objections to the Constitution in general terms, thinking it improper, and too voluminous, to explain them at full length. But it is my purpose to go at large into the Constitution when a fit occasion shall present itself.

I am, Gentlemen, with the greatest respect, your most obedient servant,

Edmund Randolph

A Letter of His Excellency Edmund Randolph, Esquire, on the Federal Constitution

Richmond, October 10, 1787.

Sir,

2.5.1 The Constitution, which I inclosed to the General Assembly in a late official letter, appears without my signature. This circumstance, although

trivial in its own nature, has been rendered rather important to myself at least, by being misunderstood by some, and misrepresented by others—As I disdain to conceal the reasons for with-holding my subscription, I have always been, still am, and ever shall be, ready to proclaim them to the world. To the legislature therefore, by whom I was deputed to the Foederal Convention, I beg leave now to address them; affecting no indifference to public opinion, but resolved not to court it by an unmanly sacrifice of my own judgment.

As this explanation will involve a summary, but general review of our foederal situation, you will pardon me, I trust, although I should transgress the usual bounds of a letter. 2.5.2

Before my departure for the Convention, I believed, that the confederation was not so eminently defective, as it had been supposed. But after I had entered into a free communication with those, who were best informed of the condition and interest of each state; after I had compared the intelligence derived from them, with the properties, which ought to characterize the government of our union, I became persuaded, that the confederation was destitute of every energy, which a constitution of the United States ought to possess.[1] 2.5.3

For the objects proposed by its institution were, that it should be a shield against foreign hostility, and a firm resort against domestic commotion: that it should cherish trade, and promote the prosperity of the states under its care. 2.5.4

But these are not among the attributes of our present union. Severe experience under the pressure of war—a ruinous weakness, manifested since the return of peace—and the contemplation of these dangers, which darken the future prospect, have condemned the hope of grandeur and of safety under the auspices of the confederation. 2.5.5

In the exigencies of war indeed the history of its effects is short; the final ratification having been delayed until the beginning of the year 1781. But howsoever short, this period is distinguished by melancholy testimonies, of its inability to maintain in harmony the social intercourse of the states, to defend Congress against incroachments on their rights, and to obtain by requisitions supplies to the foederal treasury or recruits to the foederal armies. I shall not attempt an enumeration of the particular instances; but leave to your own remembrance and the records of Congress, the support of these assertions. 2.5.6

In the season of peace too not many years have elapsed; and yet each of them has produced fatal examples of delinquency, and sometimes of pointed opposition to foederal duties. To the various remonstrances of Congress I appeal for a gloomy, but unexaggerated narrative of the injuries, which our faith, honor and happiness have sustained by the failures of the states. 2.5.7

But these evils are past; and some may be led by an honest zeal to conclude, that they cannot be repeated. Yes, sir; they will be repeated as 2.5.8

long as the confederation exists, and will bring with them other mischiefs, springing from the same source, which cannot be yet foreseen in their full array of terror.

2.5.9 If we examine the constitutions, and laws of the several states, it is immediately discovered, that the law of nations is unprovided with sanctions in many cases, which deeply affect public dignity and public justice. The letter, however of the confederation does not permit Congress to remedy these defects, and such an authority, although evidently deducible from its spirit, cannot, without a violation of the second article, be assumed. Is it not a political phaenomenon, that the head of the confederacy should be doomed to be plunged into war, from its wretched impotency to check offences against this law? And sentenced to witness in unavailing anguish the infraction of their engagements to foreign sovereigns?

2.5.10 And yet this is not the only grievous point of weakness. After a war shall be inevitable, the requisitions of Congress for quotas of men or money, will again prove unproductive and fallacious. Two causes will always conspire to this baneful consequence.

1. No government can be stable, which hangs on human inclination alone, unbiassed by the fear of coercion; and 2. from the very connection between states bound to proportionate contributions,—jealousies and suspicions naturally arise, which at least chill the ardor, if they do not excite the murmurs of the whole. I do not forget indeed, that by one sudden impulse our part of the American continent has been thrown into a military posture, and that in the earlier annals of the war, our armies marched to the field on the mere recommendations of Congress. But ought we to argue from a contest, thus signalized by the magnitude of its stake, that as often as a flame shall be hereafter kindled, the same enthusiasm will fill our legions? or renew them, as they may be thinned by losses?

2.5.11 If not, where shall we find protection? Impressions, like those, which prevent a compliance with requisitions of regular forces, will deprive the American republic of the services of militia. But let us suppose, that they are attainable, and acknowledge, as I always shall, that they are the natural support of a free government. When it is remembered, that in their absence agriculture must languish; that they are not habituated to military exposures and the rigor of military discipline, and that the necessity of holding in readiness successive detachments, carries the expence far beyond that of inlistments—this resource ought to be adopted with the caution.

2.5.12 As strongly too am I persuaded, that requisitions for money will not be more cordially received. For besides the distrust, which would prevail with respect to them also; besides the opinion, entertained by each state of its own liberality and unsatisfied demands against the United States, there is another consideration, not less worthy of attention. The first rule for determining each quota was the value of all land granted or surveyed, and of the buildings and improvements thereon. It is no longer doubted, that an

equitable, uniform mode of estimating that value, is impracticable; and therefore twelve states have substituted the number of inhabitants under certain limitations, as the standard according to which money is to be furnished. But under the subsisting articles of the union, the assent of the thirteenth state is necessary, and has not yet been given. This does of itself lessen the hope of procuring a revenue for foederal uses; and the miscarriage of the impost almost rivets our despondency.

Amidst these disappointments, it would afford some consolation, if when 2.5.13
rebellion shall threaten any state, an ultimate asylum could be found under the wing of Congress. But it is at least equivocal, whether they can intrude forces into a state, rent asunder by civil discord, even with the purest solicitude for our foederal welfare, and on the most urgent intreaties of the state itself. Nay the very allowance of this power would be pageantry alone, from the want of money and of men.

To these defects of Congressional power, the history of man has sub- 2.5.14
joined others, not less alarming. I earnestly pray, that the recollection of common sufferings, which terminated in common glory, may check the sallies of violence, and perpetuate mutual friendship between the states. But I cannot presume, that we are superior to those unsocial passions, which under like circumstances have infested more ancient nations.[2] I cannot presume, that through all time, in the daily mixture of American citizens with each other, in the conflicts for commercial advantages, in the discontents, which the neighborhood of territory has been seen to engender in other quarters of the globe, and in the efforts of faction and intrigue—thirteen distinct communities under no effective superintending controul (as the United States confessedly now are notwithstanding the bold terms of the confederation) will avoid a hatred to each other deep and deadly.

In the prosecution of this inquiry we shall find the general prosperity to 2.5.15
decline under a system thus unnerved. No sooner is the merchant prepared for foreign ports with the treasures, which this new world kindly offers to his acceptance, than it is announced to him, that they are shut against American shipping, or opened under oppressive regulations. He urges Congress to a counter-policy, and is answered only by a condolence on the general misfortune. He is immediately struck with the conviction, that until exclusion shall be opposed to exclusion and restriction to restriction, the American flag will be disgraced. For who can conceive, that thirteen legislatures, viewing commerce under different relations, and fancying themselves, discharged from every obligation to concede the smallest of their commercial advantages for the benefit of the whole, will be wrought into a concert of action in defiance of every prejudice? Nor is this all:—Let the great improvements be recounted, which have inriched and illustrated Europe: Let it be noted, how few those are, which will be absolutely denied to the United States, comprehending within their boundaries the choicest blessings of climate, soil and navigable waters; then let the most sanguine

patriot banish, if he can, the mortifying belief, that all these must sleep, until they shall be roused by the vigour of a national government.

2.5.16 I have not exemplified the preceding remarks by minute details; because they are evidently fortified by truth, and the consciousness of United America. I shall therefore no longer deplore the unfitness of the confederation to secure our peace; but proceed, with a truly unaffected distrust of my own opinions, to examine what order of powers the government of the United States ought to enjoy? how they ought to be defended against incroachment? whether they can be interwoven in the confederation without an alteration of its very essence? or must be lodged in new hands? shewing at the same time the convulsions, which seem to await us from a dissolution of the union or partial confederacies.

2.5.17 To mark the kind and degree of authority, which ought to be confided to the government of the United States is no more than to reverse the description, which I have already given, of the defects of the confederation.

2.5.18 From thence it will follow, that the operations of peace and war will be clogged without regular advances of money, and that these will be slow indeed, if dependent on supplication alone. For what better name do requisitions deserve, which may be evaded or opposed, without the fear of coercion? But although coercion is an indispensable ingredient, it ought not to be directed against a state, as a state; it being impossible to attempt it except by blockading the trade of the delinquent, or carrying war into its bowels.[3] Even if these violent schemes were eligible, in other respects both of them might perhaps be defeated by the scantiness of the public chest; would be tardy in their complete effect, as the expence of the land and naval equipments must be first reimbursed; and might drive the proscribed state into the desperate resolve of inviting foreign alliances. Against each of them lie separate unconquerable objections. A blockade is not equally applicable to all the states, they being differently circumstanced in commerce and in ports; nay an excommunication from the privileges of the union would be vain, because every regulation or prohibition may be easily eluded under the rights of American citizenship, or of foreign nations. But how shall we speak of the intrusion of troops? shall we arm citizens against citizens, and habituate them to shed kindred blood? shall we risque the inflicting of wounds, which will generate a rancour never to be subdued? would there be no room to fear, that an army accustomed to fight, for the establishment of authority, would salute an emperor of their own? Let us not bring these things into jeopardy. Let us rather substitute the same process, by which individuals are compelled to contribute to the government of their own states. Instead of making requisitions to the legislatures, it would appear more proper, that taxes should be imposed by the foederal head, under due modifications and guards: that the collectors should demand from the citizens their respective quotas, and be supported as in the collection of ordinary taxes.

It follows too, that, as the general government will be responsible to foreign nations, it ought to be able to annul any offensive measure, or inforce any public right. Perhaps, among the topics on which they may be aggrieved or complain, the commercial intercourse, and the manner, in which contracts are discharged, may constitute the principal articles of clamour. 2.5.19

It follows too, that the general government ought to be the supreme arbiter for adjusting every contention among the states. In all their connections therefore with each other, and particularly in commerce, which will probably create the greatest discord, it ought to hold the reins.

It follows too, that the general government ought to protect each state against domestic as well as external violence.

And lastly it follows, that through the general government alone can we ever assume the rank, to which we are entitled by our resources and situation.

Should the people of America surrender these powers, they can be paramount to the constitutions, and ordinary acts of legislation, only by being delegated by them. I do not pretend to affirm, but I venture to believe, that if the confederation had been solemnly questioned in opposition to our constitution or even to one of our laws, posterior to it, it must have given way. For never did it obtain with us a higher ratification, than a resolution of Assembly in the daily form. 2.5.20

This will be one security against incroachment. But another not less effectual is, to exclude the individual states from any agency in the national government, as far as it may be safe, and their interposition may not be absolutely necessary. 2.5.21

But now, sir, permit me to declare, that in my humble judgment the powers by which alone the blessings of a general government can be accomplished, cannot be interwoven in the confederation without a change of its very essence; in other words, that the confederation must be thrown aside. This is almost demonstrable from the inefficacy of requisitions and from the necessity of converting them into acts of authority. My suffrage, as a citizen, is also for additional powers. But to whom shall we commit these acts of authority, these additional powers? To Congress?—When I formerly lamented the defects in the jurisdiction of Congress, I had no view to indicate any other opinion, than that the foederal head ought not to be so circumscribed. For free as I am at all times to profess my reverence for that body, and the individuals, who compose it, I am yet equally free to make known my aversion to repose such a trust in a tribunal so constituted. My objections are not the visions of theory, but the result of my own observation in America, and of the experience of others abroad. 1. The legislative and executive are concentred in the same persons. This, where real power exists, must eventuate in tyranny. 2. The representation of the states bears no proportion to their importance. This is an unreasonable subjection of the 2.5.22

will of the majority to that of the minority. 3. The mode of election and the liability to be recalled may too often render the delegates rather partizans of their own states, than representatives of the union. 4. Cabal and intrigue must consequently gain an ascendancy in a course of years. 5. A single house of legislation will some times be precipitate, perhaps passionate. 6. As long as seven states are required for the smallest, and nine for the greatest votes, may not foreign influence at some future day insinuate itself, so as to interrupt every active exertion? 7. To crown the whole, it is scarcely within the verge of possibility, that so numerous an assembly should acquire that secrecy, dispatch, and vigour, which are the test of excellence in the executive department.

2.5.23 My inference from these facts and principles is, that the new powers must be deposited in a new body, growing out of a consolidation of the union, as far as the circumstances of the states will allow. Perhaps, however, some may meditate its dissolution, and others partial confederacies.

2.5.24 The first is an idea awful indeed and irreconcileable with a very early, and hitherto uniform conviction, that without union we must be undone. For before the voice of war was heard, the pulse of the then colonies was tried and found to beat in unison. The unremitted labour of our enemies was to divide, and the policy of every Congress to bind us together. But in no example was this truth more clearly displayed, than in the prudence, with which independence was unfolded to the sight, and in the forbearance to declare it, until America almost unanimously called for it. After we had thus launched into troubles, never before explored, and in the hour of heavy distress, the remembrance of our social strength not only forbade despair, but drew from Congress the most illustrious repetition of their settled purpose to despise all terms, short of independence.

2.5.25 Behold then, how successful and glorious we have been, while we acted in fraternal concord. But let us discard the illusion, that by this success and this glory the crest of danger has irrecoverably fallen. Our governments are yet too youthful to have acquired stability from habit. Our very quiet depends upon the duration of the union. Among the upright and intelligent, few can read without emotion the future fate of the states, if severed from each other. Then shall we learn the full weight of foreign intrigue—Then shall we hear of partitions of our country. If a prince, inflamed by the lust of conquest, should use one state, as the instrument of enslaving others—if every state is to be wearied by perpetual alarms, and compelled to maintain large military establishments—if all questions are to be decided by an appeal to arms, where a difference of opinion cannot be removed by negotiation—in a word, if all the direful misfortunes, which haunt the peace of rival nations, are to triumph over the land—for what have we contended? Why have we exhausted our wealth? Why have we basely betrayed the heroic martyrs of the federal cause?

But dreadful as the total dissolution of the union is to any mind, I entertain no less horror at the thought of partial confederacies.[4] I have not the least ground for supposing, that an overture of this kind would be listened to by a single state; and the presumption is, that the politics of the greater part of the states flow from the warmest attachment to an union of the whole. If however a lesser confederacy could be obtained, by Virginia, let me conjure my countrymen well to weigh the probable consequences, before they attempt to form it. 2.5.26

On such an event, the strength of the union would be divided into two or perhaps three parts. Has it so increased since the war as to be divisible?—and yet remain sufficient for our happiness? 2.5.27

The utmost limit of any partial confederacy, which Virginia could expect to form, would comprehend only the three southern states, and her nearest northern neighbour. But they, like ourselves, are diminished in their real force, by the mixture of an unhappy species of population.

Again may I ask, whether the opulence of the United States has been augmented since the war? This is answered in the negative by a load of debt, and the declension of trade. 2.5.28

At all times must a southern confederacy support ships of war, and soldiery. As soon would a navy move from the forest, and an army spring from the earth, as such a confederacy, indebted, impoverished in its commerce, and destitute of men, could, for some years at least provide an ample defence for itself.

Let it not be forgotten, that nations, which can inforce their rights, have large claims against the United States, and that the creditor may insist on payment from any one of them. Which of them would probably be the victim? The most productive and the most exposed. When vexed by reprisals or war, the southern states will sue for alliances on this continent or beyond sea. If for the former, the necessity of an union of the whole is decided. If for the latter, America will, I fear, re-act the scenes of confusion and bloodshed, exhibited among most of those nations, which have, too late, repented the folly of relying on auxiliaries. 2.5.29

Two or more confederacies cannot but be competitors for power. The ancient friendship between the citizens of America, being thus cut off, bitterness and hostility will succeed in its place. In order to prepare against surrounding danger, we shall be compelled to vest somewhere or other power approaching near to a military government. 2.5.30

The annals of the world have abounded so much with instances of a divided people, being a prey to foreign influence, that I shall not restrain my apprehensions of it, should our union be torn assunder. The opportunity of insinuating it will be multiplied in proportion to the parts, into which we may be broken.

In short, sir, I am fatigued with summoning up to my imagination the

miseries, which will harrass the United States, if torn from each other, and which will not end, until they are superseded by fresh mischiefs under the yoke of a tyrant.

2.5.31 I come therefore to the last and perhaps only refuge in our difficulties, a consolidation of the union, as far as circumstances will permit. To fulfil this desirable object, the constitution was framed by the Foederal Convention. A quorum of eleven states, and the only member from a twelfth have subscribed it; Mr. MASON of Virginia, Mr. GERRY of Massachusetts and myself having refused to subscribe.[5]

2.5.32 Why I refused, would, I hope, be solved to the satisfaction of those, who know me, by saying that a sense of duty commanded me thus to act. It commanded me, sir, for believe me, that no event of my life ever occupied more of my reflection. To subscribe seemed to offer no inconsiderable gratification; since it would have presented me to the world, as a fellow-labourer with the learned and zealous statesmen of America. But it was far more interesting to my feelings, that I was about to differ from three of my colleagues; one of whom is, to the honor of the country, which he has saved, imbosomed in their affections, and can receive no praise from the highest lustre of language; the other two of whom have been long inrolled among the wisest and best lovers of the commonwealth; and the unshaken and intimate friendship of all of whom I have ever prized, and still do prize, as among the happiest of all my acquisitions. I was no stranger to the reigning partiality for the members, who composed the convention; and had not the smallest doubt, that from this cause, and from the ardor for a reform of government, the first applauses at least would be loud, and profuse. I suspected too, that there was something in the human breast, which for a time would be apt to construe a temperateness in politicks into an enmity to the union. Nay I plainly foresaw, that in the dissensions of parties, a middle line would probably be interpreted into a want of enterprize and decision.[6] But these considerations, how seducing soever, were feeble opponents to the suggestions of my conscience. I was sent to exercise my judgment, and to exercise it was my fixed determination; being instructed by even an imperfect acquaintance with mankind, that self approbation is the only true reward, which a political career can bestow, and that popularity would have been but another name for perfidy, if to secure it, I had given up the freedom of thinking for myself.

2.5.33 It would have been a peculiar pleasure to me, to have ascertained, before I left Virginia, the temper and genius of my fellow-citizens, considered relatively to a government, so substantially differing from the confederation, as that, which is now submitted. But this was for many obvious reasons impossible: and I was thereby deprived of what I thought the necessary guides.

2.5.34 I saw however that the confederation was tottering from its own weak-

ness, and that the sitting of the convention was a signal of its total insufficiency. I was therefore ready to assent to a scheme of government, which was proposed, and which went beyond the limits of the confederation, believing, that without being too extensive it would have preserved our tranquility, until that temper and that genius should be collected.

But when the plan which is now before the General Assembly, was on its 2.5.35
passage through the convention, I moved, that the state-conventions should be at liberty to amend, and that a second general Convention should be holden to discuss the amendments, which should be suggested by them. This motion was in some measure justified by the manner, in which the confederation was forwarded originally, by Congress to the state-legislatures, in many of which amendments were proposed, and those amendments were afterwards examined in Congress. Such a motion was doubly expedient here, as the delegation of so much more power was sought for. But it was negatived. I then expressed my unwillingness to sign. My reasons were the following.[7]

1. It is said in the resolutions, which accompany the constitution, that it is 2.5.36
to be submitted to a convention of Delegates, chosen in each state by the people thereof, for their assent and ratification. The meaning of these terms is allowed universally to be, that the Convention must either adopt the constitution in the whole, or reject it in the whole, and is positively forbidden to amend. If therefore I had signed, I should have felt myself bound to be silent as to amendments, and to endeavor to support the constitution without the correction of a letter. With this consequence before my eyes and with a determination to attempt an amendment, I was taught by a regard for consistency not to sign.

2. My opinion always was, and still is, that every citizen of America, let the crisis be what it may, ought to have a full opportunity to propose through his representatives any amendment, which in his apprehension tends to the public welfare—By signing I should have contradicted this sentiment.

3. A constitution ought to have the hearts of the people on its side. But if at a future day it should be burthensome, after having been adopted in the whole, and they should insinuate, that it was in some measure forced upon them, by being confined to the single alternative of taking or rejecting it altogether, under my impressions and with my opinions I should not be able to justify myself had I signed.

4. I was always satisfied, as I have now experienced, that this great subject, would be placed in new lights and attitudes by the criticism of the world, and that no man can assure himself, how a constitution will work for a course of years, until at least he shall have heard the observations of the people at large. I also fear more from inaccuracies in a constitution, than from gross errors in any other composition; because our dearest interests

are to be regulated by it, and power, if loosely given, especially where it will be interpreted with great latitude, may bring sorrow in its execution. Had I signed with these ideas, I should have virtually shut my ears against the information, which I ardently desired.

5. I was afraid, that if the Constitution was to be submitted to the people, to be wholly adopted or wholly rejected by them, they would not only reject it, but bid a lasting farewell to the union. This formidable event I wished to avert, by keeping myself free to propose amendments, and thus, if possible, to remove the obstacles to an effectual government. But it will be asked, whether all these arguments were not well weighed in Convention. They were, sir, and with great candor. Nay, when I called to mind the respectability of those, with whom I was associated, I almost lost confidence in these principles. On other occasions I should chearfully have yielded to a majority; on this the fate of thousands, yet unborn, enjoined me not to yield, until I was convinced—

2.5.37 Again may I be asked, why the mode pointed out in the Constitution for its amendment, may not be a sufficient security against its imperfections, without now arresting it in its progress?—My answers are, 1. that it is better to amend, while we have the Constitution in our power, while the passions of designing men are not yet enlisted and while a bare majority of the states may amend, than to wait for the uncertain assent of three fourths of the states. 2. That a bad feature in government becomes more and more fixed every day. 3. That frequent changes of a Constitution even if practicable ought not to be wished, but avoided as much as possible: and 4. That in the present case it may be questionable, whether, after the particular advantages of its operation shall be discerned, three fourths of the states can be induced to amend.

2.5.38 I confess, that it is no easy task, to devise a scheme which shall be suitable to the views of all. Many expedients have occurred to me, but none of them appear less exceptionable than this: that if our Convention should choose to amend, another federal convention be recommended: that in that federal Convention the amendments proposed by this or any other state, be discussed; and if incorporated in the constitution or rejected, or if a proper number of the other states should be unwilling to accede to a second Convention, the constitution be again laid before the same state-conventions, which shall again assemble on the summons of the Executives, and it shall be either wholly adopted, or wholly rejected, without a further power of amendment. I count such a delay, as nothing in comparison with so grand an object; especially too as the privilege of amending must terminate after the use of it once.

2.5.39 I should now conclude this letter, which is already too long, were it not incumbent on me from having contended for amendments, to set forth the particulars, which I conceive to require correction. I undertake this with

reluctance; because it is remote from my intentions to catch the prejudices or prepossessions of any man. But as I mean only to manifest, that I have not been actuated by caprice, and now to explain every objection at full length would be an immense labour, I shall content myself with enumerating certain heads, in which the constitution is most repugnant to my wishes.[8]

The two first points are the equality of suffrage in the Senate, and the submission of commerce to a mere majority in the legislature, with no other check than the revision of the President. I conjecture that neither of these things can be corrected; and particularly the former; without which we must have risen perhaps in disorder. 2.5.40

But I am sanguine in hoping, that in every other, justly obnoxious clause, Virginia, will be seconded by a majority of the states. I hope, that she will be seconded 1. in causing all ambiguities of expression to be precisely explained: 2. in rendering the President ineligible after a given number of years: 3. in taking from him either the power of nominating to the judiciary offices, or of filling up vacancies which therein may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session: 4. in taking from him the power of pardoning for treason, at least before conviction: 5. in drawing a line between the powers of Congress and individual states; and in defining the former; so as to leave no clashing of jurisdictions nor dangerous disputes: and to prevent the one from being swallowed up by the other, under the cover of general words, and implication: 6. in abridging the power of the Senate to make treaties the supreme laws of the land: 7. in providing a tribunal instead of the Senate for the impeachment of Senators: 8. in incapacitating the Congress to determine their own salaries: and often limiting and defining the judicial power. 2.5.41

The proper remedy must be consigned to the wisdom of the convention: and the final step, which Virginia shall pursue, if her overtures shall be discarded, must also rest with them. 2.5.42

But as I affect neither mystery nor subtilty, in politics, I hesitate not to say, that the most fervent prayer of my soul is the establishment of a firm, energetic government; that the most inveterate curse, which can befal us, is a dissolution of the union; and that the present moment, if suffered to pass away unemployed, can never be recalled. These were my opinions, while I acted as a Delegate; they sway me, while I speak as a private citizen. I shall therefore cling to the union, as the rock of our salvation, and urge Virginia to finish the salutary work, which she has begun. And if after our best efforts for amendments they cannot be obtained, I scruple not to declare, (notwithstanding the advantage, which such a declaration may give to the enemies of my proposal,) that I will, as an individual citizen, accept the constitution; because I would regulate myself by the spirit of America. 2.5.43

You will excuse me, sir, for having been thus tedious. My feelings and duty demanded this exposition: for through no other channel could I rescue 2.5.44

my omission to sign from misrepresentation, and in no more effectual way could I exhibit to the General Assembly an unreserved history of my conduct.

I have the honor, Sir, to be, with great respect, your most obedient servant,

Edmund Randolph

The Honorable the Speaker
of the House of Delegates.

1. See Randolph's speech at the Philadelphia Convention introducing the Virginia Plan. Farrand I, 18 (29 May).
2. Cf. *The Federalist* no. 7.
3. Cf. *The Federalist* nos. 12, 16. Cf. Henry 5.15.15–16.
4. See Centinel XI, 2.7.142 n. 75; Henry 5.16.11 n. 25.
5. An essay by Philanthropos sought to show that the three non-signers differed radically in their objections. *Independent Gazetteer* 16 January 1788, McMaster and Stone 521–24.
6. "Previous to the appearance of this letter . . . it became difficult for many to conjecture how his Excellency would devise a middle course, so as to catch the spirit of all his countrymen, and to reconcile himself to all parties." Plain Dealer, Ford, *Essays* 389. Tench Coxe, however, thought that in not signing, Randolph had hurt himself politically but helped the cause of the Constitution in Virginia. Letter from Tench Coxe to James Madison, 21 October 1787, *Documentary History of the Constitution* IV, 340.
7. Cf. Randolph's explanations before the Constitutional Convention, Farrand II, 560–61 (10 September), 631 (15 September), 644–45 (17 September).
8. Cf. the objections expressed by Randolph on 10 September in Philadelphia, Farrand II, 560–61.

PART 2

Major Series of Essays at the Outset

Letters of Cato

NEW YORK JOURNAL
September 1787–January 1788

In the *New York Journal* of 27 September 1787, the same issue containing the text of the proposed Constitution,[1] there appeared the first of a series of Anti-Federal essays by Cato, addressed to the citizens of the state of New York. Historians have not generally found the arguments of this earliest series of Anti-Federal essays very significant or substantial. E. Wilder Spaulding regards them as "dull and ponderous, full of the usual tedious allusions to such classic names as Montesquieu, Hume, Locke, and Sidney, and intemperate in their dogmatism and exaggeration." He sees as their chief merit to show "far better than such scholarly productions as 'The Federalist' what men were thinking and talking."[2] Linda Grant DePauw describes them as "among the better pieces produced during the ratification campaign, although hardly good enough to be considered of enduring value or even of particular historical importance." She thinks they are "dreary" and "pedantic," and she attributes the attention they have received to the fact that they are usually thought to have been written by Governor George Clinton.[3] Yet if Cato is neither profound nor witty, his arguments have a cogency and a respectable grounding in the philosophy of the day sufficient to claim the attention of not only the student of historical movements and personalities but also the student of Anti-Federalist *thought*.

In the first essay Cato urges the importance of careful and independent deliberation in order that the people should preserve both their safety and their reputation, laying notable emphasis on the latter. Referring to the distinguished sponsorship of the Constitution, he urges the citizens of New York to "Attach yourselves to measures not to men" (I, 2.6.5). Stung by a sharp reply from Caesar, Cato devotes most of his second essay to a rebuttal, a vindication of popular authority, a showing that the proposed Constitution "originated in an assumption of power, which your voice alone can sanctify" (II, 2.6.9), and a conclusion that a full and free examination is essentially necessary.

In essay III, Cato takes up the question of consolidation, arguing the impossibility of maintaining a government both free and vigorous over so extensive and heterogeneous a country as the United States. He makes a standard Anti-Federalist defense of the small republic, conceding that some

of the states were already or would soon become too large to remain both vigorous and free.[4]

Cato then turns, in essay IV, to the Constitution, taking up first, not the legislature, but the executive which, while "not the first in order, as arranged therein, yet being the *chief*, is perhaps entitled by the rules of rank to the first consideration." (IV, 2.6.23). Some of the arguments here about the dangers of the presidency and its similarity to the British monarchy, are familiar due to the replies to them in *The Federalist*.

Pausing for brief but very interesting comments on the inexplicitness of the Constitution and the relation between the opinions and manners of the people, commerce, and the form of government (IV, 2.6.24, 28)—frequent Anti-Federalist themes—Cato turns in the remainder of his essays (V–VII) to the organization and powers of the legislature. Although not without interest, these papers are more routine than the earlier ones, criticizing the provision for biennial elections (V, 2.6.36–37); the inadequacy of the representation (V, 2.6.38); the unjust apportionment of representatives and direct taxes (VI, 2.6.39–42); the aristocratic tendency of the Senate (VI, 2.6.43) and its improper connection with the presidency (VI, 2.6.44; VII, 2.6.45); and the absence of sufficient limits on the federal governors, particularly with reference to the power given to Congress to make or alter the regulations regarding the time, place, and manner of choosing members of the federal legislature (VII, 2.6.46–48). The essays are broken off here, leaving undiscussed several heads listed in the initial sketch (V, 2.6.35).

The Cato letters (not to be confused with Cato [South Carolina] 5.10) were attributed by Paul Leicester Ford to George Clinton;[5] but on the basis of work by Jacob Cooke and Linda Grant DePauw, it now appears that Ford's attribution is almost entirely groundless.[6] Clinton's biographer, E. Wilder Spaulding, notes that "it was only in his later years that [Clinton] learned to write correct English and to spell passing well, and he was never an eager reader." Spaulding did not, nevertheless, find the essays inconsistent with Clinton's politics, style, or character, a judgment that must be given due weight, though he cites no evidence of Clinton's authorship except Ford's discussion.[7] DePauw argues that a project of this kind—sustained theoretical argument—was out of character for the relatively unscholarly Clinton and that such an early, decisive move was inconsistent with his prudent political style, particularly regarding the proposed Constitution. Yet Clinton's performance at the New York Convention, as revealed in the Bancroft transcripts, was surely theoretically respectable;[8] and he might well have taken an earlier and stronger stand against the Constitution in anonymous newspaper pieces than he would take publicly in his own name.[9] In *The Federalist* Hamilton referred to the author of Cato as "a writer who (whatever may be his real merit) has had no inconsiderable share in the applauses of his party,"[10] a description that would fit Clinton as

well as many others, including Abraham Yates, who is DePauw's candidate. An essayist in the *Connecticut Courant*, who provides what appears to be the only contemporary identification of Richard Henry Lee as the author of the Letters of The Federal Farmer, went on to express his surprise that Lee had united "with the G—r of N— Y—, and a train of Collectors of impost and excise, tide-waiters and bailiffs, to instruct us poor and despised Yankees in the arts of government. . . ."[11] The internal evidence is inconclusive. There is at least one striking similarity between a remark of Cato and one of Clinton in the New York ratifying convention, but there are several even sharper similarities between Cato and John Williams;[12] in either case, or both, the speaker may simply have found useful material in the newspaper series. DePauw suggests that on the available evidence a reasonable guess as to the author of Cato might be Abraham Yates;[13] but it must have been a far more lucid Abraham Yates than the one who is also identified by DePauw (on quite strong grounds) as having written the Sidney (and Sydney?) Anti-Federal essays.[14] The present editor is inclined to think that the weight of evidence still inclines toward Clinton as Cato; but the question is surely open. For most purposes it is better to regard him simply as—Cato.

1. The text of the Constitution had already been printed on the 22d in the New York *Independent Journal*.

2. E. Wilder Spaulding, *His Excellency George Clinton* (New York 1938) 173.

3. DePauw, *The Eleventh Pillar* 284–85. On reading Anti-Federalist essays, see below, A Countryman 6.7.4 n. 3.

4. See below, III, 2.6.16 n. 11.

5. See Ford, *Essays* 245, 281.

6. Jacob Cooke, "Alexander Hamilton's Authorship of the 'Caesar' Letters," *William and Mary Quarterly* January 1960, 78–85. The argument against Hamilton's authorship of the Caesar letters, to which Cato replies, is reenforced by the statistical work of Frederick Mosteller and David Wallace, *Inference and Disputed Authorship: The Federalist* (Reading, Mass., 1964) 251–52. DePauw devotes an appendix to her *The Eleventh Pillar* (283–92) to a full discussion of the question of the authorship of the Cato letters.

7. Spaulding, *His Excellency George Clinton*, p. 11. Spaulding betrays a certain uneasiness when he says that "the learned references to such authorities as Locke and Montesquieu showed that even the democratic governor could not rise above the affected pedantries of his time." E. Wilder Spaulding, *New York in the Critical Period 1783–1789* (New York 1932) 207. A contemporary critic was ungenerous enough to suggest that Cato had never read most of the works he refers to and that it was even probable that "he has never seen any more of Montesquieu's works, than a few scraps, picked out of some late miscellaneous pieces." Examiner in the *New York Journal* 14 December 1787.

8. See below, Clinton 6.13. Cf. DePauw, *The Eleventh Pillar* 197–98.

9. While the Philadelphia Convention was still sitting, Alexander Hamilton accused Clinton of having expressed "in public company" the opinion that the Convention was unnecessary and mischievous, giving rise to a newspaper exchange between Hamilton and Clinton's defenders. See Hamilton's letter to the New York *Daily Advertiser* 21 July 1787; the reply of A Republican on behalf of Clinton, *New York Journal* 6 September 1787; and Hamilton's rebuttal in the *Daily Advertiser* 15 September 1787. The Hamilton letters, with explanatory notes, are printed in *The*

Papers of Alexander Hamilton, ed. Harold C. Syrett et al. (New York 1961–) IV, 229–32, 248–53; see also his letter to General Washington of October 1787, 280–81. See DePauw's ingenious attempt to lay the responsibility for the powerful opposition to the Constitution in New York on Hamilton's apparently unfounded attack on Clinton, *The Eleventh Pillar* 72–83.

10. *The Federalist* no. 67. Hamilton here clearly suggests that he knows who the author was; and since, according to DePauw, "it is certain that Hamilton did not believe the governor was 'Cato,' " the case against Clinton's authorship would seem almost conclusive. DePauw, *The Eleventh Pillar* 288. DePauw's authority is Jacob E. Cooke, who relies on a letter from Hamilton to Washington, written after the appearance of Cato, saying that, "though the Governor has not *publicly declared himself* his particular connections and confidential friends are loud against it." "Alexander Hamilton's Authorship of the 'Caesar' Letters," *William and Mary Quarterly* January 1960, 79–80 n; my italics. This may mean that Hamilton did not think that Clinton wrote Cato; but the observation is altogether consistent with a belief that the Governor did write anonymously as Cato, while declining to make a public declaration in his own name. This was similar to the kind of behavior Hamilton had earlier suspected Clinton of engaging in. See also below, 2.6.16 n. 11.

11. See New England in *Connecticut Courant* 24 December 1787. On the authorship of the Letters from the Federal Farmer, see below, 2.8 intro.

12. See Cato V, 2.6.36 n. 24, and 2.6.38 n. 27.

13. DePauw, *The Eleventh Pillar* 290–92.

14. See below, Sydney 6.9 intro.

I

To the Citizens of the State of New-York.

2.6.1 The Convention, who sat at Philadelphia, have at last delivered to Congress that system of general government, which they have declared best calculated to promote your safety and happiness as citizens of the United States. This system, though not handed to you formally by the authority of government,[1] has obtained an introduction through divers channels; and the minds of you all, to whose observation it has come, have no doubt been contemplating it; and alternate joy, hope, or fear have preponderated, as it conformed to, or differed from, your various ideas of just government.

2.6.2 Government, to an American, is the science of his political safety—this then is a moment to you the most important—and that in various points—to your reputation as members of a great nation—to your immediate safety, and to that of your posterity. In your private concerns and affairs of life you deliberate with caution, and act with prudence; your public concerns require a caution and prudence, in a ratio suited to the difference [difficulty?] and dignity of the subject. The disposal of your reputation, and of your lives and property, is more momentous than a contract for a farm, or the sale of a bale of goods; in the former, if you are negligent or inattentive, the ambitious and despotic will entrap you in their toils, and bind you with the cord of

power from which you, and your posterity, may never be freed; and if the possibility should exist, it carries along with it consequences that will make your community totter to its center: in the latter, it is a mere loss of a little property, which more circumspection, or assiduity, may repair.

Without directly engaging as an advocate for this new form of national government, or as an opponent—let me conjure you to consider this a very important crisis of your safety and character—You have already, in common with the rest of your countrymen, the citizens of the other states, given to the world astonishing evidences of your greatness—you have fought under peculiar circumstances, and [were] successful against a powerful nation on a speculative question—you have established an original compact between you and your governors, a fact heretofore unknown in the formation of the governments of the world—your experience has informed you, that there are defects in the foederal system, and, to the astonishment of mankind, your legislatures have concerted measures for an alteration, with as much ease as an individual would make a disposition of his ordinary domestic affairs: this alteration now lies before you, for your consideration; but beware how you determine—do not, because you admit that something must be done, adopt any thing—teach the members of that convention, that you are capable of a supervision of their conduct. The same medium that gave you this system, if it is erroneous, while the door is now open, can make amendments, or give you another, if it is required.—Your fate, and that of your posterity, depends on your present conduct—do not give the latter reason to curse you, nor yourselves cause of reprehension; as individuals you are ambitious of leaving behind you a good name, and it is the reflection, that you have done right in this life, that blunts the sharpness of death; the same principles would be a consolation to you, as patriots, in the hour of dissolution, that you would leave to your children a fair political inheritance, untouched by the vultures of power, which you had acquired by *an unshaken* perseverance in the cause of liberty—but how miserable the alternative—you would deprecate the ruin you had brought on yourselves—be the curse of posterity, and the scorn and scoff of nations. 2.6.3

Deliberate, therefore, on this new national government with coolness; analize it with criticism; and reflect on it with candour: if you find that the influence of a powerful few, or the exercise of a standing army, will always be directed and exerted for your welfare alone, and not to the agrandizement of themselves, and that it will secure to you and your posterity happiness at home, and national dignity and respect from abroad, adopt it—if it will not, reject it with indignation—better to be where you are, for the present, than insecure forever afterwards. Turn your eyes to the United Netherlands, at this moment, and view their situation; compare it with what yours may be, under a government substantially similar to theirs. 2.6.4

Beware of those who wish to influence your passions, and to make you 2.6.5

dupes to their resentments and little interests—personal invectives can never persuade, but they always fix prejudices which candor might have removed—those who deal in them have not your happiness at heart. Attach yourselves to measures, not to men.

2.6.6 This form of government is handed to you by the recommendations of a man who merits the confidence of the public; but you ought to recollect, that the wisest and best of men may err, and their errors, if adopted, may be fatal to the community; therefore, in principles of *politics*, as well as in religious faith, every man ought to think for himself.

Hereafter, when it will be necessary, I shall make such observations, on this new constitution, as will tend to promote your welfare, and be justified by reason and truth.

Cato.

Sept. 26, 1787.

II

To the Citizens of the State of New-York.

Remember, O my friends! the laws, the rights,
The generous plan of power deliver'd down,
By your renown'd Forefathers;
So dearly bought, the price of so much blood!
O let it never perish in your hands!
But piously transmit it to your children.[2]

2.6.7 The object of my last address to you was to engage your dispassionate consideration of the new Foederal government; to caution you against precipitancy in the adoption of it; to recommend a correction of its errors, if it contained any; to hint to you the danger of an easy perversion of some of its powers; to solicit you to separate yourselves from party, and to be independent of and uninfluenced by any in your principles of politics: and, that address was closed with a promise of future observations on the same subject which should be justified by reason and truth. Here I intended to have rested the introduction, but a writer under the signature of CAESAR, in Mr. Childs's paper of the 1st instant, who treats you with passion, insult, and threat has anticipated those observations which would otherwise have remained in silence until a future period.[3] It would be criminal in me to hesitate a moment to appear as your advocate in so interesting a cause, and to resist the influence of such doctrines as this Caesar holds.—I shall take no other cognizance of his remarks on the *questionable* shape of my future, or the *equivocal* appearance of my past reflections, than to declare, that in my

past I did not mean to be misunderstood (for Caesar himself declares, that it is obviously the language of distrust) and that in my future there will not be the semblance of doubt. But, what is the language of Caesar[4]—he ridicules your prerogative, power, and majesty—he talks of this *proferred constitution* as the tender mercy of a benevolent sovereign to deluded subjects, or, as his tyrant name-sake, of his proferred grace to the virtuous Cato:—he shuts the door of free deliberation and discussion, and declares, that you must receive this government in manner and form as it is *proferred*—that you cannot revise nor amend it, and lastly, to close the scene, he insinuates, that it will be more healthy for you that the American Fabius should be induced to accept of the presidency of this new government than that, in case you do not acquiesce, he should be solicited to command an army to impose it on you. Is not your indignation roused at this absolute, imperious stile?—For what did you open the veins of your citizens and expend their treasure?—For what did you throw off the yoke of Britain and call yourselves independent?[5]—Was it from a disposition fond of change, or to procure new masters?—if those were your motives, you have your reward before you—go,—retire into silent obscurity, and kiss the rod that scourges you—bury the prospects you had in store, that you and your posterity would participate in the blessings of freedom, and the employments of your country—let the rich and insolent alone be your rulers—perhaps you are designed by providence as an emphatic evidence of the mutability of human affairs, to have the shew of happiness only, that your misery may seem the sharper, and if so, you must submit. But, if you had nobler views, and you are not designed by heaven as an example—are you now to be derided and insulted?—Is the power of thinking, on the only subject important to you, to be taken away? and if per chance you should happen to dissent from Caesar, are you to have Caesar's principles crammed down your throats with an army?—God forbid!

In democratic republics the people collectively are considered as the sovereign—all legislative, judicial, and executive power, is inherent in and derived from them. As a people, your power and authority have sanctioned and established the present government—your executive, legislative, and judicial acknowledge it by their public acts—you are again solicited to sanction and establish the future one—yet this Caesar mocks your dignity and laughs at the majesty of the people.[6] Caesar, with his usual dogmatism, enquires, if I had talents to throw light on the subject of legislation, why did I not offer them when the Convention was in session?—he is answered in a moment—I thought with him and you, that the wisdom of America, in that Convention, was drawn as it were to a Focus—I placed an unbounded confidence in some of the characters who were members of it, from the services they had rendered their country, without adverting to the ambitious and interested views of others. I was willingly led to expect a model of 2.6.8

perfection and security that would have astonished the world. Therefore, to have offered observation, on the subject of legislation, under these impressions, would have discovered no less arrogance than Caesar. The Convention too, when in session, shut their doors to the observations of the community, and their members were under an obligation of secrecy—Nothing transpired—to have suggested remarks on unknown and anticipated principles would have been like a man groping in the dark, and folly in the extreme. I confess, however, I have been disappointed, and Caesar is candid enough to make the same declaration, for he thinks it *might* have been more perfect.

2.6.9 But to call in dispute, at this time, and in the manner Caesar does, the right of free deliberation on this subject, is like a man's propounding a question to another, and telling him, at the same time, that if he does not answer agreeable to the opinion of the propounder, he will exert force to make him of the same sentiment:—to exemplify this, it will be necessary to give you a short history of the rise and progress of the Convention, and the conduct of Congress thereon. The states in Congress suggested, that the articles of confederation had provided for making alterations in the confederation—that there were defects therein, and as a mean to remedy which, a Convention of delegates, appointed by the different states, was resolved expedient to be held for the sole and express purpose of revising it, and reporting to Congress and the different legislatures such alterations and provisions therein as should (when agreed to in Congress and confirmed by the several states) render the foederal constitution adequate to the exigencies of government. This resolution is sent to the different states, and the legislature of this state, with others, appoint, in conformity thereto, delegates for the purpose, and in the words mentioned in that resolve, as by the resolution of Congress, and the concurrent resolutions of the senate and assembly of this state, subjoined, will appear.[7] For the sole and express purpose aforesaid a Convention of delegates is formed at Philadelphia:—what have they done? have they revised the confederation, and has Congress agreed to their report?—neither is the fact.—This Convention have exceeded the authority given to them, and have transmitted to Congress a new political fabric, essentially and fundamentally distinct and different from it, in which the different states do not retain separately their sovereignty and independency, united by a confederated league—but one entire sovereignty—a consolidation of them into one government—in which new provisions and powers are not made and vested in Congress, but in an assembly, senate, and president, who are not know in the articles of confederation.—Congress, without agreeing to, or approving of, this system *proferred* by the Convention, have sent it to the different legislatures, not for their confirmation, but to submit it to the people; not in conformity to their own resolution, but in conformity to the resolution of the Convention

made and provided in that case. Was it then, from the face of the foregoing facts, the intention of Congress, and of this and the other states, that the essence of our present national government should be annihilated, or that it should be retained and only [have] an increase of substantial necessary powers? Congress, sensible of this latter principle, and that the Convention had taken on themselves a power which neither they nor the other states had a right to delegate to them, and that they could not agree to, and approve of this consolidated system, nor the states confirm it—have been silent on its character; and though many have dwelt on their unanimity, it is no less than the unanimity of opinion that it originated in an assumption of power, which your voice alone can sanctify. This new government, therefore, founded in usurpation, is referred to your opinion as the origin of power not heretofore delegated, and, to this end, the exercise of the prerogative of free examination is essentially necessary; and yet you are unhesitatingly to acquiesce, and if you do not, the American Fabius, if we may believe Caesar, is to command an army to impose it. It is not my view to rouse your passions, I only wish to excite you to, and assist you in, a cool and deliberate discussion of the subject, to urge you to behave like sensible freemen. Think, speak, act, and assert your opinions and rights—let the same good sense govern you with respect to the adoption of a future system for the administration of your public affairs that influenced you in the formation of the present.—Hereafter I do not intend to be diverted by either Caesar, or any other—My object is to take up this new form of national government—compare it with the experience and the opinions of the most sensible and approved political authors—and to shew, that its principles, and the exercise of them, will be dangerous to your liberty and happiness.

Cato.

III

To the Citizens of the State of New-York.

In the close of my last introductory address, I told you, that my object in future would be to take up this new form of national government, to compare it with the experience and opinions of the most sensible and approved political authors, and to show you that its principles, and the exercise of them [,] will be dangerous to your liberty and happiness. 2.6.10

Although I am conscious that this is an arduous undertaking, yet I will perform it to the best of my ability.

The freedom, equality, and independence which you enjoyed by nature, 2.6.11

induced you to consent to a political power. The same principles led you to examine the errors and vices of a British superintendence, to divest yourselves of it, and to reassume a new political shape. It is acknowledged that there are defects in this, and another is tendered to you for acceptance; the great question then, that arises on this new political principle, is, whether it will answer the ends for which it is said to be offered to you, and for which all men engage in political society, to wit, the mutual preservation of their lives, liberties, and estates.

2.6.12 The recital, or premises on which this new form of government is erected, declares a consolidation or union of all the thirteen parts, or states, into one great whole, under the firm [form?] of the United States, for all the various and important purposes therein set forth.—But whoever seriously considers the immense extent of territory comprehended within the limits of the United States, together with the variety of its climates, productions, and commerce, the difference of extent, and number of inhabitants in all; the dissimilitude of interest, morals, and policies, in almost every one, will receive it as an intuitive truth, that a consolidated republican form of government therein, can never *form a perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to you and your posterity*, for to these objects it must be directed: this unkindred legislature therefore, composed of interests opposite and dissimilar in their nature, will in its exercise, emphatically be, like a house divided against itself.

2.6.13 The governments of Europe have taken their limits and form from adventitious circumstances, and nothing can be argued on the motive of agreement from them; but these adventitious political principles, have nevertheless produced effects that have attracted the attention of philosophy, which has established axioms in the science of politics therefrom, as irrefragable as any in Euclid. It is natural, says Montesquieu, *to a republic to have only a small territory, otherwise it cannot long subsist: in a large one, there are men of large fortunes, and consequently of less moderation; there are too great deposits to intrust in the hands of a single subject, an ambitious person soon becomes sensible that he may be happy, great, and glorious by oppressing his fellow citizens, and that he might raise himself to grandeur, on the ruins of his country. In large republics, the public good is sacrificed to a thousand views; in a small one the interest of the public is easily perceived, better understood, and more within the reach of every citizen; abuses have a less extent, and of course are less protected*—he also shews you, that the duration of the republic of Sparta, was owing to its having continued with the same extent of territory after all its wars; and that the ambition of Athens and Lacedemon to command and direct the union, lost them their liberties, and gave them a monarchy.[8]

2.6.14 From this picture, what can you promise yourselves, on the score of

consolidation of the United States, into one government—impracticability in the just exercise of it—your freedom insecure—even this form of government limited in its continuance—the employments of your country disposed of to the opulent, to whose contumely you will continually be an object—you must risque much, by indispensably placing trusts of the greatest magnitude, into the hands of individuals, whose ambition for power, and aggrandizement, will oppress and grind you—where, from the vast extent of your territory, and the complication of interests, the science of government will become intricate and perplexed, and too misterious for you to understand, and observe; and by which you are to be conducted into a monarchy, either limited or despotic; the latter, Mr. Locke remarks, *is a government derived from neither nature, nor compact.*[9]

Political liberty, the great Montesquieu again observes, *consists in security, or at least in the opinion we have of security;*[10] and this *security* therefore, or the *opinion*, is best obtained in moderate governments, where the mildness of the laws, and the equality of the manners, beget a confidence in the people, which produces this security, or the opinion. This moderation in governments, depends in a great measure on their limits, connected with their political distribution. 2.6.15

The extent of many of the states in the Union, is at this time, almost too great for the superintendence of a republican form of government, and must one day or other, revolve into more vigorous ones, or by separation be reduced into smaller, and more useful, as well as moderate ones.[11] You have already observed the feeble efforts of Massachusetts against their insurgents; with what difficulty did they quell that insurrection; and is not the province of Main at this moment, on the eve of separation from her. The reason of these things is, that for the security of the *property* of the community, in which expressive term Mr. Lock makes life, liberty, and estate, to consist[12]—the wheels of a free republic are necessarily slow in their operation; hence in large free republics, the evil sometimes is not only begun, but almost completed, before they are in a situation to turn the current into a contrary progression: the extremes are also too remote from the usual seat of government, and the laws therefore too feeble to afford protection to all its parts, and insure *domestic tranquility* without the aid of another principle. If, therefore, this state, and that of N. Carolina, had an army under their controul, they never would have lost Vermont, and Frankland, nor the state of Massachusetts suffer an insurrection, or the dismemberment of her fairest district, but the exercise of a principle which would have prevented these things, if we may believe the experience of ages, would have ended in the destruction of their liberties. 2.6.16

Will this consolidated republic, if established, in its exercise beget such confidence and compliance, among the citizens of these states, as to do without the aid of a standing army—I deny that it will.—The mal-contents in 2.6.17

each state, who will not be a few, nor the least important, will be exciting factions against it—the fear of a dismemberment of some of its parts, and the necessity to enforce the execution of revenue laws (a fruitful source of oppression) on the extremes and in the other districts of the government, will incidentally, and necessarily require a permanent force, to be kept on foot—will not political security, and even the opinion of it, be extinguished? can mildness and moderation exist in a government, where the primary incident in its exercise must be force? will not violence destroy confidence, and can equality subsist, where the extent, policy, and practice of it, will naturally lead to make odious distinctions among citizens?

2.6.18 The people, who may compose this national legislature from the southern states, in which, from the mildness of the climate, the fertility of the soil, and the value of its productions, wealth is rapidly acquired, and where the same causes naturally lead to luxury, dissipation, and a passion for aristocratic distinctions; where slavery is encouraged, and liberty of course, less respected, and protected; who know not what it is to acquire property by their own toil, nor to oeconomise with the savings of industry—will these men therefore be as tenacious of the liberties and interests of the more northern states, where freedom, independence, industry, equality, and frugality, are natural to the climate and soil, as men who are your own citizens, legislating in your own state, under your inspection, and whose manners, and fortunes, bear a more equal resemblance to your own?[13]

2.6.19 It may be suggested, in answer to this, that whoever is a citizen of one state, is a citizen of each, and that therefore he will be as interested in the happiness and interest of all, as the one he is delegated from; but the argument is fallacious, and, whoever has attended to the history of mankind, and the principles which bind them together as parents, citizens, or men, will readily perceive it. These principles are, in their exercise, like a pebble cast on the calm surface of a river, the circles begin in the center, and are small, active, and forcible, but as they depart from that point, they lose their force, and vanish into calmness.

2.6.20 The strongest principle of union resides within our domestic walls. The ties of the parent exceed that of any other; as we depart from home, the next general principle of union is amongst citizens of the same state, where acquaintance, habits, and fortunes, nourish affection, and attachment; enlarge the circle still further, and, as citizens of different states, though we acknowledge the same national denomination, we lose the ties of acquaintance, habits, and fortunes, and thus, by degrees, we lessen in our attachments, till, at length, we no more than acknowledge a sameness of species. Is it therefore, from certainty like this, reasonable to believe, that inhabitants of Georgia, or New-Hampshire, will have the same obligations towards you as your own, and preside over your lives, liberties, and property, with the same care and attachment? Intuitive reason, answers in the negative.[14]

In the course of my examination of the principals of consolidation of the states into one general government, many other reasons against it have occurred, but I flatter myself, from those herein offered to your consideration, I have convinced you that it is both presumptuous and impracticable consistent with your safety. To detain you with further remarks, would be useless—I shall however, continue in my following numbers, to anilise this new government, pursuant to my promise. 2.6.21

Cato.

IV

To the Citizens of the State of New-York.

Admitting, however, that the vast extent of America, together with the various other reasons which I offered you in my last number, against the practicability of the just exercise of the new government are insufficient to convince you; still it is an undeniable truth, that its several parts are either possessed of principles, which you have heretofore considered as ruinous, and that others are omitted which you have established as fundamental to your political security, and must in their operation, I will venture to assert—fetter your tongues and minds, enchain your bodies, and ultimately extinguish all that is great and noble in man. 2.6.22

In pursuance of my plan, I shall begin with observations on the executive branch of this new system; and though it is not the first in order, as arranged therein, yet being the *chief*, is perhaps entitled by the rules of rank to the first consideration. The executive power as described in the 2d article, consists of a president and vice-president, who are to hold their offices *during* the term of four years; the same article has marked the manner and time of their election, and established the qualifications of the president; it also provides against the removal, death, or inability of the president and vice-president—regulates the salary of the president, delineates his duties and powers; and lastly, declares the causes for which the president and vice-president shall be removed from office. 2.6.23

Notwithstanding the great learning and abilities of the gentlemen who composed the convention, it may be here remarked with deference, that the construction of the first paragraph of the first section of the second article, is vague and inexplicit, and leaves the mind in doubt, as to the election of a president and vice-president, after the expiration of the election for the first term of four years—in every other case, the election of these great officers is expressly provided for; but there is no explicit provision for their election in case of the expiration of their offices, subsequent to the election which is to 2.6.24

set this political machine in motion—no certain and express terms as in your state constitution, that *statedly* once in every four years, and as often as these offices shall become vacant, by expiration or otherwise, as is therein expressed, an election shall be held as follows, etc.—this inexplicitness perhaps may lead to an establishment for life.

2.6.25 It is remarked by Montesquieu, in treating of republics, that *in all magistracies, the greatness of the power must be compensated by the brevity of the duration; and that a longer time than a year, would be dangerous.*[15] It is therefore obvious to the least intelligent mind, to account why, great power in the hands of a magistrate, and that power connected, with a considerable duration, may be dangerous to the liberties of a republic—the deposit of vast trusts in the hands of a single magistrate, enables him in their exercise, to create a numerous train of dependants—this tempts his *ambition*, which in a republican magistrate is also remarked, *to be pernicious* and the duration of his office for any considerable time favours his views, gives him the means and time to perfect and execute his designs—*he therefore fancies that he may be great and glorious by oppressing his fellow citizens, and raising himself to permanent grandeur on the ruins of his country.*[16]—And here it may be necessary to compare the vast and important powers of the president, together with his continuance in office with the foregoing doctrine—his eminent magisterial situation will attach many adherents to him, and he will be surrounded by expectants and courtiers—his power of nomination and influence on all appointments—the strong posts in each state comprised within his superintendance, and garrisoned by troops under his direction—his controul over the army, militia, and navy—the unrestrained power of granting pardons for treason, which may be used to screen from punishment, those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt—his duration in office for four years: these, and various other principles evidently prove the truth of the position—that if the president is possessed of ambition, he has power and time sufficient to ruin his country.[17]

2.6.26 Though the president, during the sitting of the legislature, is assisted by the senate, yet he is without a constitutional council in their recess—he will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites, or a council of state will grow out of the principal officers of the great departments, the most dangerous council in a free country.

2.6.27 The ten miles square, which is to become the seat of government, will of course be the place of residence for the president and the great officers of state—the same observations of a great man will apply to the court of a president possessing the powers of a monarch, that is observed of that of a monarch—*ambition with idleness—baseness with pride—the thirst of riches without labour—aversion to truth—flattery—treason—perfidy—violation of*

engagements—contempt of civil duties—hope from the magistrate's weakness; but above all, the perpetual ridicule of virtue—these, he remarks, are the characteristics by which the courts in all ages have been distinguished.[18]

2.6.28 The language and the manners of this court will be what distinguishes them from the rest of the community, not what assimilates them to it, and in being remarked for a behaviour that shews they are not *meanly born*, and in adulation to people of fortune and power.

2.6.29 The establishment of a vice-president is as unnecessary as it is dangerous. This officer, for want of other employment, is made president of the senate, thereby blending the executive and legislative powers, besides always giving to some one state, from which he is to come, an unjust pre-eminence.

2.6.30 It is a maxim in republics, that the representative of the people should be of their immediate choice; but by the manner in which the president is chosen he arrives to this office at the fourth or fifth hand, nor does the highest vote, in the way he is elected, determine the choice—for it is only necessary that he should be taken from the highest of five, who may have a plurality of votes.

2.6.31 Compare your past opinions and sentiments with the present proposed establishment, and you will find, that if you adopt it, that it will lead you into a system which you heretofore reprobated as odious. Every American whig, not long since, bore his emphatic testimony against a monarchical government, though limited, because of the dangerous inequality that it created among citizens as relative to their rights and property;[19] and wherein does this president, invested with his powers and prerogatives, essentially differ from the king of Great-Britain (save as to name, the creation of nobility and some immaterial incidents, the offspring of absurdity and locality)[. T]he direct prerogatives of the president, as springing from his political character, are among the following:—It is necessary, in order to distinguish him from the rest of the community, and enable him to keep, and maintain his court, that the compensation for his services; or in other words, his revenue should be such as to enable him to appear with the splendor of a prince; he has the power of receiving embassadors from, and a great influence on their appointments to foreign courts; as also to make treaties, leagues, and alliances with foreign states, assisted by the senate, which when made, become the supreme law of the land: he is a constituent part of the legislative power; for every bill which shall pass the house of representatives and senate, is to be presented to him for approbation; if he approves of it, he is to sign it, if he disapproves, he is to return it with objections, which in many cases will amount to a compleat negative; and in this view he will have a great share in the power of making peace, coining money, etc. and all the various objects of legislation, expressed or implied in this Constitution: for though it may be asserted that the king of Great-Britain has the express power of making peace or war, yet he never thinks it prudent so to do

without the advice of his parliament from whom he is to derive his support, and therefore these powers, in both president and king, are substantially the same: he is the generalissimo of the nation, and of course, has the command and controul of the army, navy and militia; he is the general conservator of the peace of the union—he may pardon all offences, except in cases of impeachment, and the principal fountain of all offices and employments. Will not the exercise of these powers therefore tend either to the establishment of a vile and arbitrary aristocracy, or monarchy? The safety of the people in a republic depends on the share or proportion they have in the government; but experience ought to teach you, that when a man is at the head of an elective government invested with great powers, and interested in his re-election, in what circle appointments will be made; by which means *an imperfect aristocracy* bordering on monarchy may be established.

2.6.32 You must, however, my countrymen, beware, that the advocates of this new system do not deceive you, by a fallacious resemblance between it and your own state government, which you so much prize;[20] and if you examine, you will perceive that the chief magistrate of this state, is your immediate choice, controuled and checked by a just and full representation of the people, divested of the prerogative of influencing war and peace, making treaties, receiving and sending embassies, and commanding standing armies and navies, which belong to the power of the confederation, and will be convinced that this government is no more like a true picture of your own, than an Angel of darkness resembles an Angel of light.

Cato.

V

To the Citizens of the State of New-York.

2.6.33 In my last number I endeavored to prove that the language of the article relative to the establishment of the executive of this new government was vague and inexplicit, that the great powers of the President, connected with his duration in office would lead to oppression and ruin. That he would be governed by favorites and flatterers, or that a dangerous council would be collected from the great officers of state;—that the ten miles square, if the remarks of one of the wisest men, drawn from the experience of mankind, may be credited, would be the asylum of the base, idle, avaricious and ambitious, and that the court would possess a language and manners different from yours; that a vice-president is as unnecessary, as he is dangerous in

his influence—that the president cannot represent you because he is not of your own immediate choice, that if you adopt this government, you will incline to an arbitrary and odious aristocracy or monarchy—that the president possessed of the power, given him by this frame of government differs but very immaterially from the establishment of monarchy in Great Britain, and I warned you to beware of the fallacious resemblance that is held out to you by the advocates of this new system between it and your own state governments.

And here I cannot help remarking, that inexplicitness seems to pervade this whole political fabric: certainty in political compacts, which Mr. Coke calls *the mother and nurse of repose and quietness*,[21] the want of which induced men to engage in political society, has ever been held by a wise and free people as essential to their security; as, on the one hand it fixes barriers which the ambitious and tyrannically disposed magistrate dare not overleap, and on the other, becomes a wall of safety to the community—otherwise stipulations between the governors and governed are nugatory; and you might as well deposit the important powers of legislation and execution in one or a few and permit them to govern according to their disposition and will; but the world is too full of examples, which prove that *to live by one man's will became the cause of all men's misery*.[22] Before the existence of express political compacts it was reasonably implied that the magistrate should govern with wisdom and justice, but mere implication was too feeble to restrain the unbridled ambition of a bad man, or afford security against negligence, cruelty, or any other defect of mind. It is alledged that the opinions and manners of the people of America, are capable to resist and prevent an extension of prerogative or oppression; but you must recollect that opinion and manners are mutable, and may not always be a permanent obstruction against the encroachments of government; that the progress of a commercial society begets luxury, the parent of inequality, the foe to virtue, and the enemy to restraint; and that ambition and voluptuousness aided by flattery, will teach magistrates, where limits are not explicitly fixed to have separate and distinct interests from the people, besides it will not be denied that government assimilates the manners and opinions of the community to it.[23] Therefore, a general presumption that rulers will govern well is not a sufficient security.—You are then under a sacred obligation to provide for the safety of your posterity, and would you now basely desert their interests, when by a small share of prudence you may transmit to them a beautiful political patrimony, which will prevent the necessity of their travelling through seas of blood to obtain that, which your wisdom might have secured:—It is a duty you owe likewise to your own reputation, for you have a great name to lose; you are characterised as cautious, prudent and jealous in politics; whence is it therefore, that you are about to precipitate yourselves into a sea of uncertainty, and adopt a system so vague, and

2.6.34

which has discarded so many of your valuable rights:—Is it because you do not believe that an American can be a tyrant? If this be the case you rest on a weak basis[;] Americans are like other men in similar situations, when the manners and opinions of the community are changed by the causes I mentioned before, and your political compact inexplicit, your posterity will find that great power connected with ambition, luxury, and flattery, will as readily produce a Caesar, Caligula, Nero, and Domitian in America, as the same causes did in the Roman empire.

2.6.35 But the next thing to be considered in conformity to my plan, is the first article of this new government, which comprises the erection of the house of representatives and senate, and prescribes their various powers and objects of legislation. The most general objections to the first article, are that biennial elections for representatives are a departure from the safe democratical principles of annual ones—that the number of representatives are too few; that the apportionment and principles of increase are unjust; that no attention has been paid to either the numbers or property in each state in forming the senate; that the mode in which they are appointed and their duration, will lead to the establishment of an aristocracy; that the senate and president are improperly connected, both as to appointments, and the making of treaties, which are to become the supreme law of the land; that the judicial in some measure, to wit, as to the trial of impeachments[,] is placed in the senate[,] a branch of the legislative, and some times a branch of the executive: that Congress have the improper power of making or altering the regulations prescribed by the different legislatures, respecting the time, place, and manner of holding elections for representatives, and the time and manner of choosing senators; that standing armies may be established, and appropriation of money made for their support for two years; that the militia of the most remote state may be marched into those states situated at the opposite extreme of this continent; that the slave trade is, to all intents and purposes permanently established; and a slavish capitation, or poll-tax, may at any time be levied—these are some of the many evils that will attend the adoption of this government.

2.6.36 But with respect to the first objection, it may be remarked that a well digested democracy has this advantage over all others, to wit, that it affords to many the opportunity to be advanced to the supreme command, and the honors they thereby enjoy fill them with a desire of rendering themselves worthy of them; hence this desire becomes part of their education, is matured in manhood, and produces an ardent affection for their country, and it is the opinion of the great Sidney, and Montesquieu that this is in a great measure produced by annual election of magistrates.[24]

2.6.37 If annual elections were to exist in this government, and learning and information to become more prevalent, you never will want men to execute whatever you could design—Sidney observes *that a well governed state is as fruitful to all good purposes as the seven headed serpent is said to have*

been in evil; when one head is cut off, many rise up in the place of it. He remarks further, that *it was also thought, that free cities by frequent elections of magistrates became nurseries of great and able men, every man endeavoring to excel others, that he might be advanced to the honor he had no other title to, than what might arise from his merit, or reputation,*[25] but the framers of this *perfect government,* as it is called, have departed from this democratical principle, and established bi-ennial elections for the house of representatives, who are to be chosen by the people, and sextennial for the senate, who are to be chosen by the legislatures of the different states, and have given to the executive the unprecedented power of making temporary senators, in case of vacancies, by resignation or otherwise,[26] and so far forth establishing a precedent for virtual representation (though in fact, their original appointment is virtual) thereby influencing the choice of the legislatures, or if they should not be so complaisant as to conform to his appointment—offence will be given to the executive and the temporary members will appear ridiculous by rejection; this temporary member, during his time of appointment, will of course act by a power derived from the executive, and for, and under his immediate influence.

It is a very important objection to this government, that the representation consists of so few; too few to resist the influence of corruption, and the temptation to treachery, against which all governments ought to take precautions—how guarded you have been on this head, in your own state constitution, and yet the number of senators and representatives proposed for this vast continent, does not equal those of your own state; how great the disparity, if you compare them with the aggregate numbers in the United States. The history of representation in England, from which we have taken our model of legislation, is briefly this[:] before the institution of legislating by deputies, the whole free part of the community usually met for that purpose; when this became impossible, by the increase of numbers the community was divided into districts, from each of which was sent such a number of deputies as was a complete representation of the various numbers and orders of citizens within them; but can it be asserted with truth, that six men can be a complete and full representation of the numbers and various orders of the people in this state?[27] Another thing [that] may be suggested against the small number of representatives is, that but few of you will have the chance of sharing even in this branch of the legislature; and that the choice will be confined to a very few; the more complete it is, the better will your interests be preserved, and the greater the opportunity you will have to participate in government, one of the principal securities of a free people; but this subject has been so ably and fully treated by a writer under the signature of Brutus,[28] that I shall content myself with referring you to him thereon, reserving further observations on the other objections I have mentioned, for my future numbers. 2.6.38

Cato.

VI

To the People of the State of New-York.

2.6.39 The next objection that arises against this proferred constitution is, that the apportionment of representatives and direct taxes are unjust.—The words as expressed in this article are, "representatives and direct taxes shall be apportioned among the several states, which may be included in this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed[,] three fifths of all other persons." In order to elucidate this, it will be necessary to repeat the remark in my last number, that the mode of legislation in the infancy of free communities was by the collective body, and this consisted of free persons, or those whose age admitted them to the rights of mankind and citizenship—whose sex made them capable of protecting the state, and whose birth may be denominated Free Born, and no traces can be found that ever women, children, and slaves, or those who were not sui juris, in the early days of legislation, meeting with the free members of the community to deliberate on public measures; hence is derived this maxim in free governments, that representation ought to bear a proportion to the number of free inhabitants in a community; this principle your own state constitution, and others, have observed in the establishment of a future census, in order to apportion the representatives, and to increase or diminish the representation to the ratio of the increase or diminution of electors. But, what aid can the community derive from the assistance of women, infants, and slaves, in their deliberation, or in their defence? and what motive therefore could the convention have in departing from the just and rational principle of representation, which is the governing principle of this state and of all America.

2.6.40 The doctrine of taxation is a very important one, and nothing requires more wisdom and prudence than the regulation of that portion, which is taken from, and of that which is left to, the subject—and if you anticipate, what will be the enormous expence of this new government added also to your own, little will that portion be which will be left to you. I know there are politicians who believe, that you should be loaded with taxes, in order to make you industrious, and, perhaps, there are some of this opinion in the convention, but it is an erroneous principle—For, what can inspire you with industry, if the greatest measures of your labours are to be swallowed up in taxes? The advocates for this new system hold out an idea, that you will have but little to pay, for, that the revenues will be so managed as to be almost wholly drawn from the source of trade or duties on imports, but this is delusive—for this government to discharge all its incidental expences, besides paying the interests on the home and foreign debts, will require

more money than its commerce can afford; and if you reflect one moment, you will find, that if heavy duties are laid on merchandize, as must be the case, if government intend to make this the prime medium to lighten the people of taxes, that the price of the commodities, useful as well as luxurious, must be increased; the consumers will be fewer; the merchants must import less; trade will languish, and this source of revenue in a great measure be dried up; but if you examine this a little further, you will find, that this revenue, managed in this way, will come out of you and be a very heavy and ruinous one, at least—The merchant no more than advances the money for you to the public, and will not, nor cannot pay any part of it himself, and if he pays more duties, he will sell his commodities at a price portionably raised—thus the laborer, mechanic, and farmer, must feel it in the purchase of their utensils and clothing—wages, etc. must rise with the price of things, or they must be ruined. [A]nd that must be the case with the farmer, whose produce will not increase, in the ratio, with labour, utensils, and clothing; for that he must sell at the usual price or lower, perhaps caused by the decrease of trade; the consequence will be, that he must mortgage his farm, and then comes inevitable bankruptcy.

In what manner then will you be eased, if the expences of government are 2.6.41
to be raised solely out of the commerce of this country; do you not readily apprehend the fallacy of this argument. But government will find, that to press so heavily on commerce will not do, and therefore must have recourse to other objects; these will be a capitation or poll-tax, window lights, etc. etc. and a long train of impositions which their ingenuity will suggest; but will you submit to be numbered like the slaves of an arbitrary despot; and what will be your reflections when the taxmaster thunders at your door for the duty on that light which is the bounty of heaven. It will be the policy of the great landholders who will chiefly compose this senate, and perhaps a majority of this house of representatives, to keep their lands free from taxes; and this is confirmed by the failure of every attempt to lay a land-tax in this state; hence recourse must and will be had to the sources I mentioned before. The burdens on you will be insupportable—your complaints will be inefficacious—this will beget public disturbances, and I will venture to predict, without the spirit of prophecy, that you and the government, if it is adopted, will one day be at issue on this point. The force of government will be exerted, this will call for an increase of revenue, and will add fuel to the fire. The result will be, that either you will revolve to some other form, or that government will give peace to the country, by destroying the opposition. If government therefore can, notwithstanding every opposition, raise a revenue on such things as are odious and burdensome to you, they can do any thing.

But why should the number of individuals be the principle to apportion 2.6.42
the taxes in each state, and to include in that number, women, children and slaves. The most natural and equitable principle of apportioning taxes,

would be in a ratio to their property, and a reasonable impost in a ratio to their trade; but you are told to look for the reason of these things in accommodation; but this much admired principle, when strip[p]ed of its mistery, will in this case appear to be no less than a basis for an odious poll-tax—the offspring of despotic governments, a thing so detestable, that the state of Maryland, in their bill of rights, declares, "that the levying taxes by the poll, is grievous and oppressive, and ought to be abolished."—A poll-tax is at all times oppressive to the poor, and their greatest misfortune will consist in having more prolific wives than the rich.[29]

2.6.43 In every civilized community, even in those of the most democratic kind, there are principles which lead to an aristocracy—these are superior talents, fortunes, and public employments.[30] But in free governments, the influence of the two former is resisted by the equality of the laws, and the latter by the frequency of elections, and the chance that every one has in sharing in public business; but when this natural and artificial eminence is assisted by principles interwoven in this government—when the senate, so important a branch of the legislature, is so far removed from the people, as to have little or no connexion with them; when their duration in office is such as to have the resemblance of perpetuity, when they are connected with the executive, by the appointment of all officers, and also, to become a judiciary for the trial of officers of their own appointments: added to all this, when none but men of oppulence will hold a seat, what is there left to resist and repel this host of influence and power. Will the feeble efforts of the house of representatives, in whom your security ought to subsist, consisting of about seventy-three, be able to hold the balance against them, when, from the fewness of the number in this house, the senate will have in their power to poison even a majority of that body by douceurs of office for themselves or friends. From causes like this both Montesquieu and Hume have predicted the decline of the British government into that of an absolute one;[31] but the liberties of this country, it is probable if this system is adopted, will be strangled in their birth; for whenever the executive and senate can destroy the independence of the majority in the house of representatives then where is your security?—They are so intimately connected, that their interests will be one and the same; and will the slow increase of numbers be able to afford a repelling principle? but you are told to adopt this government first, and you will always be able to alter it afterwards; this would be first submitting to be slaves and then taking care of your liberty; and when your chains are on, then to act like freemen.

2.6.44 Complete acts of legislation, which are to become the supreme law of the land, ought to be the united act of all the branches of government; but there is one of the most important duties [that] may be managed by the senate and executive alone, and to have all the force of the law paramount without the aid or interference of the house of representatives; that is the power of making treaties. This power is a very important one, and may be exercised

in various ways, so as to affect your person and property, and even the domain of the nation. By treaties you may defalcate part of the empire; engagements may be made to raise an army, and you may be transported to Europe, to fight the wars of ambitious princes; money may be contracted for, and you must pay it; and a thousand other obligations may be entered into; all which will become the supreme law of the land, and you are bound by it. If treaties are erroneously or wickedly made who is there to punish—the executive can always cover himself with the plea, that he was advised by the senate; and the senate being a collective body are not easily made accountable for mal-administration. On this account we are in a worse situation than Great-Britain, where they have secured by a ridiculous fiction, the King from accountability, by declaring that he can do no wrong, by which means the nation can have redress against his minister; but with us infalibility pervades every part of the system, and neither the executive nor his council, who are a collective body, and his advisers, can be brought to punishment for mal-administration.

Cato.

VII

To the Citizens of the State of New-York.

2.6.45

That the senate and president are further improperly connected, will appear, if it is considered, that their dependence on each other will prevent either from being a check upon the other; they must act in concert, and whether the power and influence of the one or the other is to prevail, will depend on the character and abilities of the men who hold those offices at the time. The senate is vested with such a proportion of the executive, that it would be found necessary that they should be constantly sitting. This circumstance did not escape the convention, and they have provided for the event, in the 2d article, which declares, that the executive may, on extraordinary occasions, *convene both houses or either of them.* No occasion can exist for calling the assembly without the senate; the words *or either of them,* must have been intended to apply only to the senate. Their wages are already provided for; and it will be therefore readily observed, that the partition between a perpetuation of their sessions and a perpetuation of their offices, in the progress of the government, will be found to be but thin and feeble. Besides, the senate, who have the sole power to try all impeachments, in case of the impeachment of the president, are to determine, as judges, the propriety of the advice they gave him, as senators. Can the senate in this, therefore, be an impartial judicature? And will they not rather serve as a screen to great public defaulters?

2.6.46 Among the many evils that are incorporated in this new system of government, is that of congress having the power of making or altering the regulations prescribed by the different legislatures, respecting the time, place, and manner of holding elections for representatives, and the time, and manner of choosing senators. If it is enquired, in what manner this regulation may be exercised to your injury—the answer is easy.

2.6.47 By the first article the house of representatives shall consist of members, chosen every second year by the people of the several states, who are qualified to vote for members of their several state assemblies; it can therefore readily be believed, that the different state legislatures, provided such can exist after the adoption of this government, will continue those easy and convenient modes for the election of representatives for the national legislature, that are in use, for the election of members of assembly for their own states; but the congress have, by the constitution, a power to make other regulations, or alter those in practice, prescribed by your own state legislatures; hence, instead of having the places of elections in the precincts, and brought home almost to your own doors, Congress may establish a place, or places, at either the extremes, center, or outer parts of the states; at a time and season too, when it may be very inconvenient to attend; and by these means destroy the rights of election; but in opposition to this reasoning, it is asserted, that it is a necessary power because the states might omit making rules for the purpose, and thereby defeat the existence of that branch of the government; this is what logicians call *argumentum absurdum*, for the different states, if they will have any security at all in this government, will find it in the house of representatives, and they, therefore, would not be very ready to eradicate a principle in which it dwells, or involve their country in an instantaneous revolution. Besides, if this was the apprehension of the framers, and the ground of that provision, why did not they extend this controuling power to the other duties of the several state legislatures. To exemplify this the states are to appoint senators, and electors for choosing of a president; but the time is to be under the direction of congress. Now, suppose they were to omit the appointment of senators and electors, though congress was to appoint the time, which might [as] well be apprehended as the omission of regulations for the election of members of the house of representatives, provided they had that power; or suppose they were not to meet at all: of course, the government cannot proceed in its exercise. And from this motive, or apprehension, congress ought to have taken these duties entirely in their own hands, and, by a decisive declaration, annihilated them, which they in fact have done by leaving them without the means of support, or at least resting on their bounty. To this, the advocates for this system oppose the common, empty declamation, that there is no danger that congress will abuse this power; but such language, as relative to so important a subject, is mere vapour, and sound without sense. Is it not in their power, however, to make such regulations as may be inconvenient to you?

It must be admitted, because the words are unlimited in their sense. It is a good rule, in the construction of a contract, to suppose, that what may be done will be; therefore, in considering this subject, you are to suppose, that in the exercise of this government, a regulation of congress will be made, for holding an election for the whole state at Poughkeepsie, at New-York, or, perhaps, at Fort-Stanwix: who will then be the actual electors for the house of representatives? Very few more than those who may live in the vicinity of these places. Could any others afford the expence and time of attending? And would not the government by this means have it in their power to put whom they pleased in the house of representatives? You ought certainly to have as much or more distrust with respect to the exercise of these powers by congress, than congress ought to have with respect to the exercise of those duties which ought to be entrusted to the several states, because over them congress can have a legislative controuling power.

Hitherto we have tied up our rulers in the exercise of their duties by positive restrictions—if the cord has been drawn too tight, loosen it to the necessary extent, but do not entirely unbind them.—I am no enemy to placing a reasonable confidence in them; but such an unbounded one as the advocates and framers of this new system advise you to, would be dangerous to your liberties; it has been the ruin of other governments, and will be yours, if you adopt with all its latitudinal powers—unlimited confidence in governors as well as individuals is frequently the parent of deception [despotism?].—What facilitated the corrupt designs of Philip of Macedon, and caused the ruin of Athens, but the unbounded confidence in their statesmen and rulers? Such improper confidence Demosthenes was so well convinced had ruined his country, that in his second Philippic oration he remarks—"that there is one common bulwark with which men of prudence are naturally provided, the guard and security of all people, particularly of free states, against the assaults of tyrants—What is this? Distrust. Of this be mindful; to this adhere; perserve this carefully, and no calamity can affect you.["][32]—Montesquieu observes, that "the course of government is attended with an insensible descent to evil, and there is no reascending to good without very great efforts."[33] The plain inference from this doctrine is, that rulers in all governments will erect an interest separate from the ruled, which will have a tendency to enslave them. There is therefore no other way of interrupting this insensible descent and warding off the evil as long as possible, than by establishing principles of distrust in your constituents, and cultivating the sentiment among yourselves. But let me enquire of you, my countrymen, whether the freedom and independence of elections is a point of magnitude? If it is, what kind of a spirit of amity, deference and concession, is that which has put in the power of congress at one stroke to prevent your interference in government, and do away your liberties forever? Does either the situation or circumstances of things warrant it?[34] 2.6.48

Cato.

1. The compromise motion to transmit the Constitution to the states was not passed by the Congress until 28 September, the day after this essay appeared.

2. Joseph Addison, *Cato, A Tragedy*, act 3, sc. 1.

3. The essay of Caesar appeared in the New York *Daily Advertiser* 1 October 1787. It was followed by another essay on 17 October 1787, in response to Cato's second essay. The Caesar essays are reprinted in Ford, *Essays* 279–91. See above, 2.6 intro. n. 6.

4. " '*Teach* the members of the Convention (Cato *very modestly* goes on) that you are capable of supervision of their conduct; the same medium that gave you this system, if it is erroneous, while the door is now open, can make amendments *or give you another.*' O excellent thought, and happily advised! Be clamorous, my friends—be discontented—assert your prerogative—forever assert the power and *majesty of the people*. I am not willing to suspect any man's intentions, when they aim at giving information; but when they come abroad, couched in such *majesterial* terms, I own I feel some indignation. If this demogogue had talents to throw on the subject of legislation, why did he not offer them when the Convention was in session? If they had been judged useful, no doubt they would have been attended to. But is this *now a time* for such insinuations? Has not the wisdom of America been drawn, as it were, into a focus, and the proffered constitution sent forth with a unanimity that is unequaled in ancient or modern story? And shall we now wrangle and find fault with the *excellent whole* because perhaps some of its parts *might have been* more perfect? There is neither virtue or patriotism in such conduct. . . . I would also advise [Cato] to give his vote (as he will probably be one with the Electors) to the American Fabius; it will be more healthy for this country, and *this state*, that he should be induced to accept of the small presidency of the new government, than that he should be solicited again to accept of the command of *an army*." Caesar, *Daily Advertiser* 1 October 1787; Ford, *Essays* 284–85. According to one contemporary report, when Washington was about to sign the Constitution, he said, "should the states reject this excellent Constitution, the probability is that an opportunity will never again offer to cancel another in peace—the next will be drawn in blood." A writer in the *Pennsylvania Journal* 14 November 1787, as quoted by Curtis, *Constitutional History* I, 622. See American 4.20.1 n. 1.

5. "I venerate the memory of the slaughtered patriots of America, and rejoice as much as Cato that they did not bleed in vain, but I would have America profit by their death in a different manner from him. I believe they sought to obtain liberty for no particular State, but for the whole Union, indissolubly connected under one controlling and supreme head." Caesar, *Daily Advertiser* 17 October 1787; Ford, *Essays* 290.

6. Cato here renders Caesar's view more accurately than Cooke, who says that the Caesar letters were filled with an open contempt for the authority of the people, which Caesar would certainly and properly have denied. Jacob E. Cooke, "Alexander Hamilton's Authorship of the 'Caesar' Letters," *William and Mary Quarterly* January 1960, 78–85. The point is of some importance since, if Caesar had thrown doubt not only on the *majesty* and the *judgment* but also on the *authority* of the people, the case against Hamilton's authorship would be strengthened.

Caesar replied: "I am not one of those who gain an influence by cajoling the unthinking mass (tho' I pity their delusions), and ringing in their ears the gracious sound of their *absolute Sovereignty*. I despise the trick of such dirty policy. I know there are Citizens, who, to gain their own private ends, enflame the minds of the well-meaning, tho' less intelligent parts of the community, by sating their vanity with that cordial and unfailing specific, that *all power is seated in the people*. For my part, I am not much attached to the *majesty of the multitude*, and therefore waive all pretensions (founded on such conduct), to their countenance. I consider them in general as very ill qualified to judge for themselves what government will best suit their peculiar situations; nor is this to be wondered at. The science of government is not easily understood. Cato will admit, I presume, that men of good education and deep reflection, only, are judges of the *form* of a government. . . . When a new form of government is fabricated, it lies with the people at large to receive or reject it—that is their *inherent rights*. Now, I would ask (without intending to triumph over the

weakness or follies of any men), how are the people to profit by this inherent right? By what conduct do they discover that they are sensible of their own interests in this situation? Is it by the exercise of a well-disciplined reason, and a correspondent education? I believe not. How then? As I humbly conceive, by a tractable and docile disposition, and by honest men endeavouring to keep their minds easy, while others, of the same disposition, with the advantages of genius and learning, are constructing the bark that may, by the blessing of Heaven, carry them to the port of rest and happiness, if they will embark without diffidence and proceed without mutiny. I know this is blunt and ungracious reasoning; it is the best, however, which I am prepared to offer on this momentous business; and since my own heart does not reproach me, I shall not be very solicitous about its reception. If truth, then, is permitted to speak, the mass of the people of America (any more than the mass of other countries) cannot judge with any degree of precision concerning the fitness of this New Constitution to the peculiar situation of America; they have, however, done wisely in delegating the power of framing a government to those every way worthy and well-qualified. . . ." Caesar, *Daily Advertiser* 17 October 1787; Ford, *Essays* 287–89. Cf. Centinel I, 2.7.3, who agrees that the science of government is so abstruse that few can judge for themselves; he urges that all who are capable should come forward to help the people judge, else they will rely implicitly on the character of the members of the Philadelphia Convention.

7. Following this number of the Cato letters the editor of the *New York Journal* printed the Congressional Resolution of 21 February 1787 and the Resolution of the Senate of New York of 6 March 1787, both of which state the convention to be "for the sole and express purpose of revising the articles of confederation, and reporting to Congress, and the several legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the states"—the New York resolution reads, "several states"—"render the foederal constitution adequate to the exigencies of government and the preservation of the union."

8. *The Spirit of Laws* VIII, ch. 16. For other arguments in defense of the small republic, see Yates and Lansing 2.3.7; Martin 2.4.44; Centinel I, 2.7.17–19; Federal Farmer II, 2.8.15–19; Brutus I, 2.9.10–21; Old Whig IV, 3.3.20; Pennsylvania Convention Minority 3.11.16–17; [Pennsylvania] Farmer 3.14.7; Agrippa IV, 4.6.16–17; Columbian Patriot 4.28.4; Mercer 5.5.5–6; Cato Uticensis 5.7.6–9; Henry 5.16.11; Mason, Elliot II, 30 (see also 2.2.2); Monroe 5.21.12–13; Smith 6.12.9; Clinton 6.13.14–18. For Federalist responses, see Agrippa IV, 4.6.16 n. 10.

9. See *Second Treatise on Government* XV, sec. 172.

10. *The Spirit of Laws* XI, ch. 6.

11. Cf. *The Federalist* no. 9, 52–53: "When Montesquieu recommends a small extent for republics, the standards he had in view were of dimensions far short of the limits of almost every one of these States. . . . If we therefore take his ideas on this point as the criterion of truth, we shall be driven to the alternative either of taking refuge at once in the arms of monarchy, or of splitting ourselves into an infinity of little, jealous, clashing, tumultuous commonwealths, the wretched nurseries of unceasing discord and the miserable objects of universal pity or contempt. Some of the writers who have come forward on the other side of the question seem to have been aware of the dilemma; and have even been bold enough to hint at the division of the larger States as a desirable thing. Such an infatuated policy, such a desperate expedient, might, by the multiplication of petty offices, answer the views of men who possess not qualifications to extend their influence beyond the narrow circles of personal intrigue, but it could never promote the greatness or happiness of the people of America." As Cooke points out (p. 612, n. 6) Publius is probably referring to Cato's use of Montesquieu. For other suggestions that the states are too large, see Martin 2.4.44; Centinel I, 2.7.19; also Ellsworth, Farrand I, 406 (25 June); Martin, Farrand II, 4 (14 July).

12. *Second Treatise on Government*, IX, sec. 123.

13. The contrast between the frugal, republican, liberty-loving citizens of the North and the luxurious, aristocratic, slave-holding Southerners was a frequent Anti-Federal argument against consolidation, emphasized by the Northerners of

course (Agrippa XII, 4.6.48; Symmes 4.5.2–4) but repeated also by some Southern Anti-Federalists (Federal Farmer V, 2.8.61).

14. Hamilton uses exactly this argument in the New York convention to show that the Constitution will not undermine the states, because the attachments of the people will be to the states and "wherever the popular attachments lie, there will rest the political superiority." He goes on to say of the states, "If they are really useful, if they are calculated to promote the essential interests of the people, they must have their confidence and support." Elliot II, 354–55. The qualification is critical and becomes the basis for the next step in this part of Hamilton's argument. See Brutus XI, 2.9.130 and n. 87, and above, n. 11.

15. *The Spirit of Laws* II, ch. 3.

16. Ibid. VIII, ch. 16.

17. Cf. Publius' argument for reeligibility of the President, which is directly in point: there is no way of withholding from an ambitious President enough power to ruin his country—if he is not given it, he will seize it. The solution must be sought rather in an arrangement that makes his interest coincide with his duties and that encourages him to gratify, with projects for the public benefit, his higher passions rather than his lower ones. *The Federalist* no. 72; see Federal Farmer XIV, 2.8.178; Cato [South Carolina] 5.10.2.

18. *The Spirit of Laws* III, ch. 5. For other expressions of a concern with the ridicule of virtue see Columbian Patriot 4.28.8; Smith 6.12.9.

19. See An American Citizen (Tench Coxe), who argues, on the contrary, that the differences with England "did not arise so much from objections to the form of government, though undoubtedly a better one by far is now within our reach. . . ." Ford, *Pamphlets* 136ff.

20. Cf. *The Federalist* no. 69, where the presidency is compared with the king of England and the governor of New York. The alleged similarities and differences between the presidency and the British king were of course common themes on both sides. The main references are collected below, Philadelphiensis XII, 3.9.96 n. 37. For a general comparison of the new Constitution and the Constitution of New York, see Sydney 6.9.

21. Sir Edward Coke, *Institutes* II, *proem*. See below, Clinton 6.13.10 n. 5. For other examples of this widespread argument that the Constitution is dangerously vague, see Brutus VI, 2.9.77; Bostonian 4.21.1; Columbian Patriot, 4.28.2; Henry 5.16.2; Denatus 5.18.5. Henry told the Virginia ratifying convention, "A constitution, sir, ought to be like a beacon, held up to the public eye, so as to be understood by every man." Elliot III, 579. For Federalist defenses of the language of the Constitution, see A Landholder, Ford, *Essays* 156; Ames, Elliot II, 155.

22. Richard Hooker, *Of the Laws of Ecclesiastical Policy* I, ch. 10, sec. 5; quoted by Locke, *Second Treatise on Government* VIII, sec. 111. Cf. [Thomas Gordon and John Trenchard], *Cato's Letters, or Essays on Liberty, Civil and Religious, and Other Important Subjects*, 3d ed. (London 1733) II, no. 45 (16 September 1721).

23. See Federal Farmer VIII, 2.8.105 n. 68.

24. See Algernon Sidney, *Discourses Concerning Government* II, sec. 21; Montesquieu, *The Spirit of Laws* II, ch. 3; *Considerations on the Greatness of the Romans and Their Decline* ch. 1. John Williams repeats the argument of this paragraph, often in the same words, in the debate of the New York convention, 21 June 1788, Elliot II, 242.

25. Sidney, *Discourses* II, secs. 23, 28.

26. The Constitution does not of course give the executive any more such power, as Publius shows forcefully in *The Federalist* no. 67, which is largely devoted to an indignant refutation of this "misrepresentation," which Publius cites "as a sample of the general spirit" of criticism of the provision for the Executive.

27. Part of John Williams' speech of 21 June 1788 in the New York ratifying convention is taken directly from this paragraph. Elliot II, 242.

28. See Brutus III, 2.9.42–44; IV, 2.9.46–48.

29. Publius agrees that poll taxes are undesirable and hopes that they will not be introduced. However, "There may exist certain critical and tempestuous conjunctures of the State, in which a poll tax may become an inestimable resource. And

as I know nothing to exempt this portion of the globe from the common calamities that have befallen other parts of it, I acknowledge my aversion to every project that is calculated to disarm the government of a single weapon, which in any possible contingency might be usefully employed for the general defense and security." *The Federalist* no. 36.

30. For other Anti-Federal discussions of the "natural aristocracy" see Federal Farmer VII, 2.8.97 n. 64.

31. Cf. Montesquieu, *The Spirit of Laws* XI, ch. 6; and Hume's essay, "Whether the British Government Inclines More to Absolute Monarchy or to a Republic," *Essays, Moral, Political, and Literary*, ed. T. H. Green and T. H. Grose (London 1882) I. Cato's interpretation of both authors is doubtful.

32. Demosthenes, *Second Philippic Oration* sec. 24.

33. *The Spirit of Laws* V, ch. 7.

34. Cato leaves undiscussed three heads of his list in V, 2.6.35: the provisions of the Constitution regarding standing armies, the militia, and the slave trade.

Letters of Centinel

(PHILADELPHIA) INDEPENDENT GAZETTEER
and
(PHILADELPHIA) FREEMAN'S JOURNAL
October 1787–April 1788

The most prolific and one of the best known of the Anti-Federalist essayists was the Centinel, whose essays appeared in the Philadelphia *Independent Gazetteer* and the Philadelphia *Freeman's Journal* and were widely reprinted, although not in their entirety.[1] The first two numbers were printed in numerous newspapers and also appeared separately as broadsides.[2] The first nine letters were reprinted in an Anti-Federalist collection, issued in New York in 1788.[3]

There are three groups of Centinel essays. The first eighteen numbers, published between 5 October 1787 and 9 April 1788, discuss the principles of the new Constitution and of its advocates. Papers XIX to XXIV, published in October and November 1788, were aimed at influencing the election of representatives to the new Congress, the Constitution having been adopted; they are concerned chiefly with party politics in Pennsylvania, past and present, and with the financial affairs of Robert Morris and his associates. Finally, in the autumn of 1789, there appeared another dozen essays under the heading "Centinel Revived," which deal with the proposed amendments to the federal Constitution and with the state constitution and state political affairs. Only the first group is reprinted here.

The Centinel letters were generally attributed at the time to Judge George Bryan, a prominent Pennsylvania legislator and judge, who was the principal leader of the Anti-Federalists in his state. However, Judge Bryan's son, Samuel, claimed to be the author in several private letters;[4] and it is now generally thought that he was the author, although reflecting the views of and no doubt working in close collaboration with his father.[5]

Centinel does not present systematic arrangement and development of argument, like, say, the letters of The Federal Farmer, or the essays of Cato or Brutus; his essays are rather like a series of partially spontaneous speeches made over a period of time to a shifting and somewhat inattentive audience. Variations on a set of themes rather than a schematic development of themes is Centinel's style. Typically he starts an essay by going over some of the ground of the last one, sometimes moving on to new

matters, sometimes developing themes barely mentioned before, sometimes substantially repeating earlier arguments. Centinel tends to lay his heaviest emphasis on rather shallow statements of certain standard themes—the importance of resisting the influence of great names, the critical position of the press and the attempts by Federalists to stifle it, the various nefarious practices indulged in by the friends of the Constitution, etc. The more significant and substantial arguments typically spin out from these primary themes.

Except for their length and their notoriety, it can hardly be maintained, as Konkle attempts to do, that "these papers at once took rank, on their side, with *The Federalist* papers on the other."[6] There are substantial and important arguments, in addition to information of a historical interest, scattered throughout the papers; but the papers do not, taken as a whole, compare in quality with the best Anti-Federalist writing, to say nothing of *The Federalist*. The first essay is indeed of major importance in the corpus of Anti-Federalist writings; the second essay is important; the fourth, fifth, sixth, and eleventh contain material of interest to the student of Anti-Federalist ideas; the remaining essays will properly be passed over by most nonspecialist readers. There follows a brief description of the content of each essay.

In his first essay, Centinel, after urging the need for dispassionate and deliberate examination, turns to a discussion of John Adams' principle of balanced government. Centinel objects that, first, there is not human wisdom enough to construct such a government; second, it would not last; third, it would not, in any case, answer the purpose of preserving liberty. The correct principle of free government is responsibility of the government to the people where the people are virtuous and property is pretty equally distributed. Thus the best government has a simple structure, short terms of office, rotation, etc. The proposed Constitution is *neither* balanced, as Adams wants, *nor* responsible, as Centinel thinks best. Centinel next turns to the powers of the Congress under the new Constitution, concluding with the warning that it is the opinion of all writers that a very extensive country cannot be governed on democratic principles except by a confederation of a number of smaller republics (2.7.11–19). He then discusses the structure of the new government, concluding that the Senate will be the great efficient body and that the government will be in practice an irresponsible aristocracy. Finally Centinel objects that no provision has been made for the liberty of the press or for jury trial.

Repeating the need for fundamental and free discussion, free of the "splendor of names," Centinel turns in his second essay to a point-by-point refutation of one of the most influential Federalist statements, James Wilson's brief address to the citizens of Philadelphia on 6 October.[7] Centinel argues that the powers of the federal government, particularly in the area of taxation and the judiciary, will destroy the states and endanger the freedom of the press and personal liberty, which are unprotected by a bill of rights.

He argues that no standing army should be permitted in time of peace except with the vote of two-thirds of the legislature, that the Senate will become the nucleus of a permanent aristocracy, that the provisions for amendment are illusory, and that the opposition to the Constitution, far from consisting of interested men, includes the respectable yeomen, a number of the members of the Philadelphia Convention, and the majority of the Congress.

The third essay begins with repetition of earlier arguments about the importance of the decision to be made, the need for fundamental investigation, and the dubious motives of the Federalists. Centinel describes the events leading to the Constitution and its ratification in Pennsylvania, which show an intention to establish a new permanent aristocracy, hidden by the old forms. He goes on to criticize the power given to the Congress to alter state regulations regarding the times, places, and manner of holding elections for the federal congress, for calling forth the militia, and for protecting the slave trade for a period of twenty years—this last being the only significant contribution of this paper (2.7.76). He concludes with an expression of surprise at Quaker support of the Constitution and a reference to Brutus' discussion of the impracticability of maintaining a free government over so extensive a territory.

The fourth essay is more substantial. Here Centinel contends that the present difficulties of the United States are due to the enormous demands of financing the Revolution rather than to intrinsic deficiencies in the Articles of Confederation. Warning against the danger of governing overmuch and thus weakening the people's sense of obligation and duty, so important in free government, Centinel argues that the only amendment necessary is one giving Congress the power to lay an impost on commerce and to regulate trade. He concludes by yet again discoursing on the secrecy with which the Constitution was formulated, the stifling of discussion, the reliance on great names, the exaggeration of present distresses, the attempt to represent the new government as the only alternative, the weight of the opposition, and the need for reconsideration.

The fifth essay is cast in the form of a reply to a remark by James Wilson in the Pennsylvania ratifying convention that a consolidation of the United States would be improper. It is largely a repetition of arguments made in numbers I and II about the extensive powers of the general government under the new Constitution, but Centinel discusses the "necessary and proper" clause for the first time and rebuts Wilson's argument that the Constitution requires the preservation of the states by showing that the states might become mere boards of election and eventually (by means of Congress's ultimate power to provide for elections) be eliminated altogether. This paper contains brief but interesting remarks on dual sovereignty (2.7.99–100) and on the object of government being to check and control the ambitious and designing (2.7.101).

Commenting on the "incredible transition" of a people once full of zest

for liberty now about to sacrifice it, ignoring acknowledged danger in the new Constitution "in order to reap the golden harvest of regulated commerce," Centinel expatiates in his sixth essay on the lust of dominion and the need to guard against it in establishing political systems: "the great end of civil government is to protect the weak from the oppression of the powerful to put every man upon the level of equal liberty. . . ." (2.7.107).

The seventh essay contains nothing of substance. Centinel goes beyond his earlier remarks only in the strength of his denunciation of the Pennsylvania Federalists and in his suggestion that, despite the favorable action of the Pennsylvania convention, the people, aroused by "the enlightened pen of patriotism," will "assert their liberty, if necessary, by the sword" (2.7.116). He ends by calling for a second convention.

The eighth essay contains further reflections on the benefits of freedom, the dangers of the new Constitution, the corrupt character and treasonable activities of the advocates of the Constitution, concealed behind such respected names as Washington. The essay adds little to previous discussions except violence of language and a remark on the character of the merchant who, immersed in his narrow schemes of wealth, is the last to see a threat to public liberty (2.7.126).

Essay IX opens with praise of the Pennsylvania constitution as the triumph of patriotism over ambition, a victory which the well-born few seek to overturn. The Constitution contains a mere pretense of reservations in favor of liberty and is in fact a surrender at will and pleasure to our rulers. The illicit activities of the Federalists are further traced.

The tenth essay describes the success of the press in rousing the people to the dangers of the Constitution and the reaction of James Wilson and the Federalists in establishing a committee to collect funds to increase the stream of Federalist propaganda and to prepare for the use of force if necessary.

In his eleventh essay Centinel returns to more systematic argument. There are three arguments chiefly relied upon by the advocates of the Constitution: (1) the distresses of the community, (2) the evils of anarchy, (3) and the horrible consequences of the dissolution of the Union. The first having been treated in previous papers, Centinel here discusses the second and third, arguing that even anarchy is preferable to certain despotism because good government may grow out of it, that in any case anarchy is more likely if the Constitution is adopted than if it is not, that the event of separate confederacies is improbable—is in fact a hobgoblin sprung from the brain of the author of *The Federalist*—and that, even admitting that disunion would be the result of rejection of the Constitution, occasional wars are preferable to despotism. Centinel closes with a complaint about the Post Office suppression of the circulation of newspapers from state to state.

In the twelfth essay Centinel defends his contention that the activities of the proponents of the Constitution constitute a conspiracy, by exposing

their sensitiveness to the charge, their reliance on the authority of names, their precipitation in such places as Massachusetts, and their attempt to shackle the press, particularly in Pennsylvania.

The thirteenth essay contains further denunciations of the activity of the "conspirators," ending with a call for the establishment of local societies by and communication among the "patriots" to "frustrate the machinations of an ambitious junto" (2.7.160).

In his fourteenth essay *Centinel* presents extensive extracts from Luther Martin's Genuine Information to prove that the new Constitution does not and was not intended to establish a federal government but provides instead for a consolidation. He ends with further discussion of the suppression of the circulation of Anti-Federalist newspapers.

Returning to the theme of the first essay, Centinel observes in his fifteenth paper that, the science of government being most difficult and abstruse, men are likely to be imposed on by the artful and designing, particularly at times like the present, when the healthy distrust of innovation has been lost. The bulk of the paper is devoted to a consideration of the Massachusetts ratification, showing that circumstances in Massachusetts led many men of property to join the Federalist conspiracy, that the elections were held in the heat of enthusiasm, and that few able Anti-Federalists were elected, and that even so, the Constitution was ratified by a bare majority and with qualifying amendments.

In his sixteenth essay Centinel argues that the ex post facto provision precludes the new Congress from taking measures to compel public defaulters to render an account. If Congress should desire nevertheless to secure the money for the government, the members would be precluded by their oath to support the Constitution; and if they proceeded nevertheless, they would be restrained by the Supreme Court, which (Centinel argues here) will have the power to construe the Constitution in last resort. The failure to secure the old debts due to the United States would also be unjust to certain states, like Pennsylvania, which had made unusual exertions to meet their obligations, and would give unfair advantage to the delinquent states.

Centinel devotes the first part of his seventeenth essay to a continuation of his argument that the Constitution was intended to screen public defaulters, discussing particularly the financial affairs of Robert Morris and of General Thomas Mifflin, the quartermaster general. He alludes again to the Post Office "suppression" of "patriotic" newspapers and concludes with a defense of Anti-Federalist writer, Benjamin Workman, against the attack of Francis Hopkinson.

The eighteenth and last essay contains further discussion of the insidious measures taken to promote the establishment of the Constitution, particularly the propagation of false information of unanimous Federalist sentiment

in various parts of the country and the muzzling of the press. The strength of Anti-Federalist sentiment in Pennsylvania is described. The Centinel retains his anonymity in order to avoid mere personal attacks, which would deflect attention from the proper object.

1. With the exception of the second essay, the essays appeared first in the *Independent Gazetteer*. Most but not all were printed shortly thereafter in the *Freeman's Journal*.

2. It was these broadsides, presumably, that were distributed by the New York Federal Republican Committee. See Main, *Antifederalists* 235.

3. *Observations on the Proposed Constitution for the United States of America, Clearly Shewing It To Be a Complete System of Aristocracy and Tyranny and Destructive of the Rights and Liberties of the People* (New York 1788. Contains, in addition to the Centinel essays, the Address and Reasons of Dissent of the Minority of the Pennsylvania Convention [below, 3.11], Edmund Randolph's letter of 10 October 1787 to the Speaker of the Virginia House of Delegates [above, 2.5] and the proposed Constitution).

4. According to McMaster and Stone, whose source is a private communication from the historian Paul Leicester Ford, Samuel Bryan wrote to George Clinton, saying, "I have not the honor of being personally known to your Excellency, but . . . I flatter myself that in the character of Centinel I have been honored with your approbation and esteem." McMaster and Stone 6–7n. Burton Konkle's version of the letter is significantly different: ". . . I flatter myself that in the character of Centinel I, I have been honored with your approbation and esteem." Burton Alva Konkle, *George Bryan and the Constitution of Pennsylvania, 1731–1791* (Philadelphia 1922) 309. The correct version is probably McMaster and Stone's, which Konkle seems to have misread. The original letter has been lost. Samuel Bryan also claimed authorship of Centinel in letters to Thomas Jefferson, 27 February 1801 and 24 July 1807, and to Albert Gallatin, 18 December 1790. Files of Ratification of the Constitution Project, National Archives. See Pennsylvania Convention Minority 3.11.2 n. 2.

5. McMaster and Stone 6–7. A contemporary critic referred to "the author (I should have said authors) of illiberal and scandalous performance. . . ." A Federalist, *Independent Gazetteer* 25 October 1787, McMaster and Stone 166.

Konkle reflects all the uncertainties involved. First he contends that "there can be as little doubt that Samuel Bryan was the author of them all, as that they expressed in fullness and accuracy the sentiments and convictions of Justice Bryan." *George Bryan* 309. Or perhaps the father wrote them: "No one familiar with Justice Bryan's writing but can see the Bryanesque ear-marks in both style and verbal expression in this paper [I], as well as the rest." Ibid. 310–11; cf. 320. The father must have written one of them: "There is a wealth of legal knowledge in this paper [II] that sounds very much like Justice Bryan, rather than the son, so that one is inclined to feel that, even though the son wrote 'No. I,' the father must have written 'No. II.' " Ibid. 313.

6. Ibid. 309.

7. See below, 2.7.35 n. 14. Konkle suggests, "It would seem as though Mr. Wilson's speech of the 6th had *Centinel*'s paper of the 5th in contemplation, as *Centinel No. II* did his of the 6th of October." Ibid. p. 313. But the supposition is unlikely. Wilson would barely have had time to read the first number of Centinel and formulate his reply, and according to his biographer, Wilson spent much time and thought in preparing the address. Charles Page Smith, *James Wilson, Founding Father, 1742–1798* (Chapel Hill 1956) 264–65. Moreover, Wilson does not reply to the most interesting part of Centinel's argument, that dealing with responsibility, and he does not follow Centinel's more detailed argument. It is more likely that Wilson was replying to arguments made in the legislature, at the early sessions of the state ratifying convention, and particularly by the sixteen seceders from the Pennsylvania Assembly. See below, 3.2.

I

MR. OSWALD,

As the Independent Gazetteer seems free for the discussion of all public matters, I expect you will give the following a place in your next.

To the Freemen of Pennsylvania.

Friends, Countrymen and Fellow Citizens,

2.7.1 Permit one of yourselves to put you in mind of certain *liberties* and *privileges* secured to you by the constitution of this commonwealth, and to beg your serious attention to his uninterested opinion upon the plan of federal government submitted to your consideration, before you surrender these great and valuable privileges up forever. Your present frame of government, secures to you a right to hold yourselves, houses, papers and possessions free from search and seizure, and therefore warrants granted without oaths or affirmations first made, affording sufficient foundation for them, whereby any officer or messenger may be commanded or required to search your houses or seize your persons or property, not particularly described in such warrant, shall not be granted. Your constitution further provides "that in controversies respecting property, and in suits between man and man, the parties have a right *to trial by jury, which ought to be held sacred.*" It also provides and declares, "*that the people have a right of* FREEDOM OF SPEECH, *and of* WRITING *and* PUBLISHING *their sentiments, therefore* THE FREEDOM OF THE PRESS OUGHT NOT TO BE RESTRAINED."[1] The constitution of Pennsylvania is *yet* in existence, *as yet* you have the right to *freedom of speech*, and of *publishing your sentiments*. How long those rights will appertain to you, you yourselves are called upon to say, whether your *houses* shall continue to be your *castles;* whether your *papers*, your *persons* and your *property*, are to be held sacred and free from *general warrants*, you are now to determine. Whether the *trial by jury* is to continue as your birth-right, the freemen of Pennsylvania, nay, of all America, are now called upon to declare.

2.7.2 Without presuming upon my own judgement, I cannot think it an unwarrantable presumption to offer my private opinion, and call upon others for their's; and if I use my pen with the boldness of a freeman, it is because I know that *the liberty of the press yet remains unviolated,* and *juries yet are judges.*

2.7.3 The late Convention have submitted to your consideration a plan of a new federal government—The subject is highly interesting to your future welfare—Whether it be calculated to promote the great ends of civil society, *viz.* the happiness and prosperity of the community; it behoves you well to consider, uninfluenced by the authority of names. Instead of that frenzy of

enthusiasm, that has actuated the citizens of Philadelphia, in their approbation of the proposed plan, before it was possible that it could be the result of a rational investigation into its principles; it ought to be dispassionately and deliberately examined, and its own intrinsic merit the only criterion of your patronage. If ever free and unbiassed discussion was proper or necessary, it is on such an occasion.—All the blessings of liberty and the dearest privileges of freemen, are now at stake and dependent on your present conduct. Those who are competent to the task of developing the principles of government, ought to be encouraged to come forward, and thereby the better enable the people to make a proper judgment; for the science of government is so abstruse, that few are able to judge for themselves; without such assistance the people are too apt to yield an implicit assent to the opinions of those characters, whose abilities are held in the highest esteem, and to those in whose integrity and patriotism they can confide; not considering that the love of domination is generally in proportion to talents, abilities, and superior acquirements; and that the men of the greatest purity of intention may be made instruments of despotism in the hands of the *artful and designing*. If it were not for the stability and attachment which time and habit gives to forms of government, it would be in the power of the enlightened and aspiring few, if they should combine, at any time to destroy the best establishments, and even make the people the instruments of their own subjugation.

The late revolution having effaced in a great measure all former habits, and the present institutions are so recent, that there exists not that great reluctance to innovation, so remarkable in old communities, and which accords with reason, for the most comprehensive mind cannot foresee the full operation of material changes on civil polity; it is the genius of the common law to resist innovation. 2.7.4

The wealthy and ambitious, who in every community think they have a right to lord it over their fellow creatures, have availed themselves, very successfully, of this favorable disposition; for the people thus unsettled in their sentiments, have been prepared to accede to any extreme of government; all the distresses and difficulties they experience, proceeding from various causes, have been ascribed to the impotency of the present confederation, and thence they have been led to expect full relief from the adoption of the proposed system of government; and in the other event, immediately ruin and annihilation as a nation. These characters flatter themselves that they have lulled all distrust and jealousy of their new plan, by gaining the concurrence of the two men in whom America has the highest confidence, and now triumphantly exult in the completion of their long meditated schemes of power and aggrandisement. I would be very far from insinuating that the two illustrious personages alluded to, have not the welfare of their country at heart; but that the unsuspecting goodness and zeal of the one, has been imposed on, in a subject of which he must be necessarily 2.7.5

inexperienced, from his other arduous engagements; and that the weakness and indecision attendant on old age, has been practised on in the other.[2]

2.7.6 I am fearful that the principles of government inculcated in Mr. Adams's treatise,[3] and enforced in the numerous essays and paragraphs in the newspapers, have misled some well designing members of the late Convention.—But it will appear in the sequel, that the construction of the proposed plan of government is infinitely more extravagant.

2.7.7 I have been anxiously expecting that some enlightened patriot would, ere this, have taken up the pen to expose the futility, and counteract the baneful tendency of such principles. Mr. Adams's *sine qua non* of a good government is three balancing powers, whose repelling qualities are to produce an equilibrium of interests, and thereby promote the happiness of the whole community. He asserts that the administrators of every government, will ever be actuated by views of private interest and ambition, to the prejudice of the public good; that therefore the only effectual method to secure the rights of the people and promote their welfare, is to create an opposition of interests betweeen the members of two distinct bodies, in the exercise of the powers of government, and balanced by those of a third.[4] This hypothesis supposes human wisdom competent to the task of instituting three co-equal orders in government, and a corresponding weight in the community to enable them respectively to exercise their several parts, and whose views and interests should be so distinct as to prevent a coalition of any two of them for the destruction of the third. Mr. Adams, although he has traced the constitution of every form of government that ever existed, as far as history affords materials, has not been able to adduce a single instance of such a government; he indeed says that the British constitution is such in theory, but this is rather a confirmation that his principles are chimerical and not to be reduced to practice. If such an organization of power were practicable, how long would it continue? not a day—for there is so great a disparity in the talents, wisdom and industry of mankind, that the scale would presently preponderate to one or the other body, and with every accession of power the means of further increase would be greatly extended. The state of society in England is much more favorable to such a scheme of government than that of America. There they have a powerful hereditary nobility, and real distinctions of rank and interests; but even there, for want of that perfect equallity of power and distinction of interests, in the three orders of government, they exist but in name; the only operative and efficient check, upon the conduct of administration, is the sense of the people at large.

2.7.8 Suppose a government could be formed and supported on such principles, would it answer the great purposes of civil society; if the administrators of every government are actuated by views of private interest and ambition, how is the welfare and happiness of the community to be the result of such jarring adverse interests?

2.7.9 Therefore, as different orders in government will not produce the good of

the whole, we must recur to other principles. I believe it will be found that the form of government, which holds those entrusted with power, in the greatest responsibility to their constitutents, the best calculated for freemen.[5] A republican, or free government, can only exist where the body of the people are virtuous, and where property is pretty equally divided[;] in such a government the people are the sovereign and their sense or opinion is the criterion of every public measure; for when this ceases to be the case, the nature of the government is changed, and an aristocracy, monarchy or despotism will rise on its ruin. The highest responsibility is to be attained, in a simple structure of government, for the great body of the people never steadily attend to the operations of government, and for want of due information are liable to be imposed on—If you complicate the plan by various orders, the people will be perplexed and divided in their sentiments about the source of abuses or misconduct, some will impute it to the senate, others to the house of representatives, and so on, that the interposition of the people may be rendered imperfect or perhaps wholly abortive. But if, imitating the constitution of Pennsylvania, you vest all the legislative power in one body of men (separating the executive and judicial) elected for a short period, and necessarily excluded by rotation from permanency, and guarded from precipitancy and surprise by delays imposed on its proceedings, you will create the most perfect responsibility for then, whenever the people feel a grievance they cannot mistake the authors, and will apply the remedy with certainty and effect, discarding them at the next election. This tie of responsibility will obviate all the dangers apprehended from a single legislature, and will the best secure the rights of the people.

Having premised this much, I shall now proceed to the examination of the proposed plan of government, and I trust, shall make it appear to the meanest capacity, that it has none of the essential requisites of a free government; that it is neither founded on those balancing restraining powers, recommended by Mr. Adams and attempted in the British constitution, or possessed of that responsibility to its constituents, which, in my opinion, is the only effectual security for the liberties and happiness of the people; but on the contrary, that it is a most daring attempt to establish a despotic aristocracy among freemen, that the world has ever witnessed. 2.7.10

I shall previously consider the extent of the powers intended to be vested in Congress, before I examine the construction of the general government. 2.7.11

It will not be controverted that the legislative is the highest delegated power in government, and that all others are subordinate to it. The celebrated *Montesquieu* establishes it as a maxim, that legislation necessarily follows the power of taxation.[6] By sect. 8, of the first article of the proposed plan of government, "the Congress are to have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and *general welfare* of the United States; but all duties, imposts and excises, shall be uniform throughout the United States." Now

what can be more comprehensive than these words; not content by other sections of this plan, to grant all the great executive powers of a confederation, and a STANDING ARMY IN TIME OF PEACE, that grand engine of oppression, and moreover the absolute controul over the commerce of the United States and all external objects of revenue, such as unlimited imposts upon imports, etc.—they are to be vested with every species of *internal* taxation; —whatever taxes, duties and excises that they may deem requisite for the *general welfare*, may be imposed on the citizens of these states, levied by the officers of Congress, distributed through every district in America; and the collection would be enforced by the standing army, however grievous or improper they may be. The Congress may construe every purpose for which the state legislatures now lay taxes, to be for the *general welfare*, and thereby seize upon every object of revenue.

2.7.12 The judicial power by 1st sect. of article 3 ["]shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admirality and maritime jurisdiction, to controversies to which the United States shall be a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects."

2.7.13 The judicial power to be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish.

2.7.14 The objects of jurisdiction recited above, are so numerous, and the shades of distinction between civil causes are oftentimes so slight, that it is more than probable that the state judicatories would be wholly superceded; for in contests about jurisdiction, the federal court, as the most powerful, would ever prevail. Every person acquainted with the history of the courts in England, knows by what ingenious sophisms they have, at different periods, extended the sphere of their jurisdiction over objects out of the line of their institution, and contrary to their very nature; courts of a criminal jurisdiction obtaining cognizance in civil causes.

2.7.15 To put the omnipotency of Congress over the state government and judicatories out of all doubt, the 6th article ordains that "this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the *supreme law of the land*, and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

2.7.16 By these sections the all-prevailing power of taxation, and such extensive legislative and judicial powers are vested in the general government, as must in their operation, necessarily absorb the state legislatures and judicatories; and that such was in the contemplation of the framers of it, will appear from

the provision made for such event, in another part of it; (but that, fearful of alarming the people by so great an innovation, they have suffered the forms of the separate governments to remain, as a blind.) By sect. 4th of the 1st article, "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time, by law, make or alter such regulations, except as to the place of chusing senators.*" The plain construction of which is, that when the state legislatures drop out of sight, from the necessary operation of this government, then Congress are to provide for the election and appointment of representatives and senators.

2.7.17 If the foregoing be a just comment—if the United States are to be melted down into one empire, it becomes you to consider, whether such a government, however constructed, would be eligible in so extended a territory; and whether it would be practicable, consistent with freedom? It is the opinion of the greatest writers, that a very extensive country cannot be governed on democratical principles, on any other plan, than a confederation of a number of small republics, possessing all the powers of internal government, but united in the management of their foreign and general concerns.

2.7.18 It would not be difficult to prove, that any thing short of despotism, could not bind so great a country under one government; and that whatever plan you might, at the first setting out, establish, it would issue in a depotism.

2.7.19 If one general government could be instituted and maintained on principles of freedom, it would not be so competent to attend to the various local concerns and wants, of every particular district[,] as well as the peculiar governments, who are nearer the scene, and possessed of superior means of information[;] besides, if the business of the *whole* union is to be managed by one government, there would not be time. Do we not already see, that the inhabitants in a number of larger states, who are remote from the seat of government, are loudly complaining of the inconveniencies and disadvantages they are subjected to on this account, and that, to enjoy the comforts of local government, they are separating into smaller divisions.[7]

2.7.20 Having taken a review of the powers, I shall now examine the construction of the proposed general government.

Art. 1. sect. 1. "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a senate and house of representatives." By another section, the president (the principal executive officer) has a conditional controul over their proceedings.

Sect. 2. "The house of representatives shall be composed of members chosen every second year, by the people of the several states. The number of representatives shall not exceed one for every 30,000 inhabitants."

The senate, the other constituent branch of the legislature, is formed by the legislature of each state appointing two senators, for the term of six years.

2.7.21 The executive power by Art. 2, sec. 1. is to be vested in a president of the United States of America, elected for four years: Sec. 2. gives him "power,

by and with the consent of the senate to make treaties, provided two thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law, etc. And by another section he has the absolute power of granting reprieves and pardons for treason and all other high crimes and misdemeanors, except in case of impeachment.

The foregoing are the outlines of the plan.

2.7.22 Thus we see, the house of representatives, are on the part of the people to balance the senate, who I suppose will be composed of the *better sort*, the *well born*, etc. The number of the representatives (being only one for every 30,000 inhabitants) appears to be too few, either to communicate the requisite information, of the wants, local circumstances and sentiments of so extensive an empire, or to prevent corruption and undue influence, in the exercise of such great powers; the term for which they are to be chosen, too long to preserve a due dependence and accountability to their constituents; and the mode and places of their election not sufficiently ascertained, for as Congress have the controul over both, they may govern the choice, by ordering the *representatives* of a *whole* state, to be *elected* in *one* place, and that too may be the most *inconvenient*.

2.7.23 The senate, the great efficient body in this plan of government, is constituted on the most unequal principles. The smallest state in the union has equal weight with the great states of Virginia, Massachusetts, or Pennsylvania—The Senate, besides its legislative functions, has a very considerable share in the Executive; none of the principal appointments to office can be made without its advice and consent. The term and mode of its appointment, will lead to permanency; the members are chosen for six years, the mode is under the controul of Congress, and as there is no exclusion by rotation, they may be continued for life, which, from their extensive means of influence, would follow of course. The President, who would be a mere pageant of state, unless he coincides with the views of the Senate, would either become the head of the aristocratic junto in that body, or its minion; besides, their influence being the most predominant, could the best secure his re-election to office. And from his power of granting pardons, he might skreen from punishment the most treasonable attempts on the liberties of the people, when instigated by the Senate.

2.7.24 From this investigation into the organization of this government, it appears that it is devoid of all responsibility or accountability to the great body of the people, and that so far from being a regular balanced government, it would be in practice a *permanent* ARISTOCRACY.

2.7.25 The framers of it[,] actuated by the true spirit of such a government, which ever abominates and suppresses all free enquiry and discussion, have made no provision for the *liberty of the press*, that grand *palladium of freedom*, and *scourge of tyrants;* but observed a total silence on that head. It

is the opinion of some great writers, that if the liberty of the press, by an institution of religion, or otherwise, could be rendered *sacred,* even in *Turkey,* that despotism would fly before it.[8] And it is worthy of remark, that there is no declaration of personal rights, premised in most free constitutions; and that trial by *jury* in *civil* cases is taken away; for what other construction can be put on the following, viz. Article III. Sect. 2d. "In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have *original* jurisdiction. In all the other cases above mentioned, the Supreme Court shall have *appellate* jurisdiction, both as to *law and fact?*" It would be a novelty in jurisprudence, as well as evidently improper to allow an appeal from the verdict of a jury, on the matter of fact; therefore, it implies and allows of a dismission of the jury in civil cases, and especially when it is considered, that jury trial in criminal cases is expresly stipulated for, but not in civil cases.

But our situation is represented to be so *critically* dreadful, that, however 2.7.26
reprehensible and exceptionable the proposed plan of government may be, there is no alternative, between the adoption of it and absolute ruin.—My fellow citizens, things are not at that crisis, it is the argument of tyrants; the present distracted state of Europe secures us from injury on that quarter, and as to domestic dissentions, we have not so much to fear from them, as to precipitate us into this form of government, without it is a safe and a proper one. For remember, of all *possible* evils, that of *despotism* is the *worst* and the most to be *dreaded.*

Besides, it cannot be supposed, that the first essay on so difficult a sub- 2.7.27
ject, is so well digested, as it ought to be,—if the proposed plan, after a mature deliberation, should meet the approbation of the respective States, the matter will end; but if it should be found to be fraught with dangers and inconveniencies, a future general Convention being in possession of the objections, will be the better enabled to plan a suitable government.

Who's here so base, that would a bondman be?
If any, speak; for him have I offended.
Who's here so vile, that will not love his country?
If any, speak; for him have I offended.[9]

Centinel.

II[10]

To the People of Pennsylvania.

Friends, Countrymen, and Fellow-Citizens, 2.7.28

As long as the liberty of the press continues unviolated, and the people have the right of expressing and publishing their sentiments upon every

public measure, it is next to impossible to enslave a free nation. The state of society must be very corrupt and base indeed, when the people in possession of such a monitor as the press, can be induced to exchange the heaven-born blessings of liberty for the galling chains of despotism.—Men of an aspiring and tyrannical disposition, sensible of this truth, have ever been inimical to the press, and have considered the shackling of it, as the first step towards the accomplishment of their hateful domination, and the entire suppression of all liberty of public discussion, as necessary to its support.—For even a standing army, that grand engine of oppression, if it were as numerous as the abilities of any nation could maintain, would not be equal to the purposes of despotism over an enlightened people.

2.7.29 The abolition of that grand palladium of freedom, the liberty of the press, in the proposed plan of government, and the conduct of its authors, and patrons, is a striking exemplification of these observations. The reason assigned for the omission of a *bill of rights*, securing the *liberty of the press*, and *other invaluable personal rights*, is an insult on the understanding of the people.

2.7.30 The injunction of secrecy imposed on the members of the late Convention during their deliberations, was obviously dictated by the genius of Aristocracy; it was deemed impolitic to unfold the principles of the intended government to the people, as this would have frustrated the object in view.

2.7.31 The projectors of the new plan, supposed that an ex parte discussion of the subject, was more likely to obtain unanimity in the Convention; which would give it such a sanction in the public opinion, as to banish all distrust, and lead the people into an implicit adoption of it without examination.

2.7.32 The greatest minds are forcibly impressed by the immediate circumstances with which they are connected; the particular sphere men move in, the prevailing sentiments of those they converse with, have an insensible and irresistible influence on the wisest and best of mankind; so that when we consider the abilities, talents, ingenuity and consummate address of a number of the members of the late Convention, whose principles are despotic, can we be surprised that men of the best intentions have been misled in the difficult science of government? Is it derogating from the character of the *illustrious and highly revered* WASHINGTON, to suppose him fallible on a subject that must be in a great measure novel to him?—As a patriotic hero, he stands unequalled in the annals of time.

2.7.33 The new plan was accordingly ushered to the public with such a splendor of names, as inspired the most unlimited confidence; the people were disposed to receive upon trust, without any examination on their part, what would have proved either a *blessing* or a *curse* to them and their posterity.—What astonishing infatuation! to stake their happiness on the wisdom and integrity of any set of men! In matters of infinitely smaller concern, the dictates of prudence are not disregarded! The celebrated *Montesquieu*, in his Spirit of Laws, says, that "slavery is ever preceded by sleep."[11] And

again, in his account of the rise and fall of the Roman Empire, page 97, "That it may be advanced as a general rule, that in a free State, whenever a perfect calm is visible, the spirit of liberty no longer subsists."[12] And Mr. *Dickinson,* in his Farmer's Letters, No. XI. lays it down as a maxim, that "A perpetual jealousy respecting liberty is absolutely requisite in all free States."

"Happy are the men, and happy the people, who grow wise by the misfortunes of others. Earnestly, my dear countrymen, do I beseech the author of all good gifts, that you may grow wise in this manner, and I beg leave to recommend to you in general, as the best method of obtaining this wisdom, diligently to study the histories of other countries. You will there find all the arts, that can possibly be practised by cunning rulers, or false patriots among yourselves, so fully delineated, that changing names, the account would serve for your own times."[13]

A *few* citizens of Philadelphia (too few, for the honour of human nature) 2.7.34
who had the wisdom to think *consideration* ought to precede *approbation,* and the fortitude to avow that they would take time to judge for themselves on so momentous an occasion, were stigmatized as enemies to their country; as monsters, whose existence ought not to be suffered, and the destruction of them and their houses recommended, as meritorious.—The authors of the new plan, conscious that it would not stand the test of enlightened patriotism, tyrannically endeavoured to preclude all investigation.—If their views were laudable[,] if they were honest,—the contrary would have been their conduct, they would have invited the freest discussion. Whatever specious reasons may be assigned for secrecy during the framing of the plan, no good one can exist, for leading the people blindfolded into the implicit adoption of it. Such an attempt does not augur the public good—It carries on the face of it an intention to juggle the people out of their liberties.

The virtuous and spirited exertions of a few patriots, have at length 2.7.35
roused the people from their fatal infatuation to a due sense of the importance of the measure before them. The glare and fascination of names is rapidly abating, and the subject begins to be canvassed on its own merits; and so serious and general has been the impression of the objections urged against the new plan, on the minds of the people, that its advocates, finding mere declamation and scurrility will no longer avail, are reluctantly driven to defend it on the ground of argument. Mr. *Wilson,* one of the deputies of this State in the late Convention, has found it necessary to come forward.[14] From so able a lawyer, and so profound a politician, what might not be expected, if this act of Convention be the heavenly dispensation which some represent it. Its divinity would certainly be illustrated by one of the principal instruments of the Revelation; for this gentleman has that transcendent merit!—But if, on the other hand, this able advocate has failed to vindicate it from the objections of its adversaries, must we not consider it as the production of *frail* and *interested* men.

2.7.36 Mr. *Wilson* has recourse to the most flimsey sophistry in his attempt to refute the charge that the new plan of general government will supersede and render powerless the state governments. His quibble upon the term *Corporation*, as sometimes equivalent to communities which possess sovereignty, is unworthy of him.[15] The same comparison in the case of the British parliament assuming to tax the colonies, is made in the Xth of the Farmer's Letters, and was not misunderstood in 1768 by any. He says that the existence of the proposed federal plan depends on the existence of the State governments, as the senators are to be appointed by the several legislatures, who are also to nominate the electors who chuse the President of the United States; and that hence all fears of the several States being melted down into one empire, are groundless and imaginary.[16]—But who is so dull as not to comprehend, that the *semblance* and *forms* of an ancient establishment, may remain, after the *reality* is gone.—*Augustus*, by the aid of a great army, assumed despotic power, and notwithstanding this, we find even under Tiberius, Caligula and Nero, princes who disgraced human nature by their excesses, the shadows of the ancient constitution held up to amuse the people. The senate sat as formerly; consuls, tribunes of the people, censors and other officers were annually chosen as before, and the forms of republican government continued. Yet all this was in *appearance* only.—Every *senatus consultum* was dictated by him or his ministers, and every Roman found himself constrained to submit in all things to the despot.

2.7.37 Mr. *Wilson* asks, "What controul can proceed from the federal government to shackle or destroy that *sacred palladium* of national freedom, the *liberty of the press?*"[17] What!—Cannot Congress, when possessed of the immense authority proposed to be devolved, restrain the printers, and put them under regulation.—Recollect that the omnipotence of the federal legislature over the State establishments is recognized by a special article, viz.—"that this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law* of the land; and the judges in every State shall be bound thereby, any thing in the *Constitutions* or laws of any State to the contrary notwithstanding."—After such a declaration, what security does the *Constitutions* of the several States afford for the *liberty of the press and other invaluable personal rights*, not provided for by the new plan?—Does not this sweeping clause subject every thing to the controul of Congress?

2.7.38 In the plan of Confederation of 1778,[18] now existing, it was thought proper by Article the 2d, to declare that "each State retains its sovereignty, freedom and independence[,] and every power, jurisdiction and right, which is not by this Confederation expressly delegated to the United States in Congress assembled." *Positive* grant was not *then* thought sufficiently descriptive and restraining upon Congress, and the omission of such a declaration *now*, when such great devolutions of power are proposed, manifests

the design of reducing the several States to shadows. But Mr. Wilson tells you, that every right and power not specially granted to Congress is considered as withheld.[19] How does this appear? Is this principle established by the proper authority? Has the Convention made such a stipulation? By no means. Quite the reverse; the *laws* of Congress are to be "the *supreme law* of the land, any thing in the *Constitutions* or laws of any State to the contrary notwithstanding;" and consequently, would be *paramount* to all *State* authorities. The lust of power is so universal, that a speculative unascertained rule of construction would be a *poor* security for the liberties of the people.

Such a body as the intended Congress, unless particularly inhibited and restrained, must grasp at omnipotence, and before long swallow up the Legislative, the Executive, and the Judicial powers of the several States. 2.7.39

In addition to the respectable authorities quoted in my first number, to shew that the right of *taxation* includes all the powers of government, I beg leave to adduce the Farmer's Letters, see particularly letter 9th, in which Mr. Dickinson has clearly proved, that if the British Parliament assumed the power of taxing the colonies, *internally*, as well as *externally*, and it should be submitted to, the several colony legislatures would soon become contemptible, and before long fall into disuse.—Nothing, says he, would be left for them to do, higher than to frame bye-laws for empounding of cattle or the yoking of hogs. 2.7.40

By the proposed plan, there are divers cases of judicial authority to be given to the courts of the United States, besides the two mentioned by Mr. *Wilson*.[20]—In maritime causes about property, jury trial has not been usual; but in suits in *equity*, with all due deference to Mr. *Wilson's* professional abilities, (which he calls to his aid) jury trial, as to facts, is in full exercise. Will this jurisperitus say that if the question in equity should be, did *John Doe* make a will, that the chancellor of England would decide upon it? He well knows that in this case, there being no mode of jury trial before the chancellor, the question would be referred to the court of king's bench for discussion [decision?] according to the common law, and when the judge in equity should receive the *verdict*, the fact so established, could never be re-examined or controverted. Maritime causes and those appertaining to a court of equity, are, however, but *two* of the many and extensive subjects of federal cognizance mentioned in the plan. This jurisdiction will embrace all suits arising under the laws of impost, excise and other revenue of the United States. In England if goods be seized, if a ship be prosecuted for non-compliance with, or breach of the laws of the customs, or those for regulating trade, in the court of exchequer, the claimant is secured of the transcendent privilege of Englishmen, *trial by a jury of his peers*. Why not in the United States of America? This jurisdiction also goes to all cases under the laws of the United States, that is to say, under all statutes and ordinances of Congress. How far this may extend, it is easy to forsee; for upon 2.7.41

the decay of the state powers of legislation, in consequence of the loss of the *purse strings*, it will be found necessary for the federal legislature to make laws upon every subject of legislation. Hence the state courts of justice, like the barony and hundred courts of England, will be eclipsed and gradually fall into disuse.

2.7.42 The jurisdiction of the federal court goes, likewise, to the laws to be created by treaties, made by the President and Senate, (a species of legislation) with other nations; "to all cases affecting foreign ministers and consuls; to controversies wherein the United States shall be a party; to controversies between citizens of different states," as when an inhabitant of *New-York* has a demand on an inhabitant of *New-Jersey*.—This last is a very invidious jurisdiction, implying an improper distrust of the impartiality and justice of the tribunals of the states. It will include all legal debates between foreigners in Britain, or elsewhere, and the people of this country.—A reason hath been assigned for it, viz. "That large tracts of land, in neighbouring states, are claimed under royal or other grants, disputed by the states where the lands lie, so that justice cannot be expected from the state tribunals."[21]—Suppose it were proper indeed to provide for such case, why include all cases, and for all time to come? Demands as to land for 21 years would have satisfied this. A London merchant shall come to America, and sue for his supposed debt, and the citizen of this country shall be deprived of jury trial, and subjected to an appeal (tho' nothing but the *fact* is disputed) to a court 500 or 1000 miles from home; when if this American has a claim upon an inhabitant of England, his adversary is secured of the privilege of jury trial.—This jurisdiction goes also to controversies between any state and its citizens; which, though probably not intended, may hereafter be set up as a ground to divest the states, severally, of the trial of criminals; inasmuch as every charge of felony or misdemeanour, is a controversy between the state and a citizen of the same: that is to say, the state is plaintiff and the party accused is defendant in the prosecution.[22] In all doubts about jurisprudence, as was observed before, the paramount courts of Congress will decide, and the judges of the state, being *sub graviore lege*, under the paramount law, must acquiesce.

2.7.43 Mr. *Wilson* says, that it would have been impracticable to have made a general rule for jury trial in the civil cases assigned to the federal judiciary, because of the want of uniformity in the mode of jury trial, as practised by the several states.[23] This objection proves too much, and therefore amounts to nothing. If it precludes the mode of common law in civil cases, it certainly does in criminal. Yet in these we are told "the oppression of government is effectually barred by declaring that in all criminal cases *trial by jury* shall be preserved." Astonishing, that provision could not be made for a jury in civil controversies, of 12 men, whose verdict should be unanimous, *to be taken from the vicinage;* a precaution which is omitted as to trial of crimes, which may be any where in the state within which they have been committed. So that an inhabitant of *Kentucky* may be tried for treason at *Richmond*.

2.7.44 The abolition of jury trial in civil cases, is the more considerable, as at length the courts of Congress will supersede the state courts, when such mode of trial will fall into disuse among the people of the United States.

The northern nations of the European continent, have all lost this invaluable privilege: *Sweden*, the last of them, by the artifices of the *aristocratic* senate, which depressed the king and reduced the house of commons to insignificance. But the nation a few years ago, preferring the absolute authority of a monarch to the *vexatious* domination of the *well-born* few, an end was suddenly put to their power.

"The policy of this right of juries, (says judge Blackstone) to decide upon *fact*, is founded on this: That if the power of judging were entirely trusted with the magistrates, or any select body of men, named by the executive authority, their decisions, in spite of their own natural integrity, would have a biass towards those of their own rank and dignity; for it is not to be expected, that the *few* should be attentive to the rights of the *many*. This therefore preserves in the hands of the people, that share which they ought to have in the administration of justice, and prevents the encroachments of the more powerful and wealthy citizens."[24]

2.7.45 The attempt of governor *Colden*, of New-York, before the revolution to re-examine the *facts* and re-consider the *damages*, in the case of *Forsey* against *Cunningham*, produced about the year 1764, a flame of patriotic and successful opposition, that will not be easily forgotten.[25]

2.7.46 To manage the various and extensive judicial authority, proposed to be vested in Congress, there will be one or more inferior courts immediately requisite in each state; and laws and regulations must be forthwith provided to direct the judges—here is a wide door for inconvenience to enter. Contracts made under the acts of the states respectively, will come before courts acting under new laws and new modes of proceeding, not thought of when they were entered into.—An inhabitant of Pennsylvania residing at Pittsburgh, finds the goods of his debtor, who resides in Virginia, within the reach of his attachment; but no writ can be had to authorise the marshal, sheriff, or other officer of Congress, to seize the property, about to be removed, nearer than 200 miles: suppose that at Carlisle, for instance, such a writ may be had, mean while the object escapes. Or if an inferior court, whose judges have ample salaries, be established in every county, would not the expence be enormous? Every reader can extend in his imagination, the instances of difficulty which would proceed from this needless interference with the judicial rights of the separate states, and which as much as any other circumstance in the new plan, implies that the dissolution of their forms of government is designed.

2.7.47 Mr. *Wilson* skips very lightly over the danger apprehended from the standing army allowed by the new plan.[26] This grand machine of power and oppression, may be made a fatal instrument to overturn the public liberties, especially as the funds to support the troops may be granted for *two* years, whereas in Britain, the grants ever since the revolution in 1688, have been

from year to year. A standing army with regular provision of pay and contingencies, would afford a strong temptation to some ambitious man to step up into the throne, and to seize absolute power. The keeping on foot a hired military force *in time of peace,* ought not to be gone into, unless *two thirds* of the members of the federal legislature agree to the necessity of the measure, and adjust the numbers employed. Surely Mr. *Wilson* is not serious when he adduces the instance of the troops now stationed on the Ohio, as a proof of the propriety of a standing army.—They are a mere occasional armament for the purpose of restraining divers hostile tribes of savages. It is contended that under the present confederation, Congress possess the power of raising armies at pleasure; but the opportunity which the states severally have of withholding the supplies necessary to keep these armies on foot, is a sufficient check on the *present* Congress.

2.7.48 Mr. *Wilson* asserts, that never was charge made with less reason, than that which predicts the institution of a *baneful aristocracy* in the federal Senate.[27]—In my first number, I stated that this body would be a very unequal representation of the several states, that the members being appointed for the long term of six years, and there being no exclusion by rotation, they might be continued for life, which would follow of course from their extensive means of influence, and that possessing a considerable share in the *executive* as well as *legislative,* it would become a *permanent aristocracy,* and swallow up the other orders in the government.[28]

2.7.49 That these fears are not imaginary, a knowledge of the history of other nations, where the powers of government have been injudiciously placed, will fully demonstrate. Mr. *Wilson* says, "the senate branches into two characters; the one legislative and the other executive. In its legislative character it can effect no purpose, without the co-operation of the house of representatives, and in its executive character it can accomplish no object without the concurrence of the president. Thus fettered, I do not know any act which the senate can of itself perform, and such dependence necessarily precludes every idea of influence and superiority." This I confess is very specious, but experience demonstrates, that checks in government, unless accompanied with *adequate* power and *independently* placed, prove *merely nominal,* and will be *inoperative.* Is it probable, that the president of the United States, limited as he is in power, and dependent on the will of the senate, in appointments to office, will either have the *firmness* or *inclination* to exercise his prerogative of a conditional controul upon the proceedings of that body, however injurious they may be to the public welfare: it will be his interest to coincide with the views of the senate, and thus become the head of the aristocratic junto. The king of England is a constitutent part in the legislature, but although an hereditary monarch, in possession of the whole executive power, including the unrestrained appointment to offices, and an immense revenue, enjoys but in *name* the prerogative of a negative upon the parliament. Even the king of England, circumstanced as he is, has not dared

to exercise it for near a century past. The check of the house of representatives upon the senate will likewise be rendered nugatory for want of due weight in the democratic branch, and from their constitution *they* may become so *independent* of the *people* as to be indifferent of its interests: nay as Congress would have the controul over the mode and place of their election, by ordering the representatives of a *whole* state to be elected at *one* place, and that too the most *inconvenient*, the ruling power may govern the *choice*, and thus the house of representatives may be composed of the *creatures* of the senate. Still the *semblance* of checks, may remain but without *operation*.

This mixture of the legislative and executive moreover highly tends to corruption. The chief improvement in government, in modern times, has been the compleat separation of the great distinctions of power; placing the *legislative* in different hands from those which hold the *executive;* and again severing the *judicial* part from the ordinary *administrative*. "When the legislative and executive powers (says Montesquieu) are united in the same person, or in the same body of magistrates, there can be no liberty."[29] 2.7.50

Mr. *Wilson* confesses himself, not satisfied with the organization of the federal senate, and apologizes for it, by alledging a sort of compromise. It is well known, that some members of convention, apprized of the mischiefs of such a compound of authority, proposed to assign the supreme executive powers to the president and a small council, made personally responsible for every appointment to office, made personally responsible for every appointment to office, or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step. Such a check upon the chief magistrate would admirably secure the power of pardoning, now proposed to be exercised by the president alone, from abuse. For as it is placed he may shelter the traitors whom he himself or his coadjutors in the senate, have excited to plot against the liberties of the nation. 2.7.51

The delegation of the power of taxation to Congress, as far as duties on imported commodities, has not been objected to. But to extend this to excises, and every species of internal taxation, would necessarily require so many ordinances of Congress, affecting the body of the people, as would perpetually interfere with the State laws and personal concerns of the people. This alone would directly tend to annihilate the particular governments; for the people fatigued with the operations of two masters would be apt to rid themselves of the weaker. But we are cautioned against being alarmed with imaginary evils, for Mr. *Wilson* has predicted that the great revenue of the United States, will be raised by impost.[30] Is there any ground for this? Will the impost supply the sums necessary to pay the interest and principal of the foreign loan, to defray the great additional expence of the new constitution; for the policy of the new government will lead it to institute numerous and lucrative civil offices, to extend its influence and pro- 2.7.52

vide for the swarms of expectants; (the people having in fact no controul upon its disbursements) and to afford pay and support for the proposed standing army, that darling and long wished for object of the *well-born* of America; and which, if we may judge from the principles of the intended government, will be no trifling establishment, for cantonments of troops in every district of America, will be necessary to compel the submission of the people to the arbitrary dictates of the ruling powers? I say will the impost be adequate? By no means.—To answer these there must be excises and other indirect duties imposed, and as land taxes will operate too equally to be agreeable to the wealthy aristocracy in the senate who will be possessed of the government, *poll taxes* will be substituted as provided for in the new plan; for the doctrine then will be, *that slaves ought to pay for wearing their heads.*[31]

2.7.53 As the taxes necessary for these purposes, will drain your pockets of every penny, what is to become of that virtuous and meritorious class of citizens the public creditors. However well disposed the people of the United States may be to do them justice, it would not be in their power; and, *after waiting year after year*, without prospect of the payment of the interest or principal of the debt, they will be constrained to sacrifice their certificates in the purchase of waste lands in the far distant wilds of the western territory.

2.7.54 From the foregoing illustration of the powers proposed to be devolved to Congress, it is evident, that the general government would necessarily annihilate the particular governments, and that the security of the personal rights of the people by the state constitutions is superseded and destroyed; hence results the necessity of such security being provided for by a bill of rights to be inserted in the new plan of federal government. What excuse can we then make for the omission of this grand palladium, this barrier between *liberty* and *oppression*. For universal experience demonstrates the necessity of the most express declarations and restrictions, to protect the rights and liberties of mankind, from the silent, powerful and ever active conspiracy of those who govern.

2.7.55 The new plan, it is true, does propose to secure the people of the benefit of personal liberty by the *habeas corpus;* and trial by jury for all crimes, except in case of impeachment: but there is no declaration, that all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding; and that no man ought, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will and consent; and that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner controul, the right of conscience in the free exercise of religious worship: that the trial by jury in civil causes as well as criminal, and the modes prescribed by the common law for safety of life in

criminal prosecutions shall be held sacred; that the requiring of excessive bail, imposing of excessive fines and cruel and unusual punishments be forbidden; that monoplies in trade or arts, other than to authors of books or inventors of useful arts, for a reasonable time, ought not to be suffered; that the right of the people to assemble peaceably for the purpose of consulting about public matters, and petitioning or remonstrating to the federal legislature ought not to be prevented; that *the liberty of the press be held sacred;* that the people have a right to hold themselves, their houses, papers and possessions free from search or seizure; and that therefore warrants without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or his property, not particularly described, are contrary to that right and ought not to be granted; and that standing armies in time of peace are dangerous to liberty, and ought not to be permitted but when absolutely necessary; all which is omitted to be done in the proposed government.

2.7.56 But Mr. *Wilson* says, the new plan does not arrogate perfection, for it provides a mode of alteration and correction, if found necessary.[32] This is one among the numerous deceptions attempted on this occasion. True, there is a mode prescribed for this purpose. But it is barely possible that amendments may be made. The fascination of power must first cease, the nature of mankind undergo a revolution, that is not to be expected on this side of eternity. For to effect this (Art. 6.) it is provided, that if *two thirds* of both houses of the federal legislature shall propose them; or when two thirds of the several states by their legislatures, shall apply for them, the federal assembly shall call a convention for proposing amendments, which when ratified by three fourths of the state legislatures, or conventions, as Congress shall see best, shall controul and alter the proposed confederation. Does history abound with examples of a voluntary relinquishment of power, however injurious to the community? No; it would require a general and successful rising of the people to effect anything of this nature.—This provision therefore is mere sound.

2.7.57 The opposition to the new plan (says Mr. Wilson) proceeds from interested men, *viz.* the officers of the state governments.[33] He had before denied that the proposed transfer of powers to Congress would annihilate the state governments. But he here lays aside the masque, and avows the fact. For, the truth of the charge against *them* must entirely rest on such consequence of the new plan. For if the state establishments are to remain unimpaired, why should officers peculiarly connected with them, be interested to oppose the adoption of the new plan? Except the collector of the impost, judge of the admiralty, and the collectors of excise (none of whom have been reckoned of the opposition) they would otherwise have nothing to apprehend.—But the charge is unworthy and may with more propriety be retorted on the expectants of office and emolument under the intended government.

2.7.58 The opposition is not so partial and interested as Mr. *Wilson* asserts. It consists of a respectable yeomanry throughout the union, of characters far removed above the reach of his unsupported assertions. It comprises many worthy members of the late convention, and a majority of the present Congress, for a motion made in that honorable body, for their *approbation* and *recommendation* of the new plan, was after two days animated discussion, prudently withdrawn by its advocates, and a simple *transmission** of the plan to the several states could only be obtained; yet this has been palmed upon the people as the approbation of Congress; and to strengthen the deception, the bells of the city of Philadelphia were rung for a whole day.

2.7.59 Are Mr. *W——n*, and many of his coadjutors in the late C——n, the disinterested patriots they would have us believe? Is their conduct any recommendation of their plan of government? View them the foremost and loudest on the floor of Congress, in our Assembly, at town meetings, in sounding its eulogiums:—View them preventing investigation and discussion, and in that most despotic manner endeavouring to compel its adoption by the people, with such precipitancy as to preclude the possibility of a due consideration, and then say whether the motives of these men can be pure.

My fellow citizens, such false detestable *patriots* in every nation, have led their blind confiding country, shouting their applauses, into the jaws of *despotism* and *ruin*. May the wisdom and virtue of the people of America, save them from the usual fate of nations.

Centinel.

III[34]

To the People of Pennsylvania.

John iii. ver. 20th—"*For every one that doeth evil, hateth the light, neither cometh to the light, lest his deeds should be reproved.*"—But "*there is nothing covered that shall not be revealed; neither hid that shall not be known. Therefore whatsoever ye have spoken in darkness, shall be heard in*

*Upon the last motion being made, those who had strenuously and successfully opposed Congress giving any countenance of approbation or recommendation to this system of oppression, said,—"We have no objection to transmit the new plan of government to the several states, that they may have an opportunity of judging for themselves on so momentous a subject." Whereupon it was unanimously agreed to, in the following words, *viz.* "Congress having received the report of the Convention lately assembled in Philadelphia, *Resolved unanimously*, That the said report, with the resolutions and letter accompanying the same, be *transmitted* to the several legislatures, in order to be submitted to a convention of delegates, chosen in each state by the people thereof, in conformity to the resolves of the Convention, made and provided in that case."

the light: and that which ye have spoken in the ear in closets, shall be proclaimed on the house tops." St. Luke, chap. xii. 2d and 3d verses.

Friends, Countrymen, and Fellow-Citizens!

2.7.60 The formation of a good government, is the greatest effort of human wisdom, actuated by disinterested patriotism; but such is the cursed nature of ambition, so prevalent in the minds of men, that it would sacrifice every thing to its selfish gratification; hence the fairest opportunities of advancing the happiness of humanity, are so far from being properly improved, that they are too often converted by the votaries of power and domination, into the means of obtaining their nefarious ends. It will be the misfortune of America of adding to the examples of this kind, if the proposed plan of government should be adopted; but I trust, short as the time allowed you for consideration is, you will be so fully convinced of the truth of this, as to escape the impending danger: it is only necessary to strip the monster of its assumed garb, and to exhibit it in its native colours, to excite the universal abhorrence and rejection of every virtuous and patriotic mind.

2.7.61 For the sake of my dear country, for the honor of human nature, I hope and am persuaded, that the good sense of the people will enable them to rise superior to the most formidable conspiracy against the liberties of a free and enlightened nation, that the world has ever witnessed. How glorious would be the triumph! How it would immortalize the present generation in the annals of freedom!

2.7.62 The establishment of a government, is a subject of such momentous and lasting concern, that it should not be gone into without the clearest conviction of its propriety; which can only be the result of the fullest discussion, the most thorough investigation and dispassionate consideration of its nature, principles and construction. You are now called upon to make this decision, which involves in it, not only your fate, but that of your posterity for ages to come. Your determination will either ensure the possession of those blessings, which render life desireable, or entail those evils which make existence a curse: that such are the consequences of a wise or improper organization of government, the history of mankind abundantly testifies. If you viewed the magnitude of the object in its true light, you would join with me in sentiment, that the new government ought not to be implicitly admitted. Consider then duly before you leap, for after the Rubicon is once passed, there will be no retreat.

2.7.63 If you were even well assured that the utmost purity of intention predominated in the production of the proposed government, such is the imperfection of human reason and knowledge, that it would not be wise in you to adopt it with precipitation *in toto,* for all former experience must teach you the propriety of a revision on such occasions, to correct the errors, and supply the deficiences, that may appear necessary. In every government whose object is the public welfare, the laws are subjected to repeated revisions, in some by different orders in the governments, in others by an

appeal to the judgements of the people and deliberative forms of procedure. A knowledge of this, as well as of other states, will show that in every instance where a law has been passed without the usual precautions, it has been productive of great inconvenience and evils, and frequently has not answered the end in view, a supplement becoming necessary to supply its deficiences.

2.7.64 What then are we to think of the motives and designs of those men who are urging the implicit and immediate adoption of the proposed government? are they fearful, that if you exercise your good sense and discernment, you will discover the masqued aristocracy, that they are attempting to smuggle upon you, under the suspicious garb of republicanism?—When we find that the principal agents in this business, are the very men who fabricated the form of government, it certainly ought to be conclusive evidence of their insidious design to deprive us of our liberties—The circumstances attending this matter, are such as should in a peculiar manner excite your suspicion; it might not be useless to take a review of some of them.

2.7.65 In many of the states, particularly in this and the northern states, there are aristocratic junto's of the *well-born few,* who had been zealously endeavoring since the establishment of their constitutions, to humble that offensive *upstart, equal liberty;* but all their efforts were unavailing, the *ill-bred churl* obstinately kept his assumed station.

2.7.66 However, that which could not be accomplished in the several states, is now attempting through the medium of the future Congress.—Experience having shewn great defects in the present confederation, particularly in the regulation of commerce and maritime affairs; it became the universal wish of America to grant further powers, so as to make the federal government adequate to the ends of its institution. The anxiety on this head was greatly increased, from the impoverishment and distress occasioned by the excessive importations of foreign merchandise and luxuries, and consequent drain of specie, since the peace: thus the people were in the disposition of a drowning man, eager to catch at any thing that promised relief, however delusory. Such an opportunity for the acquisition of *undue* power, has never been viewed with indifference by the ambitious and designing in any age or nation, and it has accordingly been too successfully improved by such men among us. The deputies from this state (with the exception of two) and most of those from the other states in the union, were unfortunately of this complexion, and many of them of such superior endowments, that in an *exparte* discussion of the subject, by specious glosses they have gained the concurrence of some well disposed men, in whom their country have great confidence, which has given a great sanction to their scheme of power.

2.7.67 A comparison of the authority under which the convention acted, and their form of government, will shew that they have despised their delegated power, and assumed sovereignty; that they have entirely annihilated the old confederation, and the particular government of the several states, and

instead thereof have established one general government that is to pervade the union; constituted on the most *unequal* principles, destitute of accountability to its constituents, and as despotic in its nature, as the Venetian aristocracy; a government that will give full scope to the magnificent designs of the *well-born;* a government where tyranny may glut its vengeance on the *low-born,* unchecked by *an odious bill of rights:* as has been fully illustrated in my two preceding numbers; and yet as a blind upon the understandings of the people, they have continued the forms of the particular governments, and termed the whole a confederation of the United States, pursuant to the sentiments of that profound, but corrupt politician Machiavel, who advises any one who would change the constitution of a state, to keep as much as possible to the old forms; for then the people seeing the same officers, the same formalities, courts of justice, and other outward appearances, are insensible of the alteration, and believe themselves in possession of their old government.[35] Thus Caesar, when he seized the Roman liberties, caused himself to be chosen dictator (which was an ancient office) continued the senate, the consuls, the tribunes, the censors, and all other offices and forms of the commonwealth; and yet changed Rome from the most free to the most tyrannical government in the world.

2.7.68 The convention, after vesting all the great and efficient powers of sovereignty in the general government, insidiously declare by section 4th of article 4th, "that the United States shall guarantee to every state in this union, a republican *form* of government;" but of what avail will be the *form* without the *reality* of freedom?

2.7.69 The late convention in the majesty of its assumed omnipotence, have not even condescended to submit the plan of the new government to the consideration of the people, the true source of authority; but have called upon them by their several conventions, 'to assent to and ratify'* in toto, what they have been pleased to decree; just as the grand monarque of France requires the parliament of Paris to register his edicts without revision or alteration, which is necessary previous to their execution.

2.7.70 The authors and advocates of the new plan, conscious that its establishment can only be obtained from the ignorance of the people of its true nature, and their unbounded confidence in some of the men concurring; have hurried on its adoption with a precipitation that betrays their design: before many had seen the new plan, and before any had time to examine it, they, by their ready minions, attended by some well disposed but mistaken persons, obtained the subscriptions of the people to papers expressing their entire approbation of [it], and their wish to have it established; thus precluding them from any consideration; but lest the people should discover the juggle, the elections of the state conventions, are urged on at very early days; the proposition of electing the convention for this state in nine days

*See resolution of Convention accompanying the instrument of the proposed government.[36]

after the date of the resolution for all the counties east of Bedford, and supported by three or four of the deputies of the convention, and who were also members of the then assembly, is one of the most extravagant instances of this kind; and even this was only prevented by the secession of nineteen virtuous and enlightened members.*[37] In order to put the matter beyond all recal, they have proceeded a step further, they have made the deputies nominated for the state convention of this city and elsewhere, pledge their sacred honor, previous to their election, that they would implicitly adopt the proposed government, in toto; thus short as the period is before the final fiat is to be given, consideration is rendered nugatory, and conviction of its dangers or impropriety unavailable. A good cause does not stand in need of such means; it scorns all indirect advantages and borrowed helps, and trusts alone to its own native merit and intrinsic strength: the lion is never known to make use of cunning, nor can a good cause suffer by a free and thorough examination—It is knavery that seeks disguise. Actors do not care that any one should look into the tiring room, nor jugglers or sharpers into their hands or boxes.

Every exertion has been made to suppress discussion by shackling the press; but as this could not be effected in *this* state, the people are warned not to listen to the adversaries of the proposed plan, lest they should impose upon them, and thereby prevent the adoption of this blessed government. What figure would a lawyer make in a court of justice, if he should desire the judges not to hear the counsel of the other side, lest they should perplex the cause and mislead the court? Would not every bystander take it for granted, that he was conscious of the weakness of his client's cause, and that it could no otherwise be defended, than by not being understood?

2.7.71 All who are friends to liberty are friends to reason, the champion of liberty, and none are foes to liberty but those who have truth and reason for

*The message of the President and Council, sent into the present General Assembly, on the 27th of October last, discloses another imposition. The board sent to the House the official transmission of the proposed constitution of the United States, inclosed in a letter from the President of Congress, which proves that the paper produced to the last house on the day before the final rising of the same, was a surreptitious copy of the vote of Congress, obtained for the purpose of deluding the legislature into the extravagance of directing an election of Convention within *nine* days.

The provision made by the Convention of Pennsylvania, which sat in 1776 for amending the constitution, is guarded with admirable wisdom and caution. A council of Censors is to be holden every seven years, which shall have power (two thirds of the whole number elected agreeing) to propose amendments of the same government, and to call a Convention to adopt and establish these propositions; but the alterations must be "promulgated *at least* six months before the day appointed for the *election* of such Convention, for the *previous consideration* of the people, that they may have an opportunity of instructing their delegates on the subject." The present measures explain the conduct of a certain party of the Censors who sat in 1784, (much fewer than two thirds of the whole) that proposed to abolish the 47th article of the constitution, whereby the manner of amending the same was regulated.

their foes. He who has dark purposes to serve, must use dark means; light would discover him, and reason expose him: he must endeavour to shut out both, and make them look frightful by giving them ill names.

Liberty only flourishes where reason and knowledge are encouraged; and 2.7.72
wherever the latter are stifled, the former is extinguished. In Turkey printing is forbid, enquiry is dangerous, and free speaking is capital; because they are all inconsistent with the nature of the government. Hence it is, that the Turks are all stupidly ignorant, and are all slaves.

I shall now proceed in the consideration of the construction of the pro- 2.7.73
posed plan of government.—By section 4th of article 1st, of the proposed government, it is declared, "that the times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; *but the Congress may at any time by law make or alter such regulations, except as to the place of chusing senators.*" Will not this section put it in the power of the future Congress to abolish the suffrage by ballot, so indispensible in a free government.—Montesquieu, in his Spirit of Laws, vol. 1, page 12, says "that in a democracy there can be no exercise of sovereignty but by the suffrages of the people, which are their will: now the sovereign's will is the sovereign himself. The laws, therefore, which establish the right of suffrage, are fundamental to this government. In fact, it is as important to regulate in a republic, in what manner, by whom, and concerning what, suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern."[38] This valuable privilege of voting by ballot, ought not to rest on the discretion of the government, but be irrevocably established in the Constitution.

Will not the above quoted section, also authorise the future Congress to 2.7.74
lengthen the term for which the senators and representatives are to be elected, from 6 and 2 years respectively, to any period, even for life? As the parliament of England voted themselves from triennial to septennial; and as the long parliament under Charles the 1st became perpetual?

Section 8th, of article 1st, vests Congress with power "to provide for 2.7.75
calling forth the militia to execute the laws of the union, suppress insurrections and repell invasions; to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."—This section will subject the citizens of these States to the most arbitrary military discipline, even death may be inflicted on the disobedient; in the character of militia, you may be dragged from your families and homes to any part of the continent, and for any length of time, at the discretion of the future Congress: and as militia, you may be made the unwilling instruments of oppression, under the direction of government; there is no exemption upon account of conscientious scruples of bearing arms; no equivalent to be re-

ceived in lieu of personal services. The militia of Pennsylvania may be marched to Georgia or New-Hampshire, however incompatible with their interests or consciences;—in short, they may be made as mere machines as Prussian soldiers.

2.7.76 Section the 9th begins thus—"The migration or importation of such persons, as any of the States, now existing, shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a duty or tax may be imposed on such importation, not exceeding ten dollars for each person." And by the 5th article this restraint is not to be removed by any future Convention. We are told that the objects of this article are slaves, and that it is inserted to secure to the southern States the right of introducing negroes for twenty-one years to come, against the declared sense of the other States to put an end to an odious traffic in the human species; which is especially scandalous and inconsistent in a people, who have asserted their own liberty by the sword, and which dangerously enfeebles the districts, wherein the labourers are bondmen. The words are dark and ambiguous; such as no plain man of common sense would have used, [and] are evidently chosen to conceal from Europe, that in this enlightened country, the practice of slavery has its advocates among men in the highest stations. When it is recollected that no poll tax can be imposed on *five* negroes above what *three* whites shall be charged; when it is considered, that the impost on the consumption of the Carolina field negroes, must be trifling, and the excise, nothing, it is plain that the proportion of contributions, which can be expected from the southern states under the new constitution, will be very unequal; and yet they are to be allowed to enfeeble themselves by the further importation of negroes till the year 1808. Has not the concurrence of the five southern states (in the convention) to the new system, been purchased too dearly by the rest, who have undertaken to make good their deficiencies of revenue, occasioned by their wilful incapacity, without an equivalent?

The general acquiescence of one description of citizens in the proposed government, surprises me much; if so, many of the Quakers have become indifferent to the sacred rights of conscience, so amply secured by the constitution of this commonwealth;[39] if they are satisfied, to rest this inestimable privilege on the discretion of the future government; yet, in a political light, they are not acting wisely; in the state of Pennsylvania, they form so considerable a portion of the community, as must ensure them great weight in the government; but in the scale of general empire, they will be lost in the balance.

2.7.77 I intended in this number to have shewn from the nature of things, from the opinions of the greatest writers, and from the peculiar circumstances of the United States, the impracticability of establishing and maintaining one government on the principles of freedom in so extensive a territory; to have shewn, if practicable, the inadequacy of such government, to provide for its

many and various concerns; and also to have shewn, that a confederation of small republics, possessing all the powers of internal government, and united in the management of their general and foreign concerns, is the only system of government by which so extensive a country can be governed consistent with freedom: But a writer under the signature of Brutus, in the New-York paper, which has been republished by Messrs. Dunlap and Claypoole, has done this in so masterly a manner, that it would be superfluous in me to add any thing on this subject.[40]

My fellow citizens, as a lover of my country, as the friend to mankind, 2.7.78
whilst it is yet safe to write, and whilst it is yet in your power to avoid it, I warn you of the impending danger. To this remote quarter of the world, has liberty fled.—Other countries, now subject to slavery, were once as free as we yet are; therefore, for your own sakes, for the sake of your posterity, as well as for that of the oppressed of all nations, cherish this remaining asylum of liberty.

Centinel.

Philad., *Novem.* 5th, 1787.

IV[41]

To the People of Pennsylvania.

Friends, Countrymen and fellow Citizens,

That the present confederation is inadequate to the objects of the union, 2.7.79
seems to be universally allowed. The only question is, what additional powers are wanting to give due energy to the federal government? We should, however, be careful in forming our opinion on this subject, not to impute the temporary and extraordinary difficulties that [have] hitherto impeded the execution of the confederation, to defects in the system itself. Taxation is in every government, a very delicate and difficult subject; hence it has been the policy of all wise statesmen, as far as circumstances permitted, to lead the people by small beginnings and almost imperceptible degrees, into the habits of taxation; where the contrary conduct has been pursued, it has ever failed of full success, not unfrequently proving the ruin of the projectors. The imposing of a burdensome tax at once on a people, without the usual gradations, is the severest test that any government can be put to, despotism itself has often proved unequal to the attempt. Under this conviction, let us take a review of our situation before and since the revolution. From the first settlement of the country until the commencement of the late war, the taxes were so light and trivial as to be scarcely felt by the people; when we engaged in the expensive contest with Great Britain, the Congress sensible of the difficulty of levying the monies necessary to its support, by *direct* taxation, had recourse to an anticipation of the public resources, by emitting

bills of credit, and thus postponed the necessity of taxation for several years; this means was pursued to a most ruinous length; but about the year 80 or 81, it was wholly exhausted, the bills of credit had suffered such a depreciation from the excessive quantities in circulations, that they ceased to be useful as a medium. The country at this period, was very much impoverished and exhausted; commerce had been suspended for near six years; the husbandman, for want of a market, limited his crops to his own subsistence; the frequent calls of the militia and long continuance in actual service, the devastations of the enemy, the subsistence of our own armies, the evils of the depreciation of the paper money, which fell chiefly upon the patriotic and virtuous part of the community, and all concurred to produce great distress throughout America. In this situation of affairs, we still had the same powerful enemy to contend with, who had even more numerous and better appointed armies in the field than at any former time. Our allies were applied to in this exigence, but the pecuniary assistance that we could procure from them, was soon exhausted; the only resource now remaining, was to obtain by direct taxation, the monies necessary for our defence; the history of mankind does not furnish a similar instance of an attempt to levy such enormous taxes at once, of a people so wholly unprepared and uninured to them—the lamp of sacred liberty must indeed have burned with unsullied lustre, every sordid principle of the mind must have been then extinct, when the people not only submitted to the grievous impositions, but cheerfully exerted themselves to comply with the calls of their country; their abilities however, were not equal to furnish the necessary sums—indeed the requisition of the year 1782, amounted to the whole income of their farms and other property, including the means of their subsistence; perhaps the strained exertions of *two* years, would not have sufficed to the discharge of this requisition; how then can we impute the difficulties of the people to a due compliance with the requisitions of Congress to a defect in the confederation, for any government, however energetic, in similar circumstances, would have experienced the same fate. If we review the proceedings of the states, we shall find that they gave every sanction and authority to the requisitions of Congress, that their laws could confer, that they attempted to collect the sums called for in the same manner as is proposed to be done in future by the general government, instead of the state legislatures.

2.7.80 It is a maxim that a government, ought to be cautious not to govern over much, for when the cord of power is drawn too tight, it generally proves its destruction[;] the impracticability of complying with the requisitions of Congress has lessened the sense of obligation and duty in the people, and thus weakened the ties of the union; the opinion of power in a free government is much more efficatious than the exercise of it; it requires the maturity of time and repeated practice to give due energy and certainty to the operations of government, especially to such as affect the purses of the people.

The thirteen Swiss Cantons confederated by more general and weaker ties than these United States are by the present articles of confederation, have not experienced the necessity of strengthening their union by vesting their general diet with further or greater powers; this national body has only the management of their foreign concerns and in case of a war can only call by requisition on the several Cantons for the necessary supplies, who are sovereign and independent in every internal and local exercise of government—and yet this rope of sand, as our confederation has been termed, which is so similar to that, has held together for ages without any apparent charm. 2.7.81

I am persuaded that a due consideration, will evince, that the present inefficacy of the requisitions of Congress, is not owing to a defect in the confederation, but the peculiar circumstances of the times. 2.7.82

The wheels of the general government having been thus clogged and the arrearages of taxes still accumulating, it may be asked what prospect is there of the government resuming its proper tone, unless more compulsory powers are granted? To this it may be answered, that the produce of imposts on commerce which all agree to vest in Congress, together with the immense tracts of land at their disposal, will rapidly lessen and eventually discharge the present incumbrances; when this takes place, the mode by requisition will be found perfectly adequate to the extraordinary exigencies of the union. Congress have lately sold land to the amount of eight millions of dollars, which is a considerable portion of the whole debt.

It is to be lamented that the interested and designing have availed themselves so successfully of the present crisis, and under the specious pretence of having discovered a panacea for all the ills of the people, they are about establishing a system of government, that will prove more destructive to them, than the wooden horse filled with soldiers did in ancient times to the city of Troy; this horse was introduced by their hostile enemy the Grecians, by a prostitution of the sacred rites of their religion; in like manner, my fellow citizens[,] are aspiring despots among yourselves prostituting the name of a Washington to cloak their designs upon your liberties. 2.7.83

I would ask how is the proposed government to shower down those treasures upon every class of citizens as is so industriously inculcated and so fondly believed? Is it by the addition of numerous and expensive establishments? Is it by doubling our judiciaries, instituting federal courts in every county of every state? Is it by a superb presidental court? Is it by a large standing army? In short is it by putting it in the power of the future government to levy money at pleasure, and placing this government so independent of the people as to enable the administration to gratify every corrupt passion of the mind, to riot on your spoils, without check or controul? 2.7.84

A transfer to Congress of the power of imposing imposts on commerce and the unlimited regulation of trade, I believe is all that is wanting to render 2.7.85

America as prosperous as it is in the power of any form of government to render her; this properly understood would meet the views of all the honest and well meaning.

2.7.86 What gave birth to the late Continental Convention? Was it not the situation of our commerce, which lay at the mercy of every foreign power, who from motives of interest or enmity could restrict and controul it, without risquing a retaliation on the part of America, as Congress was impotent on this subject? Such indeed was the case with respect to Britain, whose hostile regulations gave such a stab to our navigation as to threaten its annihilation, it became the interest of even the American merchant to give a preference to foreign bottoms; hence the distress of our seamen, shipwrights, and every mechanic art dependent on navigation.

2.7.87 By these regulations too we were limitted in markets for our produce, our vessels were excluded from their West India Islands, many of our staple commodities were denied entrance in Britain; hence the husbandmen were distressed by the demand for their crops being lessened and their prices reduced. This is the source to which may be traced every evil we experience, that can be relieved by a more energetic government. Recollect the language of complaint for years past, compare the recommendations of Congress founded on such complaints, pointing out the remedy, examine the reasons assigned by the different states for appointing delegates to the late Convention, view the powers vested in that body; they all harmonize in one sentiment, that the due regulation of trade and navigation was the anxious wish of every class of citizens, was the great object of calling the Convention.

2.7.88 This object being provided for, by the proposed Constitution, the people overlook and are not sensible of the needless sacrifice they are making for it.—Of what avail will be a prosperous state of commerce, when the produce of it will be at the absolute disposal of an arbitrary and unchecked government, who may levy at pleasure the most oppressive taxes; who may destroy every principle of freedom; who may even destroy the privilege of complaining.

2.7.89 If you are in doubt about the nature and principles of the proposed government, view the conduct of its authors and patrons[;] that affords the best explanation, the most striking comment.

The evil genius of darkness presided at its birth, it came forth under the veil of mystery, its true features being carefully concealed, and every deceptive art has been and is practising to have this spurious brat received as the genuine offspring of heaven-born liberty. So fearful are its patrons that you should discern the imposition, that they have hurried on its adoption, with the greatest precipitation; they have endeavored also to preclude all investigation, they have endeavored to intimidate all opposition; by such means as these, have they surreptitiously procured a Convention in this state, favorable to their views; and here again investigation and discussion

are abridged, the final question is moved before the subject has been under consideration; an appeal to the people is precluded even in the last resort, lest their eyes should be opened; the Convention have denied the minority the privilege of entering the reasons of their dissent on its journals[42]—Thus despotism is already triumphant, and the genius of liberty is on the eve of her exit, is about bidding an eternal adieu to this once happy people.

2.7.90 After so recent a triumph over British despots, after such torrents of blood and treasure have been spent, after involving ourselves in the distresses of an arduous war, and incurring such a debt, for the express purpose of asserting the rights of humanity, it is truly astonishing that a set of men among ourselves, should have the effrontery to attempt the destruction of our liberties. But in this enlightened age to hope to dupe the people by the arts they are practising, is still more extraordinary.

2.7.91 How do the advocates of the proposed government, combat the objections urged against it? Not even by an attempt to disprove them, for that would the more fully confirm their truth, but by a species of reasoning that is very congenial to that contempt of the understandings of the people, that they so eminently possess, and which policy cannot even prevent frequent ebullitions of; they seem to think that the oratory and fascination of great names and mere sound will suffice to ensure success; that the people may be diverted from a consideration of the merits of the plan, by bold assertions and mere declamation. Some of their writers for instance, paint the distresses of every class of citizens with all the glowing language of eloquence, as if this was a demonstration of the excellence, or even the safety of the new plan,[43] which, notwithstanding the reality of this distress, may be a system of tyranny and oppression; other writers tell you of the great men who composed the late convention, and give you a pompous display of their virtues,[44] instead of a justification of the plan of government; and others again urge the tyrant's plea, they endeavor to make it a case of necessity, now is the critical moment;[45] they represent the adoption of this government as our only alternative, as the last opportunity we shall have of peaceably establishing a government;[46] they assert it to be the best system that can be formed, and that if we reject it, we will have a worse one or none at all, nay, that if we presume to propose alterations, we shall get into a labyrinth of difficulties from which we cannot be extricated, as no two states will agree in amendments, that therefore it would involve us in irreconcilable discord.[47] But they all sedulously avoid the fair field of argument, a rational investigation into the origination of the proposed government. I hope the good sense of the people will detect the fallacy of such conduct, will discover the base juggle and with becoming resolution resent the imposition.

2.7.92 That the powers of Congress ought to be strengthened, all allow, but is this a conclusive proof of the necessity to adopt the proposed plan; is it a proof that because the late convention, in the first essay upon so arduous and difficult a subject, harmonised in their ideas, that a future convention

will not, or that after a full investigation and mature consideration of the objections, they will not plan a better government and one more agreeable to the sentiments of America, or is it any proof that they can never again agree in any plan? The late convention must indeed have been inspired, as some of its advocates have asserted, to admit the truth of these positions, or even to admit the possibility of the proposed government, being such a one as America ought to adopt; for this body went upon original ground, foreign from their intentions or powers, they must therefore have been wholly uninformed of the sentiments of their constituents in respect to this form of government, as it was not in their contemplation when the convention was appointed to erect a new government, but to strengthen the old one. Indeed they seem to have been determined to monopolize the exclusive merit of the discovery, or rather as if darkness was essential to its success they precluded all communication with the people, by closing their doors; thus the well disposed members unassisted by public information and opinion, were induced by those arts that are now practising on the people, to give their sanction to this system of despotism.

2.7.93 Is there any reason to presume that a new Convention will not agree upon a better plan of government? Quite the contrary, for perhaps there never was such a coincidence on any occasion as on the present[;] the opponents to the proposed plan, at the same time in every part of the continent, harmonised in the same objections; such an uniformity of opposition is without example and affords the strongest demonstration of its solidity. Their objections too are not local, are not confined to the interests of any one particular state to the prejudice of the rest, but with a philanthropy and liberality that reflects lustre on humanity, that dignifies the character of America, they embrace the interests and happiness of the whole union[;] they do not even condescend to minute blemishes, but shew that the main pillars of the fabric are bad, that the essential principles of liberty and safety are not to be found in it, that despotism will be the necessary and inevitable consequence of its establishment.

Centinel.

V

To the People of Pennsylvania.

Friends, Countrymen, and Fellow-Citizens,

2.7.94 Mr. Wilson in a speech delivered in our Convention on Saturday the 24th instant, has conceded, nay forceably proved, that one consolidated government, will not answer for so extensive a territory as the United States

includes, that slavery would be the necessary fate of the people under such a government; his words are so remarkable, that I cannot forbear reciting them, they are as follows, viz. "The extent of country for which the new constitution was required, produced another difficulty in the business of the federal convention. It is the opinion of some celebrated writers, that to a small territory, the democratical, to a middling territory, (as Montesquieu has termed it) the monarchical, and, to an extensive territory, the despotic form of government, is best adapted. Regarding then, the wide and almost unbounded jurisdiction of the United States, at first view, the hand of despotism seemed necessary to controul, connect, and protect it; and hence the chief embarrassment rose. For, we knew that, although our constituents would chearfully submit to the legislative restraints of a free government, they would spurn at every attempt to shackle them with despotic power." See page 5 of the printed speech. And again in page 7, he says "Is it probable that the dissolution of the state governments, and the establishment of one consolidated empire would be eligible in its nature, and satisfactory to the people in its administration? I think not, as I have given reasons to shew that so extensive a territory could not be governed, connected, and preserved, but by the supremacy of despotic power. All the exertions of the most potent emperors of Rome were not capable of keeping that empire together, which, in extent, was far inferior to the dominion of America."[48]

This great point having been now confirmed by the concession of Mr. Wilson, though indeed it was self evident before, and the writers against the proposed plan of government, having proved to demonstration, that the powers proposed to be vested in Congress, will necessarily annihilate and absorb the state Legislatures and judiciaries and produce from their wreck one consolidated government, the question is determined. Every man therefore who has the welfare of his country at heart, every man who values his own liberty and happiness, in short, every description of persons, except those aspiring despots who hope to benefit by the mysery and vassalage of their countrymen, must now concur in rejecting the proposed system of government, must now unite in branding its authors with the stigma of eternal infamy. The anniversary of this great escape from the fangs of despotism, ought to be celebrated as long as liberty shall continue to be dear to the citizens of America. 2.7.95

I will repeat some of my principal arguments, and add some further remarks, on the subject of consolidation.[49] 2.7.96

The Legislative is the highest delegated power in government, all others are subordinate to it. The celebrated Montesquieu establishes it as a maxim, that legislation necessarily follows the power of taxation.[50] By the 8th sect. of article the 1st of the proposed government, "the Congress are to have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and *general welfare* of the United

States." Now, what can be more comprehensive than these words? Every species of taxation, whether external or internal are included. Whatever taxes, duties, and excises that the Congress may deem necessary to the *general welfare* may be imposed on the citizens of these states and levied by their officers. The congress are to be the absolute judges of the propriety of such taxes, in short they may construe every purpose for which the state legislatures now lay taxes, to be for the *general welfare*, they may seize upon every source of taxation, and thus make it impracticable for the states to have the smallest revenue, and if a state should presume to impose a tax or excise that would interfere with a federal tax or excise, congress may soon terminate the contention, by repealing the state law, by virtue of the following section—"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or in any department thereof." Indeed every law of the states may be controuled by this power. The legislative power granted for these sections is so unlimited in its nature, may be so comprehensive and boundless in its exercise, that this alone would be amply sufficient to carry the coup de grace to the state governments, to swallow them up in the grand vortex of general empire. But the legislative has an able auxiliary in the judicial department, for a reference to my second number will shew that this may be made greatly instrumental in effecting a consolidation; as the federal judiciary would absorb all others.[51] Lest the foregoing powers should not suffice to consolidate the United States into one empire, the Convention[,] as if determined to prevent the possibility of a doubt, as if to prevent all clashing by the opposition of state powers, as if to preclude all struggle for state importance, as if to level all obstacles to the supremacy of universal sway, which in so extensive a territory, would be an iron-handed despotism, have ordained by article the 6th, "That this constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law of the land; and the judges in every state shall be bound thereby any thing in the constitution or laws of any state to the contrary notwithstanding.*"

2.7.97 The words "pursuant to the constitution" will be no restriction to the authority of congress; for the foregoing section gives[52] them unlimited legislation; their unbounded power of taxation does alone include all others, as whoever has the purse strings will have full dominion. But the convention has superadded another power, by which the congress may stamp with the sanction of the constitution every possible law; it is contained in the following clause—"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof. " Whatever law congress may deem necessary and proper for carrying into execution any of the powers vested in them,

may be enacted; and by virtue of this clause, they may controul and abrogate any and every of the laws of the state governments, on the allegation that they interfere with the execution of any of their powers, and yet these laws will "be made in pursuance of the constitution," and of course will "be the supreme law of the land, and the judges in every state shall be bound thereby, any thing in the *constitution* or *laws* of any state to the contrary notwithstanding."

2.7.98 There is no reservation made in the whole of this plan in favor of the rights of the separate states. In the present plan of confederation made in the year 1778,[53] it was thought necessary by article the 2d to declare that "each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation *expressly* delegated to the United States in Congress assembled." *Positive* grant was not *then* thought sufficiently descriptive and restrictive upon congress, and the omission of such a declaration *now*, when such great devolutions of power are proposed, manifests the design of consolidating the states.

2.7.99 What restriction does Mr. Wilson pretend there is in the new constitution to the supremacy of despotic sway over the United States? What barrier does he assign for the security of the state governments? Why truly a mere cobweb of a limit! by interposing the shield of what will become mere *form*, to check the *reality* of power. He says, that the existence of the state governments are essential to the organization of congress, that the former is made the necessary basis of the latter, for the federal senators and president are to be appointed by the state legislatures; and that hence all fears of a consolidation are groundless and imaginary.[54] It must be confessed, as reason and argument would have been foreign to the defence of the proposed plan of government, Mr. Wilson has displayed much ingenuity on this occasion, he has involved the subject in all the mazes of sophistry, and by subtil distinctions, he has established principles and positions, that exist only in his own fertile imagination. It is a solecism in politics for two co-ordinate sovereignties to exist together, you must separate the sphere of their jurisdiction, or after running the race of dominion for some time, one would necessarily triumph over the other; but in the mean time the subjects of it would be harrassed with double impositions to support the contention; however the strife between congress and the states could not be of long continuance, for the former has a decisive superiority in the outset, and has moreover the power by the very constitution itself to terminate it, when expedient.

2.7.100 As this necessary connexion, as it has been termed, between the state governments and the general government, has been made a point of great magnitude by the advocates of the new plan, as it is the only obstacle alledged by them against a consolidation, it ought to be well considered. It is declared by the proposed plan, that the federal senators and the electors who chuse the president of the United States, shall be appointed by the state

legislatures for the long period of six and four years respectively;—how will this connexion prevent the state legislatures being divested of every important, every efficient power? may not they, will not they dwindle into mere boards of appointment, as has ever happened in other nations to public bodies, who, in similar circumstances, have been so weak as to part with the essentials of power? Does not history abound with such instances? And this may be the mighty amount of this inseparable connexion, which is so much dwelt upon as the security of the state governments. Yet even this shadow of a limit against consolidation, may be annihilated by the imperial fiat, without any violation of even the forms of the constitution[;] section 4th of article the 1st has made a provision for this, when the people are sufficiently fatigued with the useless expence of maintaining the *forms* of departed power and security, and when they shall pray to be relieved from the imposition. This secton cannot be too often repeated, as it gives such a latitude to the designing, as it revokes every other part of the constitution that may be tolerable, and as it may enable the administration under it, to complete the system of despotism; it is in the following words, viz. "The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time by law make or alter such regulations, except as to the place of chusing senators.*" The only apparent restriction in this clause, is as to the *place* of appointing senators, but even this may be rendered of no avail, for as the Congress have the controul over the time of appointment of both senators and representatives, they may under the pretence of an apprehension of invasion, upon the pretence of the turbulence of what they may stile a faction, and indeed pretences are never wanting to the designing, they may postpone the time of the election of the senators and the representatives from period to period to perpetuity; thus they may[,] and if they may, they certainly will[,] from the lust of dominion, so inherent in the mind of man, relieve the people from the trouble of attending elections by condescending to create themselves. Has not Mr. Wilson avowed it in fact? Has he not said in the Convention that it was necessary that Congress should possess this power as the means of its own preservation[;] otherwise says he, an invasion, a civil war, a faction, or a secession of a minority of the assembly might prevent the representation of a state in Congress.[55]

2.7.101 The advocates of the proposed government must be hard driven, when they represent, that because the legislatures of this and the other states have exceeded the due bounds of power, notwithstanding every guard provided by their constitutions; that because the lust of arbitrary sway is so powerful as sometimes to get the better of every obstacle; that therefore we should give full scope to it, for that all restriction would be useless and nugatory. And further, when they tell you that a good administration will atone for all the defects in the government, which, say they, you must necessarily have, for how can it be otherwise, your rulers are to be taken from among your-

selves. My fellow citizens, these aspiring despots, must indeed have a great contempt for your understandings, when they hope to gull you out of your liberties by such reasoning; for what is the primary object of government, but to check and controul the ambitious and designing[;][56] how then can moderation and virtue be expected from men, who will be in possession of absolute sway, who will have the United States at their disposal? They would be more than men, who could resist such temptation! their being taken from among the people, would be no security; tyrants are of native growth in all countries, the greatest bashaw in Turky has been one of the people, as Mr. Wilson tells you the president-general will be.[57] What consolation would this be, when you shall be suffering under his oppression.

Centinel.

Philadelphia, Nov. 30, 1787.

VI

To the People of Pennsylvania.

Man is the glory, jest, and riddle of the world.—Pope.[58]

Incredible transition! the people who, seven years ago, deemed every earthly good, every other consideration, as worthless, when placed in competition with liberty, that heaven-born blessing, that zest of all others; the people, who, actuated by this noble ardor of patriotism, rose superior to every weakness of humanity, and shone with such dazzling lustre amidst the greatest difficulties; who, emulous of eclipsing each other in the glorious assertion of the dignity of human nature, courted every danger, and were ever ready, when necessary, to lay down their lives at the altar of liberty: I say the people, who exhibited so lately a spectacle, that commanded the admiration, and drew the plaudits of the most distant nations, are now reversing the picture, are now lost to every noble principle, are about to sacrifice that inestimable jewel liberty, to the genius of despotism. A *golden phantom* held out to them, by the crafty and aspiring despots among themselves, is alluring them into the fangs of arbitrary power; and so great is their infatuation, that it seems, as if nothing short of the reality of misery necessarily attendant on slavery, will rouse them from their false confidence, or convince them of the direful deception; but then alas! it will be too late, the chains of despotism will be fast rivetted and all escape precluded. 2.7.102

For years past, the harpies of power have been industriously inculcating the idea that all our difficulties proceed from the impotency of Congress, and have at length succeeded to give to this sentiment almost universal 2.7.103

currency and belief: the devastations, losses and burthens occasioned by the late war; the excessive importations of foreign merchandise and luxuries, which have drained the country of its specie and involved it in debt, are all overlooked, and the inadequacy of the powers of the present confederation is erroneously supposed to be the only cause of our difficulties; hence persons of every description are revelling in the anticipation of the halcyon days, consequent on the establishment of the new constitution.—What gross deception and fatal delusion! Although very considerable benefit might be derived from strengthening the hands of Congress, so as to enable them to regulate commerce, and counteract the adverse restrictions of other nations, which would meet with the concurrence of all persons; yet this benefit, is accompanied in the new constitution with the scourge of despotic power, that will render the citizens of America tenants at will of every species of property, of every enjoyment, and make them the meer drudges of government. The gilded bait conceals corrosives that will eat up their whole substance.

2.7.104 Since the late able discussion,[59] all are now sensible of great defects in the new constitution, are sensible that power is thereby granted without limitation or restriction; yet such is the impatience of the people to reap the golden harvest of regulated commerce, that they will not take time to secure their liberty and happiness, nor even to secure the benefit of the expected wealth; but are weakly trusting their every concern to the discretionary disposal of their future rulers: are content to risque every abuse of power, because they are promised a good administration, because moderation and self-denial are the characteristic features of men in possession of absolute sway. What egregious folly! What superlative ignorance of the nature of power does such conduct discover!

2.7.105 History exhibits this melancholy truth, that slavery has been the lot of nearly the whole of mankind in all ages, and, that the very small portion who have enjoyed the blessings of liberty, have soon been reduced to the common level of slavery and misery. The cause of this general vassalage may be traced to a principle of human nature, which is more powerful and operative than all the others combined; it is that lust of dominion that is inherent in every mind, in a greater or less degree; this is so universal and ever active a passion as to influence all our ancestors; the different situation and qualifications of men only modifies and varies the complexion and operation of it.

2.7.106 For this darling pre-eminence and superiority, the merchant, already possessed of a competency, adventures his all in the pursuit of greater wealth; it is for this, that men of all descriptions, after having amassed fortunes, still persevere in the toils of labour; in short, this is the great principle of exertion in the votaries of riches, learning, and fame.

2.7.107 In a savage state, pre-eminence is the result of bodily strength and intrepidity, which compels submission from all such as have the misfortune to be less able; therefore the great end of civil government is to protect the

weak from the oppression of the powerful, to put every man upon the level of equal liberty; but here again the same lust of dominion by different means frustrates almost always this salutary intention. In a polished state of society, wealth, talents, address and intrigue are the qualities that attain superiority in the great sphere of government.

2.7.108 The most striking illustration of the prevalence of this lust of dominion is, that the most strenuous assertors of liberty in all ages, after successfully triumphing over tyranny, have themselves become tyrants, when the unsuspicious confidence of an admiring people have entrusted them with unchecked power: Rare are the instances of self-denial, or consistency of conduct in the votaries of liberty, when they have become possessed of the reins of authority; it has been the peculiar felicity of this country, that her *great Deliverer* did not prove a *Cromwell* nor a *Monk*.

2.7.109 Compare the declarations of the most zealous assertors of *religious* liberty, whilst under the lash of persecution, with their conduct when in power; you will find that even the benevolence and humility inculcated in the gospels, prove no restraint upon this love of domination—The mutual contentions of the several sects of religion in England some ages since, are sufficient evidence of this truth.

2.7.110 The annals of mankind demonstrate the precarious tenure of privileges and property dependent upon the will and pleasure of rulers; these illustrate the fatal danger of relying upon the moderation and self-denial of men exposed to the temptations that the Congress under the new constitution will be. The lust of power or dominion is of that nature, as seeks to overcome every obstacle, and does not remit its exertions, whilst any object of conquest remains, nothing short of the plenitude of dominion, will satisfy this cursed demon: Therefore, liberty is only to be preserved by a due responsibility in the government, and by the constant attention of the people; whenever that responsibility has been lessened, or this attention remitted, in the same degree has arbitrary sway prevailed.

2.7.111 The celebrated *Montesquieu* has warned mankind of the danger of an implicit reliance on rulers; he says, that "a perpetual *jealousy* respecting liberty, is absolutely requisite in all free states,"[60] and again, "that slavery is ever preceded by sleep."[61]

2.7.112 I shall conclude this number with an extract from a speech delivered by Lord *George Digby*, afterwards *Earl* of *Bristol*, in the *English* Parliament, on the triennial bill in the year 1641, viz. "It hath been a maxim among the wisest legislators that whoever means to settle good laws, must proceed in them with a sinister opinion of all mankind; and suppose that whosoever is not wicked, it is for want only of the opportunity. It is that opportunity of being ill, Mr. Speaker, that we must take away, if ever we mean to be happy, which can never be done, but by *the frequency of parliaments*.

"No state can wisely be confident of any public minister's continuing good, longer than the rod is held over him.

"Let me appeal to all those that were present in this house at the agitation

of the *petition of right:* And let them tell themselves truly of whose promotion to the management of public affairs do they think the generality would, at that time, have had better hopes, than of Mr. *Noy,* and Sir *Thomas Wentworth;* both having been at that time and in that business as I have heard, most keen and active patriots, and the latter of them, to the eternal aggravation of his infamous treachery to the commonwealth be it spoken, the first mover, and insister to have this clause added to the *petition of right,* viz.

"That for the comfort and safety of his subjects, his Majesty would be pleased to declare his will and pleasure, that all his ministers should serve him according to the laws and statutes of the realm.

"And yet, Mr. Speaker, to whom now can all the inundations upon our *liberties,* under pretence of law, and the late ship-wreck at once of all our property be attributed more than to *Noy,* and all those other mischiefs whereby this monarchy hath been brought almost to the brink of destruction, so much to any as to that *grand apostate* to the commonwealth, the now Lieutenant of Ireland, Sir Thomas Wentworth? Let every man but consider those men as once they were." British Liberties, page 184 and 185.[62]

Centinel.

Philadelphia, December 22, 1787.

VII

To the People of Pennsylvania.

Friends and Fellow-Citizens!

2.7.113 The admiring world lately beheld the sun of liberty risen to meridian splendour in this western hemisphere, whose chearing rays began to dispel the glooms of even trans-atlantic despotism: the patriotic mind, enraptured with the glowing scene, fondly anticipated an universal and eternal day to the orb of freedom; but the horizon is already darkened and the glooms of slavery threaten to fix their empire. How transitory are the blessings of this life! Scarcely have four years elapsed since these United States, rescued from the domination of foreign despots by the unexampled heroism and perseverance of its citizens, at such great expence of blood and treasure, when they are about to fall a prey to the machinations of a profligate junto at home, who seizing the favorable moment, when the temporary and extraordinary difficulties of the people have thrown them off their guard, and lulled that jealousy of power so essential to the preservation of freedom, have been too successful in the sacrilegious attempt; however I am confident that

this formidable conspiracy will end in the confusion and infamy of its authors; that if necessary, the avenging sword of an abused people will humble these aspiring despots to the dust, and that their fate, like that of Charles the First of England, will deter such attempts in future, and prove the confirmation of the liberties of America until time shall be no more.

2.7.114 One would imagine by the insolent conduct of these harpies of power, that they had already triumphed over the liberties of the people, that the chains were rivetted and tyranny established. They tell us all further opposition will be vain, as this state has passed the rubicon. Do they imagine the freemen of Pennsylvania will be thus trepaned out of their liberties; that they will submit without a struggle? They must indeed be inebriated with the lust of dominion to indulge such chimerical ideas. Will the act of one sixth of the people, and this too founded on deception and surprise, bind the community? Is it thus that the altar of liberty, so recently crimsoned with the blood of our worthies, is to be prostrated and despotism reared on its ruins? Certainly not. The solemn mumery that has been acting in the name of the people of Pennsylvania will be treated with the deserved contempt; it has served indeed to expose the principles of the men concerned, and to draw a line of discrimination between the real and affected patriots.

2.7.115 Impressed with an high opinion of the understanding and spirit of my fellow citizens, I have in no stage of this business entertained a doubt of its eventual defeat; the momentary delusion, arising from an unreserved confidence placed in some of the characters whose names sanctioned this scheme of power, did not discourage me: I foresaw that this blind admiration would soon be succeeded by rational investigation, which, stripping the monster of its gilded covering, would discover its native deformity.

2.7.116 Already the enlightened pen of patriotism, aided by an able public discussion, has dispelled the mist of deception, and the great body of the people are awakened to a due sense of their danger, and are determined to assert their liberty, if necessary by the sword, but this mean need not be recurred to, for who are their enemies? A junto composed of the lordly and high minded gentry, of the profligate and the needy office-hunters; of men principally who in the late war skulked from the common danger. Would such characters dare to face the majesty of a free people? No.—All the conflict would be between the offended justice and generosity of the people, whether these sacrilegious invaders of their dearest rights should suffer the merited punishment, or escape with an infamous contempt?

2.7.117 However, as additional powers are necessary to Congress, the people will no doubt see the expediency of calling a convention for this purpose as soon as may be by applying to their representatives in assembly, at their next session, to appoint a suitable day for the election of such Convention.

Centinel.

Philadelphia, December 27, 1787.

VIII

To the People of Pennsylvania.

Fellow Citizens,

2.7.118 Under the benign influence of liberty, this country, so recently a rugged wilderness and the abode of savages and wild beasts, has attained to a degree of improvement and greatness, in less than two ages, of which history furnishes no parallel: It is here that human nature may be viewed in all its glory; man assumes the station designed him by the creation; a happy equality and independency pervades the community; it is here the human mind, untrammeled by the restraints of arbitrary power, expands every faculty: as the field to fame and riches is open to all, it stimulates universal exertion, and exhibits a lively picture of emulation, industry and happiness. The unfortunate and oppressed of all nations, fly to this grand asylum, where liberty is ever protected, and industry crowned with success.

2.7.119 But as it is by comparison only that men estimate the value of any good, they are not sensible of the worth of those blessings they enjoy, until they are deprived of them; hence from ignorance of the horrors of slavery, nations, that have been in possession of that rarest of blessings, liberty, have so easily parted with it: when groaning under the yoke of tyranny what perils would they not encounter, what consideration would they not give to regain the inestimable jewel they had lost; but the jealously of despotism guards every avenue to freedom, and confirms its empire at the expence of the devoted people, whose property is made instrumental to their misery, for the rapacious hand of power seizes upon every thing; despair presently succeeds, and every noble faculty of the mind being depressed, and all motive to industry and exertion being removed, the people are adapted to the nature of the government, and drag out a listless existence.

2.7.120 If ever America should be enslaved it will be from this cause, that they are not sensible of their peculiar felicity, that they are not aware of the value of the heavenly boon, committed to their care and protection, and if the present conspiracy fails, as I have no doubt will be the case, it will be the triumph of reason and philosophy, as these United States have never felt the iron hand of power, or experienced the wretchedness of slavery.

2.7.121 The conspirators against our liberties have presumed too much on the maxim that nations do not take the alarm, until they feel oppression; the enlightened citizens of America have on two memorable occasions convinced the tyrants of Europe that they are endued with the faculty of foresight, that they will jealously guard against the first introduction of tyranny, however speciously glossed over, or whatever appearance it may assume: It was not the mere amount of *the duty on stamps*, or *tea* that America opposed, they were considered as signals of approaching des-

potism, as precedents whereon the superstructure of arbitrary sway was to be reared.

Notwithstanding such illustrious evidence of the good sense and spirit of 2.7.122
the people of these United States, and contrary to all former experience of mankind, which demonstrates that it is only by gradual and imperceptible degrees that nations have hitherto been enslaved, except in case of conquest by the sword; the authors of the present conspiracy are attempting to seize upon absolute power at one grasp, impatient of dominion they have adopted a decisive line of conduct, which if successful, would obliterate every trace of liberty. I congratulate my fellow citizens that the infatuated confidence of their enemies has so blinded their ambition, that their defeat must be certain and easy, if imitating the refined policy of successful despots, they had attacked the citadel of liberty by sap, and gradually undermined its outworks, they would have stood a fairer chance of effecting their design; but in this enlightened age thus rashly to attempt to carry the fortress by storm, is folly indeed. They have even exposed some of their batteries prematurely, and thereby unfolded every latent view, for the unlimited power of taxation would alone have been amply sufficient for every purpose; by a proper application of this, the will and pleasure of the rulers would of course have become the supreme law of the land; therefore there was no use in portraying the ultimate object, by superadding the form to reality of supremacy in the following clause, viz. that which empowers the new congress to make all laws that may be necessary and proper for carrying into execution any of their powers, by virtue of which every possible law will be constitutional, as they are to be the sole judges of the propriety of such laws,[63] that which ordains that their acts shall be the supreme law of the land, any thing in the laws or constitution of any state to the contrary notwithstanding; that which gives Congress the absolute controul over the time and mode of its appointment and election, whereby, independent of any other means, they may establish hereditary despotism; that which authorises them to keep on foot at all times a standing army; and that which subjects the militia to absolute command—and to accelerate the subjugation of the people, trial by jury in civil cases and the liberty of the press are abolished.

So flagrant, so audacious a conspiracy against the liberties of a free people 2.7.123
is without precedent. Mankind in the darkest ages have never been so insulted; even then, tyrants found it necessary to pay some respect to the habits and feelings of the people, and nothing but the name of a Washington could have occasioned a moment's hesitation about the nature of the new plan, or saved its authors from the execration and vengeance of the people, which, eventually will prove an aggravation of their treason; for America will resent the imposition practiced upon the unsuspicious zeal of her *illustrious deliverer*, and vindicate her character from the aspersions of these enemies of her happiness and fame.

The advocates of this plan have artfully attempted to veil over the true 2.7.124

nature and principles of it with the names of those respectable characters that by consummate cunning and address they have prevailed upon to sign it, and what ought to convince the people of the deception and excite their apprehensions, is that with every advantage which education, the science of government and of law, the knowledge of history and superior talents and endowments, furnish the authors and advocates of this plan with, they have from its publication exerted all their power and influence to prevent all discussion of the subject, and when this could not be prevented they have constantly avoided the ground of argument and recurred to declamation, sophistry and personal abuse, but principally relied upon the magic of names. Would this have been their conduct, if their cause had been a good one? No, they would have invited investigation and convinced the understandings of the people.

2.7.125 But such policy indicates great ignorance of the good sense and spirit of the people, for if the sanction of every convention throughout the union was obtained by the means these men are practising; yet their triumph would be momentary, the favorite object would still elude their grasp; for a good government founded on fraud and deception could not be maintained without an army sufficiently powerful to compel submission, which the *well born* of America could not speedily accomplish. However the complexion of several of the more considerable states does not promise even this point of success. The Carolinas, Virginia, Maryland, New-York and New-Hampshire have by their wisdom in taking a longer time to deliberate, in all probability saved themselves from the disgrace of becoming the dupes of this gilded bait, as experience will evince that it need only be properly examined to be execrated and repulsed.

2.7.126 The merchant, immersed in schemes of wealth, seldom extends his views beyond the immediate object of gain; he blindly pursues his seeming interest, and sees not the latent mischief; therefore it is, that he is the last to take the alarm when public liberty is threatened. This may account for the infatuation of some of our merchants, who, elated with the imaginary prospect of an improved commerce under the new government, overlook all danger: they do not consider that commerce is the hand-maid of liberty, a plant of free growth that withers under the hand of despotism, that every concern of individuals will be sacrificed to the gratification of the men in power, who will institute injurious monopolies and shackle commerce with every device of avarice; and that property of every species will be held at the will and pleasure of rulers.

2.7.127 If the nature of the case did not give birth to these well-founded apprehensions, the principles and characters of the authors and advocates of the measure ought. View the monopolising spirit of the principal of them.[64] See him converting a bank, instituted for common benefit, to his own and creatures ['] emolument, and by the aid thereof, controuling the credit of the state, and dictating the measures of government. View the vassalage of our

merchants, the thraldom of the city of Philadelphia, and the extinction of that spirit of independency in most of its citizens so essential to freedom. View this Collosus attempting to grasp the commerce of America and meeting with a sudden repulse, in the midst of his immense career, receiving a shock that threatens his very existence. View the desperate fortunes of many of his co-adjutors and dependants, particularly the bankrupt situation of the principal instrument under the *great man* in promoting the new government, whose superlative arrogance, ambition and rapacity, would need the spoils of thousands to gratify; view his towering aspect, he would have no bowels of compassion for the oppressed, he would *overlook* all their sufferings.[65] Recollect the strenuous and unremitted exertions of these men, for years past, to destroy our admirable constitution, whose object is to secure equal liberty and advantages to all, and the great obstacle in the way of their ambitious schemes, and then answer, whether these apprehensions are chimerical, whether such characters will be less ambitious, less avaritious, more moderate, when the privileges, property, and every concern of the people of the United States shall lie at their mercy, when they shall be in possession of absolute sway?

Centinel.

Philadelphia; December 29, 1787.

IX

To the People of Pennsylvania.

Fellow Citizens,

You have the peculiar felicity of living under the most perfect system of local government in the world; prize then this invaluable blessing as it deserves: Suffer it not to be wrested from you, and the scourge of despotic power substituted in its place, under the specious pretence of vesting the general government of the United States with necessary power; that this would be the inevitable consequence of the establishment of the new constitution, the least consideration of its nature and tendency is sufficient to convince every unprejudiced mind. If you were sufficiently impressed with your present favored situation, I should have no doubt of a proper decision of the question in discussion. 2.7.128

The highest illustration of the excellence of the constitution of this commonwealth, is, that from its first establishment, the ambitious and profligate have been united in a constant conspiracy to destroy it; so sensible are they that it is their great enemy, that it is the great palladium of equal liberty, and the property of the people from the rapacious hand of power: The annals of 2.7.129

mankind do not furnish a more glorious instance of the triumph of patriotism over the lust of ambition aided by most of the wealth of the state. The few generally prevail over the many by uniformity of council, unremitted and persevering exertion, and superior information and address; but in Pennsylvania the reverse has happened; here the *well born* have been baffled in all their efforts to prostrate the altar of liberty for the purpose of substituting their own insolent sway that would degrade the freemen of this state into servile dependence upon the *lordly* and *great:* However, it is not the nature of ambition to be discouraged; it is ever ready to improve the first opportunity to rear its baneful head and with irritated fury to wreak its vengeance on the votaries of liberty. The present conspiracy is a continental exertion of the *well born* of America to obtain that darling domination, which they have not been able to accomplish in their respective states. Of what complexion were the deputies of this state in the general convention? *Six* out of *eight* were the inveterate enemies of our inestimable constitution, and the principals of that faction that for ten years past have kept the people in continual alarm for their liberties. Who are the advocates of the new constitution in this state? They consist of the same faction, with the addition of a few deluded well meaning men, but whose number is daily lessening.

2.7.130 These conspirators have come forward at a most favorable conjuncture, when the state of public affairs has lulled all jealousy of power: Emboldened by the sanction of the august name of a *Washington,* that they have prostituted to their purpose, they have presumed to overleap the usual gradations to absolute power, and have attempted to seize at once upon the supremacy of dominion. The new instrument of government does indeed make a fallacious parade of some remaining privileges, and insults the understandings of the people with the semblance of liberty in some of its artful and deceptive clauses: which form but a flimsy veil over the reality of tyranny, so weakly endeavored to be concealed from the eye of freedom. For, of what avail are the few inadequate stipulations in favor of the rights of the people, when they may be effectually counteracted and destroyed by virtue of other clauses; when these enable the rulers to renounce all dependence on their constituents, and render the latter tenants at will of every concern? The new constitution is in fact a *carte blanche,* a surrender at discretion to the will and pleasure of our rulers: as this has been demonstrated to be the case, by the investigation and discussion that have taken place, I trust the same good sense and spirit which have hitherto enabled the people to triumph over the wiles of ambition, will be again exerted for their salvation. The accounts from various parts of the country correspond with my warmest hopes, and justify my early predictions of the eventual defeat of this scheme of power and office-making.

2.7.131 The genius of liberty has sounded the alarm, and the dormant spirit of her votaries is reviving with enthusiastic ardor; the like unanimity which formerly distinguished them in their conflict with foreign despots, promises to

crown their virtuous opposition on the present occasion, with signal success. The structure of despotism that has been reared in this state, upon deception and surprise, will vanish like the baseless fabric of a dream and leave not a trace behind.

The parasites and tools of power in Northampton county ought to take warning from the fate of the Carlisle junto, lest like them, they experience the resentment of an injured people. I would advise them not to repeat the imposition of a set of fallacious resolutions as the sense of that county, when in fact, it was the act of a despicable few, with Alexander Paterson at their head, whose achievements at Wyoming, as the meaner instrument of unfeeling avarice, have rendered infamously notorious; but yet, like the election of a Mr. Sedgwick for the little town of Stockbridge, which has been adduced as evidence of the unanimity of the western counties of Massachusetts state in favor of the new constitution, when the fact is far otherwise, this act of a few individuals will be sounded forth over the continent as a testimony of the zealous attachment of the county of Northampton to the new constitution.[66] By such wretched and momentary deceptions do these harpies of power endeavor to give the complexion of strength to their cause. To prevent the detection of such impositions, to prevent the reflection of the rays of light from state to state, which, producing general illumination, would dissipate the mist of deception, and thereby prove fatal to the new constitution, all intercourse between the patriots of America is as far as possible cut off; whilst on the other hand, the conspirators have the most exact information, a common concert is every where evident, they move in unison. There is so much mystery in the conduct of these men, such systematic deception, and fraud characterises all their measures, such extraordinary solicitude shewn by them to precipitate and surprise the people into a blind and implicit adoption of this government, that it ought to excite the most alarming apprehensions in the minds of all those who think their privileges, property and welfare worth securing. 2.7.132

It is a fact that can be established, that during almost the whole of the time that the late convention of this state were assembled, the newspapers published in New-York, by Mr. Greenleaf, which contains the essays written there against the new government, such as the patriotic ones of Brutus, Cincinnatus, Cato, etc.,[67] sent as usual by the printer of that place to the printers of this city, miscarried in their conveyance, which prevented the republication in this state of many of these pieces, and since that period great irregularity prevails; and I stand informed that the printers in New-York complain that the free and independent newspapers of this city do not come to hand; whilst on the contrary, we find the devoted vehicles of despotism pass uninterrupted. I would ask what is the meaning of the new arrangement at the Post-Office, which abridges the circulation of newspapers at this momentous crisis, when our every concern is dependant upon a proper decision of the subject in discussion[68]—No trivial excuse will be 2.7.133

admitted; the Centinel will, as from the first approach of despotism, warn his countrymen of the insidious and base strategems that are practising to hoodwink them out of their liberties.

2.7.134 The more I consider the manœvres that are practising, the more am I alarmed—foreseeing that the juggle cannot long be concealed, and that the spirit of the people will not brook the imposition, they have guarded as they suppose against any danger arising from the opposition of the people, and rendered their struggles for liberty impotent and ridiculous. What otherwise is the meaning of disarming the militia, for the purpose as it is said, of repairing their musquets at such a particular period? Does not the timing of the measure determine the intention? I was ever jealous of the select militia, consisting of infantry and troops of horse, instituted in this city and in some of the counties, without the sanction of law, and officered principally by the devoted instruments of the *well born*, although the illustrious patriotism of one of them, has not corresponded with the intention of appointing him. Are not these corps provided to suppress the first efforts of freedom, and to check the spirit of the people until a regular and sufficiently powerful military force shall be embodied to rivet the chains of slavery on a deluded nation. What confirms these apprehensions is the declaration of a certain Major, an active instrument in this business, and the echo of the principal conspirators, who has said, he should deem the cutting off of five thousand men, as a small sacrifice, a cheap purchase for the establishment of the new constitution.[69]

Centinel.

Philadelphia, January 5, 1788.

X

To the People of Pennsylvania.

Fellow Citizens,

2.7.135 What illustrious evidence and striking demonstration does the present momentous discussion afford of the inestimable value of the liberty of the press? No doubt now remains, but that it will prove the rock of our political salvation. Despotism, with its innumerable host of evils, by gliding through the mist of deception, had gained some of the principal works, had made a lodgement in the very citadel of liberty before it was discovered, and was near carrying the fortress by surprise: at this imminent alarming crisis the centries from the watch-towers sounded the alarm, and aroused the dormant votaries of liberty to a due sense of their danger; who, with an alacrity and spirit suited to the exigence, answered to the call, repulsed the enemy,

dislodged it from most of its acquisitions, and nothing is now wanting to a total rout and compleat defeat, but a general discharge from the artillery of freedom. As the shades of night fly the approach of the radiant sun, so does despotism before the majesty of enlightened truth; wherever free discussion is allowed, this is invariably the consequence. Since the press has been unshackled in Pennsylvania, what an astonishing transition appears in the sentiments of the people! Infatuation is at an end, execration and indignation have succeeded to blind admiration and mistaken enthusiasm. The rampant insolence of the conspirators is prostrated, black dispair has taken possession of many of them, their countenances proclaim their defeat, and express serious apprehension for their personal safety from the rising resentment of injured freemen.

James, the Caledonian, lieutenant general of the myrmidons of power, under Robert, the cofferer, who, with his aid du camp, *Gouvero*, the cunning man, has taken the field in Virginia;[70] I say James, in this exigence summonses a grand council of his partizans of this city, and represents, in the most pathetic moving language, the deplorable situation of affairs, stimulates them to make a vigorous effort to recover the ground they have lost and establish their empire; that for this purpose, a generous contribution must be made by all those who expect to taste the sweets of power, or share in the fruits of dominion, in order to form a fund adequate to the great design, that may put them in possession of the darling object: then recommends that a committee be appointed of those who are gifted with Machiavelian talents, of those who excel in ingenuity, artifice, sophistry and the refinements of faslehood, who can assume the pleasing appearance of truth and bewilder the people in all the mazes of error; and as the task will be arduous, and requires various abilities and talents, the business ought to be distributed, and different parts assigned to the members of the committee, as they may be respectively qualified; some by ingenious sophisms to explain away and counteract those essays of patriotism that have struck such general conviction; some to manufacture extracts of letters and notes from correspondents, to give the complexion of strength to their cause, by representing the unanimity of all corners of America in favor of the new constitution; and others to write reams of letters to their tools in every direction, furnishing them with the materials of propagating error and deception; in short that this committee ought to make the press groan and the whole country reverberate with their productions. Thus to overpower truth and liberty by the din of empty sound and the delusion of falsehood. 2.7.136

The conspirators, deceived by their first success, grounded on the unreserved confidence of the people, do not consider that with the detection of their views, all chance of success is over; that suspicion once awakened, is not so soon to be lulled, but with eagle-eye will penetrate all their wiles, and detect their every scheme, however deeply laid, or speciously glossed. The labours of their committee will be unavailing, the point of deception is 2.7.137

passed, the rays of enlightened patriotism have diffused general illumination. However, this new effort will serve to shew the perseverance of ambition and the necessity of constant vigilance in the people for the preservation of their liberty.

2.7.138 Already we recognize the ingenuity and industry of this committee; the papers teem with paragraphs, correspondents, etc. that exhibit a picture which bears no resemblance to the original; if we view this mirror for the representation of the sentiments of the people, a perfect harmony seems to prevail, every body in every place are charmed with the new Constitution, consider it as a gift from heaven, as their only salvation, etc. etc. etc. and I am informed expresses are employing to waft the delusion to the remotest corners; such a scene of bustle, lying, and activity, was never exhibited since the days of Adam. The contributions to the grand fund are so great, that it is whispered a magazine of all the apparatus of war is to be immediately provided, and if all other means fail, force is to be recurred to, which they hope will successfully terminate the disagreeable discussion of the rights of mankind, of equal liberty, etc. and thus establish a due subordination to the *well born few*.

Centinel.

XI[71]

To the People of Pennsylvania.

Fellow Citizens,

2.7.139 The arguments upon which the advocates of the new constitution the most dwell, are the distresses of the community, the evils of anarchy, and the horrible consequences that would ensue from the dissolution of the union of the states, and the institution of separate confederacies or republics: The unanimity of the federal convention, and the sanction of great names, can be no further urged as an argument after the exposition made by the attorney-general of Maryland, who was a member of that convention; he has opened such a scene of discord and accommodation of republicanism to despotism as excite the most serious apprehensions in every patriotic mind.[72] The first argument has been noticed in the preceding essays;[73] wherein it is shewn that this is not the criterion whereby to determine the merits of the new constitution; that notwithstanding the reality of the distresses of the people, the new constitution may not only be inadequate as a remedy, but destructive of liberty, and the completion of misery: The remaining two arguments will be discussed in this number; their futility elucidated; and thus the medium of deception being dissipated, the public atten-

tion, with undiverted, undiminished force, will be directed to the proper object, will be confined to the consideration of the nature and construction of the plan of government itself, the question will then be, whether this plan be calculated for our welfare, or misery; whether it is the temple of liberty, or the structure of despotism? and as the former, or the latter, shall appear to be the case, to adopt, or reject it accordingly, otherwise to banish the demon of domination by suitable amendments and qualifications.

2.7.140 The evils of anarchy have been pourtrayed with all imagery of language, in the glowing colours of eloquence; the affrighted mind is thence led to clasp the new constitution as the instrument of deliverance, as the only avenue to safety and happiness:[74] To avoid the possible and transitory evils of one extreme, it is seduced into the certain and permanent misery necessarily attendant on the other. A state of anarchy from its very nature, can never be of long continuance; the greater its violence, the shorter the duration; order and security are immediately sought by the distracted people beneath the shelter of equal laws, and the salutary restraints of regular government; and if this be not attainable, absolute power is assumed by the *one*, or the *few*, who shall be the most enterprising and successful. If anarchy, therefore, were the inevitable consequence of rejecting the new constitution, it would be infinitely better to incur it; for even then there would be at least the chance of a good government rising out of licentiousness; but to rush at once into despotism, because there is a bare possibility of anarchy ensuing from the rejection, or from what is yet more visionary, the small delay that would be occasioned by a revision and correction of the proposed system of government, is so superlatively weak, so fatally blind, that it is astonishing any person of common understanding should suffer such an imposition to have the least influence on his judgement; still more astonishing, that so flimsy and deceptive a doctrine should make converts among the enlightened freemen of America, who have so long enjoyed the blessings of liberty; but when I view among such converts, men otherwise *pre-eminent*, it raises a blush for the weakness of humanity, that these her brightest ornaments should be so dim-sighted to what is self-evident to most men, that such imbecility of judgement should appear where so much perfection was looked for; this ought to teach us to depend more on our own judgement and the nature of the case, than upon the opinions of the greatest and best of men, who, from *constitutional* infirmities, or *particular* situations may sometimes view an object through a delusive medium; but the opinions of great men are more frequently the dictates of ambition, or private interest.

2.7.141 The source of the apprehensions of this so much dreaded anarchy would upon investigation be found to arise from the artful suggestions of designing men, and not from a rational possibility grounded on the actual state of affairs; the least reflection is sufficient to detect the fallacy to shew that there is no one circumstance to justify the production of such an event: On the contrary, a short time will evince to the utter dismay and confusion of

the conspirators, that a perseverance in cramming down their scheme of power upon the freemen of this state, will inevitably produce *an anarchy* destructive of their darling domination, and *may* kindle a flame prejudicial to their safety; they should be cautious not to trespass too far on the forbearance of freemen, when wresting their dearest concerns; but prudently retreat from the gathering storm.

2.7.142 The other spectre that has been raised to terrify and alarm the people out of the exercise of their judgement on this great occasion, is the dread of our splitting into separate confederacies or republics, that might become rival powers and consequently liable to mutual wars from the usual motives of contention. This is an event still more improbable than the foregoing; it is a presumption unwarrantable, either by the situation of affairs, or the sentiments of the people; no disposition leading to it exists; the advocates of the new constitution seem to view such a separation with horror, and its opponents are strenuously contending for a confederation that shall embrace all America under its comprehensive and salutary protection. This hobgoblin appears to have sprung from the deranged brain of *Publius*, a New-York writer, who, mistaking sound for argument, has with Herculean labour accumulated myriads of unmeaning sentences, and *mechanically* endeavored to force conviction by a torrent of misplaced words; he might have spared his readers the fatigue of wading through his long-winded disquisitions on the direful effects of the contentions of inimical states, as totally inapplicable to the subject he was *professedly* treating; this writer has devoted much time, and wasted more paper in combating chimeras of his own creation:[75] However, for the sake of argument, I will admit, that the necessary consequence of rejecting, or delaying the establishment of the new constitution, would be the dissolution of the union, and the institution of even rival and inimical republics; yet ought such an apprehension, if well founded, to drive us into the fangs of despotism: Infinitely preferable would be occasional wars to such an event; the former, although a severe scourge, is transient in its continuance, and in its operation partial, but a small proportion of the community are exposed to its greatest horrors, and yet fewer experience its greatest evils; the latter is permanent and universal misery, without remission or exemption: as passing clouds obscure for a time the splendour of the sun, so do wars interrupt the welfare of mankind; but despotism is a settled gloom that totally extinguishes happiness, not a ray of comfort can penetrate to cheer the dejected mind; the goad of power with unabating rigor insists upon the utmost exaction, like a merciless task master, is continually inflicting the task, and is never satiated with the feast of unfeeling domination, or the most abject servility.

2.7.143 The celebrated Lord Kaims whose disquisitions on human nature evidence extraordinary strength of judgement and depth of investigation, says that a continual *civil* war, which is the most destructive and horrible scene of human discord, is preferable to the uniformity of wretchedness and mis-

ery attendant upon despotism;[76]—of all *possible* evils, as I observed in my first number, *this* is the worst and the most to be *dreaded*.

I congratulate my fellow-citizens that a good government, the greatest earthly blessing, may be so easily obtained, that our circumstances are so favorable that nothing but the folly of the conspirators can produce anarchy or civil war, which would presently terminate in their destruction and the permanent harmony of the state alone, interrupted by their ambitious machinations.

In a former number I stated a charge of a very heinous nature, and highly prejudicial to the public welfare, and at this great crisis peculiarly alarming and threatening to liberty; I mean the suppression of the circulation of the newspapers from state to state by the of——c——rs of the P——t-O——ce, who in violation of their duty and integrity have prostituted their of——ces to forward the nefarious design of enslaving their countrymen, by thus cutting off all communication by the usual vehicle between the patriots of America;—I find that notwithstanding that public appeal, they persevere in this villainous and daring practice. The newspapers of the other states that contain any useful information, are still withheld from the printers of this state, and I see by the annunciation of the Editor of Mr. Greenleaf's patriotic New-York paper, that the printers of that place are still treated in like manner; this informs his readers that but two southern papers have come to hand, and that they contain no information, which he affects to ascribe to the negligence of the p——t boy, not caring to quarrel with the p——t m——t——r g——l.[77] 2.7.144

Centinel.

Philadelphia, January 12, 1788.

XII

To the People of Pennsylvania.

Fellow-Citizens,

Conscious guilt has taken the alarm, thrown out the signal of distress, and even appealed to the generosity of patriotism. The authors and abettors of the new constitution shudder at the term *conspirators* being applied to them, as it designates their true character, and seems prophetic of the catastrophe: they read their fate in the epithet.[78] 2.7.145

In dispair they are weakly endeavouring to screen their criminality by interposing the shield of the virtues of a Washington, in representing his concurrence in the proposed system of government, as evidence of the purity of their intentions; but this impotent attempt to degrade the brightest 2.7.146

ornament of his country to a base level with themselves, will be considered as an aggravation of their treason, and an insult on the good sense of the people, who have too much discernment not to make a just discrimination between the honest mistaken zeal of the patriot, and the flagitious machinations of an ambitious junto, and will resent the imposition that Machiavelian arts and consummate cunning have practiced upon our *illustrious chief.*

2.7.147 The term *conspirators* was not, as has been alledged, rashly or inconsiderately adopted; it is the language of dispassionate and deliberate reason, influenced by the purest patriotism: the consideration of the nature and construction of the new constitution naturally suggests the epithet; its justness is strikingly illustrated by the conduct of the patrons of this plan of government, but if any doubt had remained whether this epithet is merited, it is now removed by the very uneasiness it occasions; this is a confirmation of its propriety. Innocence would have nothing to dread from such a stigma, but would triumph over the shafts of malice.

2.7.148 The conduct of men is the best clue to their principles. The system of deception that has been practiced; the constant solicitude shewn to prevent information diffusing its salutary light, are evidence of a conspiracy beyond the arts of sophistry to palliate, or the ingenuity of falsehood to invalidate: the means practised to establish the new constitution are demonstrative of the principles and designs of its authors and abettors.

2.7.149 At the time, says Mr. Martin (deputy from the state of Maryland in the general convention) when the public prints were announcing our perfect unanimity, discord prevailed to such a degree, that the minority were upon the point of appealing to the public against the machinations of ambition.[79] By such a base imposition, repeated in every newspaper and reverberated from one end of the union to the other, was the people lulled into a false confidence, into an implicit reliance upon the wisdom and patriotism of the convention; and when ambition, by her deceptive wiles, had succeeded to usher forth the new system of government with apparent unanimity of sentiment, the public delusion was compleat. The most extravagant fictions were palmed upon the people, the seal of divinity was even ascribed to the new constitution; a felicity more than human was to ensue from its establishment;—overlooking the real cause of our difficulties and burthens, which have their proper remedy, the people were taught that the new constitution would prove a mine of wealth and prosperity equal to every want, or the most sanguine desire; that it would effect what can only be produced by the exertion of industry and the practice of oeconomy.

2.7.150 The conspirators, aware of the danger of delay, that allowing time for a rational investigation would prove fatal to their designs, precipitated the establishment of the new constitution with all possible celerity; in Massachusetts the deputies of that convention, who are to give the final fiat in behalf of that great state to a measure upon which their dearest concerns depend, were elected by express in the first moments of blind enthusiasm;

similar conduct has prevailed in the other states as far as circumstances permitted.

If the foregoing circumstances did not prove a conspiracy, there are 2.7.151
others that must strike conviction in the most unsuspicious. Attempts to prevent discussion by shackling the press ought ever to be a signal of alarm to freemen, and considered as an annunciation of meditated tyranny; this is a truth that the uniform experience of mankind has established beyond the possibility of doubt. Bring the conduct of the authors and abettors of the new constitution to this test, let this be the criterion of their criminality, and every patriotic mind must unite in branding them with the stigma of conspirators against the public liberties.—No stage of this business but what has been marked with every exertion of influence and device of ambition to suppress information and intimidate public discussion; the virtue and firmness of some of the printers, rose superior to the menaces of violence, and the lucre of private interest; when every means failed to shackle the press, the free and independent papers were attempted to be demolished by withdrawing all the subscriptions to them within the sphere of the influence of the conspirators; fortunately for the cause of liberty and truth, these daring high-handed attempts have failed except in one instance, where from a peculiarity of circumstances, ambition has triumphed. Under the flimsy pretence of vindicating the character of a contemptible drudge of party rendered ridiculous by his superlative folly in the late convention, of which the statement given in the Pennsylvania Herald, was confessedly a faithful representation, this newspaper has been silenced* by some hundreds of its subscribers (who it seems are generally among the devoted tools of party, or those who are obliged from their thraldom to yield implicit assent to the mandates of the junto) withdrawing their support from it; by this stroke the conspirators have suppressed the publication of the most valuable debates of the late convention, which would have been given in course by the Editor of that paper, whose stipend now ceasing, he cannot afford without compensation the time and attention necessary to this business.

Every patriotic person who had an opportunity of hearing that illustrious 2.7.152
advocate of liberty and his country, Mr. Findley, must sensibly regret that his powerful arguments are not to extend beyond the confined walls of the State-House, where they could have so limited an effect; that the United States could not have been his auditory through the medium of the press. I anticipate the answer of the conspirators; they will tell you that this could not be their motive for silencing this paper, as the whole of the debates were taken down in short hand by another person and published, but the public are not to be easily duped, they will not receive a spurious as an equivalent for a genuine production; equal solicitude was expressed for the publication

*The Herald it is said is to be discontinued the 23d instant, (the Editor is already dismissed.)

of the former as for the suppression of the latter—the public will judge of the motives.

2.7.153 That investigation into the nature and construction of the new constitution, which the conspirators have so long and zealously struggled against, has, notwithstanding their partial success, so far taken place as to ascertain the enormity of their criminality. That system which was pompously displayed as the perfection of government, proves upon examination to be the most odious system of tyranny that was ever projected, a many headed hydra of despotism, whose complicated and various evils would be infinitely more oppressive and afflictive than the scourge of any single tyrant: the objects of dominion would be tortured to gratify the calls of ambition and the cravings of power of rival despots contending for the sceptre of superiority; the devoted people would experience a distraction of misery.

2.7.154 No wonder then that such a discovery should excite uneasy apprehensions in the minds of the conspirators, for such an attempt against the public liberties is unprecedented in history, it is a crime of the blackest dye, as it strikes at the happiness of millions and the dignity of human nature, as it was intended to deprive the inhabitants of so large a portion of the globe of the choicest blessing of life and the oppressed of all nations of an asylum.

2.7.155 The explicit language of the Centinel during the empire of delusion was not congenial to the feelings of the people, but truth when it has free scope is all powerful, it enforces conviction in the most prejudiced mind; he foresaw the consequence of an exertion of the good sense and understanding of the people, and predicted the defeat of the measure he ventured to attack, when it was deemed sacred by most men and the certain ruin of any who should dare to lisp a word against it: he has persevered through every discouraging appearance, and has now the satisfaction to find his countrymen are aware of their danger and are taking measures for their security.

2.7.156 Since writing the foregoing, I am informed that the Printer of the Pennsylvania Herald is not quite decided whether he will drop his paper; he wishes, and perhaps will be enabled, to perseverve;—however, the conspirators have effected their purpose; the editor is dismissed and the debates of the convention thereby suppressed.

Centinel.

XIII

To the People of Pennsylvania.

Fellow-Citizens,

2.7.157 The conspirators are putting your good sense, patriotism and spirit to the severest test. So bold a game of deception, so decisive a stroke for despotic power, was never before attempted among enlightened freemen. Can there

be apathy so indifferent as not to be rouzed into indignation, or prejudice so blind, as not to yield to the glaring evidence of a flagitious conspiracy against the public liberties! The audacious and high-handed measures practised to suppress information, and intimidate discussion, would in any other circumstances than the present, have kindled a flame fatal to such daring invaders of our dearest privileges.

The conspirators having been severely galled and checked in their career 2.7.158
by the artillery of freedom, have made more vigorous and successful efforts to silence her batteries, while falsehood with all her delusions is making new and greater exertions in favor of ambition. On the one hand, every avenue to information is as far as possible cut off, the usual communication between the states through the medium of the press, is in a great measure destroyed, by a new arrangement at the Post-Office, scarcely a newspaper is suffered to pass† by this conveyance,[80] and the arguments of a Findley, a Whitehill and a Smilie, that bright constellation of patriots are suppressed, and a spurious publication substituted; and on the other hand the select committee are assiduously employed in manufacturing deception in all its ensnaring colours, and having an adequate fund at their command, they are deluging the country with their productions. The only newspaper that circulates extensively out of the city is kept running over with deceptive inventions. Doctor Puff[81] the paragraphist, has scarcely slept since his appointment, having received orders to work double tides; beneath his creative pen thousands of correspondents rise into view, who all harmonize in their sentiments and information about the new-constitution; but the chief reliance is on James the Caledonian,[82] who can to appearance distroy all distinction between liberty and despotism, and make the latter pass for the former, who can bewilder truth in all the mazes of sophistry, and render the plainest propositions problematical—He chameleon-like can vary his appearance at pleasure, and assume any character for the purposes of deception. In the guise of a *Conciliator*, in the Independent Gazetteer, he professes great candour and moderation, admits some of the principal objections to the new constitution to be well founded, and insidiously proposes a method to remove them, which is to consider the first Congress under the new constitution as a convention, competent to supply all defects in the system of government.[83] This is really a discovery that does honor to his invention. What! a legislative declaration or law a basis upon which to rest our dearest liberties. Does he suppose the people have so little penetration as not to see through so flimsy a delusion, that such a security would amount to no more than the will and pleasure of their rulers, who might repeal this *fundamental* sanction whenever ambition stimulated?—in the feigned *character* of a *Freeman*, he combats the weighty arguments of the minority of the late convention, by a meer play upon words, carefully avoiding the real merits of the question,[84] and we moreover trace him in a variety of miscellaneous productions in

†For the truth of this charge I appeal to the Printers.

every shape and form, he occasionally assists Doctor Puff in the fabrication of extracts of letters, paragraphs, correspondents, etc. etc.

2.7.159 So gifted and with such a claim of merit from his extraordinary and unwearied exertions in the cause of despotism, who so suitable or deserving of the office of Chief Justice of the United States. How congenial would such a post be to the principles and disposition of James! Here he would be both Judge and jury, sovereign arbiter in law and equity. In this capacity he may satiate his vengeance on patriotism for the opposition given to his projects of dominion: Here he may gratify his superlative arrogance and contempt of mankind, by trampelling upon his fellow creatures with impunity; here he may give the finishing stroke to liberty, and silence the offensive complaints of violated justice and innocence, by adding the sanction of his office to the rapacity of power and the wantonness of oppression; there will be no intervening jury to shield the innocent, or procure redress to the injured.[85]

2.7.160 Fellow-citizens, although the conspirators and their abettors are not sufficiently numerous to endanger our liberties by an open and forcible attack on them, yet when the characters of which they are composed and the methods they are practising, are considered, it ought to occasion the most serious alarm, and stimulate to an immediate, vigorous and united exertion of the patriotic part of the community for the security of their rights and privileges. Societies ought to be instituted in every county and a reciprocity of sentiments and information maintained between such societies, whereby the patriots throughout Pennsylvania, being mutually enlightened and invigorated, would form an invincible bulwark to liberty, and by unity of council and exertion might the better procure and secure to themselves and to unborn ages the blessings of a good federal government. Nothing but such a system of conduct can frustrate the machinations of an ambitious junto, who, versed in Machiavellian arts, can varnish over with the semblance of freedom the most despotic instrument of government ever projected, who cannot only veil over their own ambitious purposes, but raise an outcry against the real patriots for interested views when they are advocating the cause of liberty and of their country by opposing a scheme of arbitrary power and office-making; who can give the appearance of economy to the introduction of a numerous and permanent standing army and the institution of lucrative, needless offices to provide for the swarms of gaping, almost famished expectants, who have been campaigning it for ten years without success against our inestimable state constitution, as a reward for their persevering toils, but particularly for their zeal on the present occasion, and also as a phalanx to tyranny; and who notwithstanding the testimony of uniform experience evinces the necessity of restrictions on those entrusted with power, and a due dependence of the deputy on the constituent being maintained to ensure the public welfare; who notwithstanding the fate that liberty has ever met from the remissness of the

people and the persevering nature of ambition who ever on the watch, grasps at every avenue to supremacy. I say, notwithstanding such evidence before them of the folly of mankind so often duped by similar arts, the conspirators have had the address to inculcate the opinion that forms of government are no security for the public liberties, that the administration is every thing, that although there would be no responsibility under the new constitution, no restriction on the powers of the government, whose will and pleasure would be literally the law of the land, yet that we should be perfectly safe and happy, that as our rulers would be made of the same corrupt materials as ourselves, they certainly could not abuse the trust reposed in them, but would be the most self denying order of beings ever created; with your purses at their absolute disposal, and your liberties at their discretion, they would be proof against the charms of money and the allurements of power; however, if such Utopian ideas should prove chimerical and the people should find the yoke too heavy, they might at pleasure alleviate or even throw it off. In short, the conspirators have displayed so much ingenuity on this occasion, that if it had not been for the patriotism and firmness of some of the printers, which gave an opportunity to enlightened truth to come forward, and by her invincible powers to detect the sophistry, and expose the fallacy of such impositions, liberty must have been overcome by the wiles of ambition, and this land of freemen have become the miserable abode of slaves.

Centinel.

Philadelphia, January 26, 1788.

XIV

To the People of Pennsylvania.

Fellow-Citizens,

I am happy to find the comment that I have made upon the nature and tendency of the new constitution, and my suspicions of the principles and designs of its authors, are fully confirmed by the evidence of the Honorable LUTHER MARTIN, esquire, late deputy in the general convention. He has laid open the conclave, exposed the dark scene within, developed the mystery of the proceedings, and illustrated the machinations of ambition. His public spirit has drawn upon him the rage of the conspirators, for daring to remove the veil of secrecy, and announcing to the public the meditated, gilded mischief: all their powers are exerting for his destruction, the mint of calumny is assiduously engaged in coining scandal to blacken his character, and thereby to invalidate his testimony; but this illustrious patriot will rise 2.7.161

superior to all their low arts, and be the better confirmed in the good opinion and esteem of his fellow-citizens, upon whose gratitude he has an additional claim by standing forth their champion at a crisis when most men would have shrunk from such a duty. Mr. Martin has appealed to general Washington for the truth of what he has advanced, and undaunted by the threats of his and his country's enemies, is nobly persevering in the cause of liberty and mankind. I would earnestly recommend it to all well meaning persons to read his communication, as the most satisfactory and certain method of forming a just opinion on the present momentous question, particularly the three or four last continuances, as they go more upon the general principles and tendency of the new constitution. I have in former numbers alluded to some passages in this publication; I shall in this number quote some few others, referring to the work itself for a more lengthy detail. The following paragraphs are extracted from the continuances republished in the "Independent Gazetteer" of the 25th January, and the "Pennsylvania Packet" of the 1st February instant, viz.

[Here Centinel inserts two extracts from Luther Martin's Genuine Information: the first is 2.4.55 above ("By the eighth section of this article . . . on which the imposts and excises are laid."); the second is 2.4.43–44 above ("But even this provision . . . and they acted accordingly."). The extracts are complete and substantially accurate and are therefore not reprinted here. Centinel concludes:]

2.7.162 After such information, what are we to think of the declarations of Mr. Wilson, who assured our state convention, that it was neither the intention of the authors of the new constitution, nor its tendency to establish a consolidated or national government, founded upon the destruction of the state governments, that such could not have been the design of the general convention he said was certain, because the testimony of experience, the opinions of the most celebrated writers, and the nature of the case demonstrated in the clearest manner, that so extensive a territory as these United States includes, could not be governed by any other mode than a confederacy of republics consistent with the principles of freedom, and that their own conviction was, that nothing short of the supremacy of despotism could connect and bind together this country under ONE GOVERNMENT?[86] Has any one a doubt now remaining of the guilt of the conspirators!

2.7.163 The O——rs of the P——t O——ce, fearful of the consequences of their conduct, are taking measures to invalidate the charge made against them. As this is a matter of the highest importance to the public, it will be necessary to state the charge and the evidence. In two of my former numbers, I asserted that the patriotic newspapers of this city and that of New-York miscarried in their passage, whilst the vehicles of despotism, meaning those newspapers in favor of the new constitution, passed as usual; and it was particularly asserted that the patriotic essays of Brutus, Cincinnatus, Cato, etc. published at New-York, were withheld during the greatest part of the

time that our state convention sat; and in a late number, I further asserted that since the late arrangement at the P——t O——ce, scarcely a newspaper was suffered to pass by the usual conveyance, and for the truth of this last charge I appealed to the printers;[87] however I understand this last is not denied or controverted. When the dependence of the printers on the P——t O——ce is considered, the injury they may sustain by incurring the displeasure of these of——rs, and when to this is added that of the complexion of the printers in respect to the new constitution, that most of them are zealous in promoting its advancement, it can scarcely be expected that they would volunteer it against the P——t O——rs, or refuse their names to a certificate exculpating the of——rs; accordingly we find that most of the printers have signed a certificate that the newspapers arrived as usual prior to the first of January, when the new arrangement took place; however, the printer of the Freeman's Journal when applied to, had the spirit to refuse his name to the establishment of a falsehood, and upon being called upon to specify the missing papers, particularly during the sitting of the state convention, he pointed out and offered to give a list of a considerable number, instancing no less than seven successive Greenleaf's patriotic New-York papers, besides others occasionally with-held from him; Colonel Oswald was out of town when his family was applied to, or I have no doubt he would have observed a similar conduct. But there is a fact that will invalidate any certificate that can be procured on this occasion, and is alone demonstrative of the suppression of the patriotic newspapers. The opponents to the new constitution in this state were anxious to avail themselves of the well-written essays of the New-York patriots, such as Brutus, Cincinnatus, Cato, etc.[88] and with that view were attentive to have them republished here as soon as they came to hand, and especially during the sitting of our state convention, when they would have been the most useful to the cause of liberty by operating on the members of that convention; a recurrence to the free papers of this city at that period, will shew a great chasm in these republications, owing to the miscarriage of Greenleaf's New-York papers; agreeable to my assertions it will appear, that for the greatest part of the time that our state convention sat, scarcely any of the numbers of Brutus, Cincinnatus, Cato, etc. were republished in this city; the fifth number of Cincinnatus that contained very material information about the finances of the union, which strikes at some of the principal arguments in favor of the new constitution, which was published at New-York the 29th November, was not republished here until the 15th December following, two or three days after the convention rose, and so of most of the other numbers of this and the other signatures; so great was the desire of the opponents here to republish them, that the fourth number of Cincinnatus was republished so lately as in Mr. Bailey's last paper, which with other missing numbers were procured by private hands from New-York, and in two or three instances, irregular numbers were republished. The new arrangement at the P——t

O——ce, novel in its nature, and peculiarly injurious by the suppression of information at this great crisis of public affairs, is a circumstance highly presumptive of the truth of the other charge.

Centinel.

XV[89]

To the People of Pennsylvania.

Fellow-Citizens,

2.7.164 There are few of the maxims or opinions we hold, that are the result of our own investigation or observation, and even those we adopt from others are seldom on a conviction of their truth or propriety, but from the facination of example and the influence of what is or appears to be the general sentiment. The science of government being the most abstruse and unobvious of all others, mankind are more liable to be imposed upon by the artful and designing in systems and regulations of government, than on any other subject: hence a jealousy of innovation confirmed by uniform experience prevails in most communities; this reluctance to change, has been found to be the greatest security of free governments, and the principal bulwark of liberty; for the aspiring and ever-restless spirit of ambition would otherwise, by her deceptive wiles and ensnaring glosses, triumph over the freest and most enlightened people. It is the peculiar misfortune of the people of these United States, at this awful crisis of public affairs, to have lost this useful, this absolutely necessary jealousy of innovation in government, and thereby to lie at the mercy and be exposed to all the artifices of ambition, without this usual shield to protect them from imposition. The conspirators, well aware of their advantage, have seized the favorable moment, and by the most unparalleled arts of deception, have obtained the sanction of the conventions of several states to the most tyrannic system of government ever projected.

2.7.165 The magic of great names, the delusion of falsehood, the suppression of information, precipitation and fraud have been the instruments of this partial success, the pillars whereon the structure of tyranny has been so far raised. Those influential vehicles, the newspapers with few exceptions, have been devoted to the cause of despotism, and by the subserviency of the P—— O——, the usefulness of the patriotic newspapers has been confined to the places of their publication, whilst falsehood and deception have had universal circulation, without the opportunity of refutation. The feigned unanimity of one part of America, has been represented to produce the acquiescence of another, and so mutually to impose upon the whole by the force of example.

2.7.166 The adoption of the new constitution by the convention of the state of

Massachusetts, by a majority of nineteen out of near four hundred members, and that too qualified by a number of propositions of amendment, cannot afford the conspirators much cause for triumph, and especially when all the circumstances under which it has been obtained, are considered. The late alarming disorders which distracted that state, and even threatened subversion of all order and government, and were with difficulty suppressed, occasioned the greatest consternation among all men of property and rank: in this disposition even the most high toned and arbitrary government became desirable as a security against licentiousness and agrarian laws; consequently the new constitution was embraced with eagerness by men of these descriptions, who, in every community, form a powerful interest, and added to the conspirators, office-hunters, etc. etc. made a formidable and numerous party in favor of the new constitution. The elections of the members of convention were moreover made in the first moments of blind enthusiasm, when every artifice was practised to prejudice the people against all those who had the enlightened patriotism to oppose this system of tyranny: thus was almost every man of real ability, who was in opposition, excluded from a seat in the convention; consequently the contest was very unequal; well-meaning, though uninformed men, were opposed to great learning, eloquence and sophistry in the shape of lawyers, doctors and divines, who were capable and seemed disposed to delude by deceptive glosses and specious reasoning; indeed, from the specimens we have seen of the discussion on this occasion, every enlightened patriot must regret that the cause of liberty has been so weakly, although jealously advocated, that its champions were so little illuminated. In addition to these numerous advantages in the convention, the friends of the new constitution had the weight and influence of the town of Boston to second their endeavors, and yet, notwithstanding all this, were near losing the question, although delusively qualified. Is this any evidence of the excellency of the new constitution? Certainly not. Nor can it have any influence in inducing the remaining states to accede. They will examine and judge for themselves, and from their wisdom in taking due time for deliberation, I have no doubt will prove the salvation of the liberties of the United States.

Centinel.

Philadelphia, February 20th, 1788.

XVI

To the People of Pennsylvania.

Fellow-Citizens,

The new constitution instead of being the panecea or cure of every grievance so delusively represented by its advocates will be found upon exami- 2.7.167

nation like Pandora's box, replete with every evil. The most specious clauses of this system of ambition and iniquity contain latent mischief, and premeditated villainy. By section 9th of the 1st article, "No *ex post facto* law shall be passed." This sounds very well upon a superficial consideration, and I dare say has been read by most people with approbation. Government undoubtedly ought to avoid retrospective laws as far as may be, as they are generally injurious and fraudulent: Yet there are occasions when such laws are not only just but highly requisite. An ex post facto law is a law made after the fact, so that the Congress under the new constitution are precluded from all controul over transactions prior to its establishment. This prohibition would skreen the numerous public defaulters, as no measure could be constitutionally taken to compel them to render an account and restore the public money; the unaccounted millions lying in their hands would become their private property. Hitherto these characters from their great weight and numbers have had the influence to prevent an investigation of their accounts, but if this constitution be established, they may set the public at defiance, as they would be completely exonerated of all demands of the United States against them. This is not a strained construction of this section, but the proper evident meaning of the words, which not even the ingenuity, or sophistry of the *Caledonian*,[90] can disguise from the meanest capacity. However if this matter admitted of any doubt, it would be removed by the following consideration, viz. that the new constitution is founded upon a dissolution of the present articles of confederation and is an original compact between those states, or rather those individuals who accede to it; consequently all contracts, debts and engagements in favor or against the United States, under the *old* government, are cancelled unless they are provided for in the *new* constitution. The framers of this constitution appear to have been aware of such consequence by stipulating in article 6th, that all debts contracted, and engagements entered into before the adoption of this constitution shall be valid *against* the United States under the new constitution, but there is no provision that the debts, etc. due *to* the United States, shall be valid or recoverable. This is a striking omission, and must have been designed, as debts of the latter description would naturally occur and claim equal attention with the former. This article implied, cancels all debts due to the United States prior to the establishment of the new constitution. If equal provision had been made for the debts due *to* the United States, as *against* the United States, the ex post facto clause would not have so pernicious an operation.

2.7.168 The immaculate convention, that is said to have possessed the fullness of patriotism, wisdom and virtue, contained a number of the principal public defaulters; and these were the most influential members, and chiefly instrumental in the framing of the new constitution: There were several of this description in the deputation from the state of Pennsylvania, who have long standing and immense accounts to settle, and MILLIONS perhaps to refund. The late Financier[91] alone, in the capacity of chairman of the commercial

committee of Congress, early in the late war, was entrusted with millions of public money, which to this day remain unaccounted for, nor has he settled his accounts as Financier. The others may also find it a convenient method to balance accounts with the public; they are sufficiently known and therefore need not be designated—This will account for the zealous attachment of such characters to the new constitution and their dread of investigation and discussion. It may be said that the new Congress would rather break through the constitution than suffer the public to be defrauded of so much treasure, when the burthens and distresses of the people are so very great; but this is not to be expected from the characters of which that Congress would in all probability be composed, if we may judge from the predominant influence and interest these defaulters now possess in many of the states. Besides, should Congress be disposed to violate the fundamental articles of the constitution for the sake of public justice, they would be prevented in so doing by their oaths,* but even if this should not prove an obstacle, if it can be supposed that any set of men would perjure themselves for the public good, and combat an host of enemies on such terms, still it would be of no avail, as there is a further barrier interposed between the public and these defaulters, namely, the supreme court of the union, whose province it would be to determine the constitutionality of any law that may be controverted;[92] and supposing no bribery or corrupt influence practised on the bench of judges, it would be their sworn duty to refuse their sanction to laws made in the face and contrary to the letter and spirit of the constitution, as any law to compel the settlement of accounts and payment of monies depending and due under the old confederation would be. The 1st section of 3d article gives the supreme court cognizance of not only the laws, but of all cases arising under the constitution, which empowers this tribunal to decide upon the construction of the constitution itself in the last resort. This is so extraordinary, so unprecedented an authority, that the intention in vesting of it must have been to put it out of the power of Congress, even by breaking through the constitution, to compel these defaulters to restore the public treasure.

In the present circumstances these sections of the new constitution would 2.7.169
be also productive of great injustice between the respective states; the delinquent states would be exonerated from all existing demands against them on account of the great arrearages of former requisitions, as they could not be constitutionally compelled to discharge them. And as the majority of the states are in this predicament, and have an equal voice in the senate, it would be their interest, and in their power by not only the constitution, but

*Article VI. "The senators and representatives before-mentioned and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath to support this constitution." Were ever public defaulters so effectually skreened! Not only the administrators of the general government, but also of the state governments, are prevented by oath from doing justice to the public; and the legislature of Pennsylvania could not without perjury insist upon the delinquent states discharging their arrears.

by a superiority of votes to prevent the levying of such arrearages; besides, the constitution, moreover, declares, that all taxes, etc. shall be uniform throughout the United States; which is an additional obstacle against noticing them.

2.7.170 The state of Pennsylvania in such case would have no credit for her extraordinary exertions and punctuality heretofore; but would be taxed equally with those states which, for years past, have not contributed any thing to the common expences of the union; indeed, some of the states have paid nothing since the revolution.

Centinel.

Philadelphia, 23d February, 1788.

XVII

To the People of Pennsylvania.

Fellow-Citizens,

2.7.171 In my last number I exposed the villainous intention of the framers of the new constitution, to defraud the public out of the millions lying in the hands of individuals by the construction of this system, which would, if established, cancel all debts now due to the United States. I also shewed that thereby the delinquent states would be exonerated of all arrearages due by them on former requisitions of Congress; and to prove that the cancelling of the public dues was premeditated in regard to individuals, I stated that the general convention contained a number of the principal public defaulters, and that these were the most influential members, and chiefly instrumental in framing the new constitution: In answer to which, the conspirators have, by bold assertions, spurious vouchers, and insufficient certificates, endeavoured to exculpate one member, and to alleviate the weight of the charge of delinquency against another. In the face of a resolution of Congress of the 20th June, 1785, declaring their intention of appointing 3 commissioners, to settle and adjust the receipts and expenditures of the late financier; the conspirators have asserted, that his accounts were finally settled in November, 1784, for which they pretend to have vouchers, and by a pompous display of certain resolutions of Congress, respecting a particular charge of fraud against him, as commercial agent to the United States, they vainly hope to divert the public attention from his great delinquency, in never accounting for the millions of public money, entrusted to him in that line. When we consider the immense sums of money taken up by Mr. M[orri]s, as commercial agent, to import military supplies, and even to trade in behalf of the United States, at a time when the risque was so great, that individuals would not venture their property; that all these transactions

were conducted under the private firm of W[illiam Gavett] and M[ereer], which afforded unrestrained scope to peculation and embezzlement of the public property, by enabling Mr. M[orri]s to throw the loss of all captures by the enemy, at that hazardous period, on the public, and converting most of the safe arrivals (which were consequently very valuable) into his private property; and when we add to these considerations, the principles of the MAN, his bankrupt situation at the commencement of the late war, and the immense wealth he has dazzled the world with since, can it be thought unreasonable to conclude, that the principal source of his affluence was the commercial agency of the United States, during the war, not that I would derogate from his successful ingenuity in his numerous speculations in the paper monies, Havannah monopoly and job, or in the sphere of financiering.[93]

The certificate published in behalf of general M[i]fflin, the quarter master gen[era]l, will not satisfy a discerning public, or acquit him of the charge of delinquency, as this certificate was procured to serve an electioneering purpose, upon a superficial and hasty inspection of his general account, unchecked by the accounts of his deputies, whose receipts and expenditures had not been examined, and consequently, by errors, collusion between him and them, or otherside g[enera]l M[i]fflin may retain a large balance in his hands; in such case a *quietus* may have been thought expedient to continue his affluence. 2.7.172

For the honor of human nature, I wish to draw a veil over the situation and conduct of another weighty character, whose name has given a false lustre to the new constitution, and been the occasion of sullying the laurels of a *Washington,* by inducing him to acquiesce in a system of despotism and villainy, at which enlightened patriotism shudders. 2.7.173

The discovery of the intended fraud, which for magnitude and audacity, is unparalelled, must open the eyes of the deluded to the true character and principles of the men who had assumed the garb of patriotism, with an insidious design of enslaving and robbing their fellow-citizens—of establishing those odious distinctions between the well born and the great body of the people, of degrading the latter to the level of slaves, and elevating the former to the rank of nobility. 2.7.174

The citizens of this state, which is in advance in its payments to the federal treasury, whilst some of the others have not paid a farthing since the war, ought in a peculiar manner to resent the intended imposition, and make its authors experience their just resentment; it is incumbent upon them in a particular manner, to exert themselves to frustrate the measures of the conspirators, and set an example to those parts of the union, who have not enjoyed the blessing of a free press on this occasion, but are still enveloped in the darkness of delusion, and enthralled by the fascination of names. 2.7.175

Could it have been supposed seven years ago, that, before the wounds received in the late conflict for liberty were scarcely healed, a post master-general and his deputies would have had the daring presumption to convert 2.7.176

an establishment intended to promote and secure the public welfare into an engine of despotism, by suppressing all those newspapers that contain the essays of patriotism and real intelligence, and propagating instead thereof falsehoods and delusion? Such a supposition at that time, would have been treated as chimerical; but how must our indignation rise when we find this flagitious practice is persevered in, after being publicly detected! Must not the bribe from the conspirators be very great to compensate the post master-general and his deputies, for the loss of character and infamy consequent upon such conduct, and for the danger they incur of being impeached and turned out of office?

2.7.177 The scurrilous attack of the *little Fiddler* upon Mr. Workman of the university, on a suspicion, perhaps unfounded, of his being the author of a series of essays under the signature of *Philadelphiensis,* is characteristical of the man;[94] he has ever been the base parasite and tool of the wealthy and great, at the expence of truth, honor, friendship, treachery to benefactors, nay to the nearest relatives; all have been sacrificed by him at the shrine of the great: he ought however, to have avoided a contrast with so worthy and highly respected a character as Mr. Workman, who had an equal right with himself to offer his sentiments on the new constitution; and if he viewed it as a system of despotism, and had talents to unfold its nature and tendency, he deserves the thanks of every patriotic American, if he has exerted them under the character of Philadelphiensis.—His not being above four years in the country can be no objection; the celebrated Thomas Paine wrote his Common Sense before he had been two years in America, which was not the less useful or acceptable upon that account. The public have nothing to do with the author of a piece; it is the merits of the writing that are alone to be considered.—Mr. Workman, prior to his coming to America, was a professor in an eminent academy in Dublin.—Little Francis should have been cautious in giving provocation, for insignificance alone could have preserved him the smallest remnant of character; I hope he will take the hint, or such a scene will be laid open as will disgrace even his patrons; the suit of claths, and the quarter cask of wine, will not be forgot.

Centinel.

Philadelphia, March 19th, 1788.

XVIII

To the People of Pennsylvania.

Fellow-Citizens,

2.7.178 The measures that are pursuing to effect the establishment of the new constitution, are so repugnant to truth, honor, and the well-being of society,

as would disgrace any cause. If the nature and tendency of this system were to be judged of by the conduct of its framers and patrons, what a picture of ambition and villainy would present itself to our view! From the specimens they have already given, anticipation may easily realise the consequences that would flow from the new constitution, if established; [we] may bid adieu to all the blessings of liberty, to all the fruits of the late glorious assertion of the rights of human nature, made at the expence of so much blood and treasure. Yet such is the infatuation of many well meaning persons, that they view with indifference the attrocious villainy which characterises the proceedings of the advocates of the new system: The daring, and in most parts of the United States, the successful methods practised to shackle the press, and destroy the freedom of discussion; the silencing the Pennsylvania Herald, to prevent the publication of the invaluable debates of the late convention of this state; the total suppression of real intelligence, and of the illuminations of patriotism through the medium of the post-office; the systematic fraud and deception that pervade the union; the stigmatising, and by every art which ambition and malice can suggest, labouring to villify, intimidate and trample under foot every disinterested patriot, who preferring his country's good to every other consideration, has the courage to stand forth the champion of liberty and the people; and the intercepting of private confidential letters passing from man to man, violating the sacredness of a seal, and thus infringing one of the first privileges of freemen—that of communicating with each other:[95] I say all these are overlooked by the infatuated admirers of the new system, who, deluded by the *phantom* of wealth and prosperity, profit not by the admonitory lesson which such proceedings afford, are deaf to the calls of patriotism, and would rush blindly into the noose of ambition.

However, to the honor of Pennsylvania, a very large majority of her 2.7.179
citizens view the subject in its true light, and spurn the shackles prepared for them. They will in due time convince the aspiring despots and avaricious office-hunters, that their dark intrigues, and deep concerted schemes of power and aggrandisement, are ineffectual, that they are neither to be duped nor dragooned out of their liberties. The conspirators, I know, insolently boast that their strength in the other states will enable them to crush the opposition in this; but let them not build upon that which is in its nature precarious and transient, which must fail them the moment the delusion is dispelled: Their success in the other states is the fruit of deceptions that cannot be long supported. Indeed the audacity and villainy of the conspirators on the one hand, and the frantic enthusiasm, and easy credulity of the people on the other, in some of the states, however well attested and recorded in the faithful page of history, will be treated by posterity as fabulous.

The great artifice that is played off on this occasion, is the persuading the 2.7.180
people of one place, that the people every where else are nearly unanimous in favor of the new system, and thus endeavouring by the fascination of

example and force of general opinion to prevail upon the people every where to acquiesce in what is represented to them as the general sentiment.

2.7.181 Thus as one means of deception has failed them, they have adopted another, always avoiding rational discussion. When the glare of great names, the dread of annihilation if the new system was rejected, or the adoption of it even delayed, were dissipated by the artillery of truth and reason; they have recurred to the one now practising, the intimidating and imposing influence of imaginary numbers and unanimity that are continually reverberated from every part of the union, by the tools and vehicles of the would-be despots; and in which they have had astonishing success. The people in the Eastern states have been taught to believe that it is all harmony to the Southward; and in the Southern states they are discouraged from opposition by the unanimity of the Eastern and Northern states; nay, what will appear incredible, considering the distance, a gentleman of veracity just returned from New-York, assures that the conspirators have had the address to inculcate an opinion there that all opposition had ceased in this state, notwithstanding the evidence of the contrary is so glaring here; this gentleman further informs, that so entirely devoted is the post-office, that not a single newspaper is received by the printers of that place from this city or elsewhere; and a Boston newspaper come by private hand, announces [to] the public, that for some months past, the printers there have received no newspapers to the Southward of New-Haven, in Connecticut, where the press is muzzled, and consequently, cannot injure the cause; that all intelligence of the occurrences in the other states is withheld from them; and that they know more of the state of Europe, than of their own country.

2.7.182 Notwithstanding many thousand copies of the Reasons of Dissent of the minority of the late convention of this state were printed and forwarded in every direction, and by various conveyances, scarcely any of these got beyond the limits of this state, and most of them not until a long time after their publication.[96] The printer of these Reasons, by particular desire, addressed a copy of them to every printer in the union, which he sent to the Post-office to be conveyed in the mail as usual, long before the *new arrangement,* as it is called, took place; and yet we since find that none of them reached the place of their destination. This is a full demonstration of the subserviency of the Post-Office, and a striking evidence of the vigilance that has been exerted to suppress information. It is greatly to be regretted that the opposition in Massachusetts were denied the benefits of our discussion, that the unanswerable dissent of our minority did not reach Boston in time to influence the decision of the great question by their convention, as it would in all probability have enabled patriotism to triumph; not that I would derogate from the good sense and public spirit of that state, which I have no doubt would in common circumstances have shone with equal splendor, but this was far from being the case; the new constitution was viewed in Massachusetts through the medium of a SHAYS, the terrors of HIS insurrection

had not subsided; a government that would have been execrated at another time was embraced by many as a refuge from anarchy, and thus liberty deformed by mad riot and dissention, lost her ablest advocates.

2.7.183 As the liberties of all the states in the union are struck at in common with those of Pennsylvania, by the conduct of the Post-Master General and deputies, I trust that the example which her Legislature* has set by instructing her delegates in Congress on this subject, will be followed by the others, that with one accord they will hurl their vengeance on the venal instruments of ambition, who have presumed to prostrate one of the principal bulwarks of liberty. In a confederated government of such extent as the United States, the freest communication of sentiment and information should be maintained, as the liberties, happiness and welfare of the union depend upon a concert of counsels; the signals of alarm whenever ambition should rear its baneful head, ought to be uniform: without this communication between the members of the confederacy the freedom of the press, if it could be maintained in so severed a situation, would cease to be a security against the encroachments of tyranny. The truth of the foregoing position is strikingly illustrated on the present occasion; for want of this intercommunity of sentiment and information, the liberties of this country are brought to an awful crisis; ambition has made a great stride towards dominion; has succeeded thro' the medium of muzzled presses to delude a great body of the people in the other states, and threatens to overwhelm the enlightened opposition in this by *external* force. Here, indeed, notwithstanding every nerve was strained, by the conspirators, to muzzle or demolish every newspaper that allowed free discussion, two printers have asserted the independency of the press,[97] whereby the arts of ambition have been detected, and the new system has been pourtrayed in its native villainy; its advocates have long since abandoned the field of argument, relinquished the unequal contest, and truth and patriotism reigns triumphant in this state; but the conspirators trust to their success in the other states for the attainment of their darling object, and therefore all their vigilance is exerted to prevent the infectious spirit of freedom and enlightened patriotism communicating to the rest of the union—all intercourse is as far as possible cut off.

2.7.184 To rectify the erroneous representation made in the other states of the sentiments of the people in this respecting the new constitution, I think it my duty to state the fact as it really is:—Those who favor this system of tyranny are most numerous in the city of Philadelphia, where, perhaps, they may be a considerable majority; in the most eastern counties they compose about one-fourth of the people, but in the middle, northern and western counties not above a twentieth part; so that upon the whole the friends to the new constitution in this state are about one-sixth of the people. The following

*The application to Congress from our Legislature, was made upon the complaint of all the printers of newspapers in the city of Philadelphia.

circumstance is an evidence of the spirit and decision of the opposition:—An individual unadvisedly and without concert, and contrary to the system of conduct generally agreed upon, went to the expence of printing and circulating an address to the Legislature, reprobating in the strongest terms the new constitution, and praying that the deputies of this state in the federal Convention, who in violation of their duty acceeded to the new constitution, be called to account for their daring procedure; this address or petition was signed by upwards of four thousand citizens in only two counties, viz. Franklin and Cumberland, and if the time had admitted, prior to the adjournment of the Legislature, there is reason to believe that this high-toned application would have been subscribed by five-sixth of the freemen of this state.[98] The advocates of the new constitution, availing themselves of this partial measure of two counties, have asserted it to be the result of a general exertion, which is so evidently false that it can only deceive people at a distance from us, for the counties over the mountain are nearly unanimous in the opposition; in Fayette at a numerous county meeting, there appeared to be but two persons in favor of the constitution; in Bedford county in the mountains, there are not above twenty; in Huntingdon adjoining, about 30; in Dauphin, in the middle country, not 100; in Berks, a large eastern county that has near 5000 taxable inhabitants, not more than 50, and so of several others, and yet no petitions were circulated or signed in those counties.—The system of conduct alluded to is the forming societies in every county in the state, who have committees of correspondence; these are now engaged in planning a uniform exertion to emancipate this state from the thraldom of despotism; a convention of deputies from every district will in all probability be agreed upon, as the most eligible mode of combining the strength of the opposition, which is increasing daily both in numbers and spirit.

2.7.185 The Centinel, supported by the dignity of the cause he advocates, and sensible that his well-meant endeavors have met the approbation of the community, views with ineffable contempt the impotent efforts of disappointed ambition to depreciate his merit and stigmatize his performances, and without pretending to the spirit of divination, he thinks he may predict that the period is not far distant when the authors and *wilful* abettors of the new constitution will be viewed with detestation by every good man, whilst the Centinels of the present day will be honored with the esteem and confidence of a grateful people.

2.7.186 Great pains have been taken to discover the author of these papers, with a view, no doubt, to villify his private character, and thereby lessen the usefulness of his writings, and many suppose they have made the discovery, but in this they are mistaken. The Centinel submits his performances to the public judgement, and challenges fair argumentation; the information he has given from time to time, has stood the test of the severest scrutiny, and thus his reputation as a writer, is established beyond the injury of his enemies. If

it were in the least material to the argument, or answered any one good purpose, he would not hesitate a moment in using his own signature; as it would not, but on the contrary, point where the shafts of malice could be levelled with most effect, and thus divert the public attention from the proper object, to a personal altercation, he from the first determined that the prying eye of party or curiosity, should never be gratified with his real name, and to that end to be the sole depository of the secret. He has been thus explicit to prevent the repetition of the weakness of declaring off, when charged with being the author, and to put the matter upon its true footing; however, it may flatter his vanity, that these papers should be ascribed to an illustrious patriot, whose public spirit and undaunted firmness of mind, eclipse the most shining ornaments of the Roman commonwealth, in its greatest purity and glory, whose persevering exertions for the public welfare, have endeared him to his country,[99] whilst it has made every knave and aspiring despot, his inveterate enemy, and who has never condescended to deny any writings that have been ascribed to him, or to notice the railings of party.

Centinel.

Philadelphia, April 5th, 1788.

1. Pennsylvania Constitution of 1776, Declaration of Rights, arts. 10, 11, 12.

2. Centinel goes further here in his criticism of Washington and Franklin than most Anti-Federalists thought prudent, and he was strongly criticized on this account. Cf. A Federalist, in the Philadelphia *Independent Gazetteer*, 25 October 1787 (McMaster and Stone 168). Resisting the weight of these venerable statesmen provided one of the Anti-Federalists' major rhetorical problems. The following Federalist appeal, exaggerated in style but characteristic in substance, was made by One of the Four Thousand, writing in the *Independent Gazetteer* 15 October 1787 (McMaster and Stone 117–18): "Freemen of Pennsylvania, consider the character and services of the men who made this government. Behold the venerable FRANKLIN, in the 70th year of his age, cooped up in the cabin of a small vessel, and exposing himself to the dangers of a passage on the ocean, crowded with British cruisers, in a winter month, in order to solicit from the court of France that aid, which finally enabled America to close the war with so much success and glory—and then say, is it possible that this man would set his hand to a constitution that would endanger your liberties? From this aged servant of the public, turn your eyes to the illustrious American hero, whose name has ennobled human nature—I mean our beloved WASHINGTON. Behold him, in the year 1775, taking leave of his happy family and peaceful retreat, and flying to the relief of a distant, and at that time an unknown part of the American continent. See him uniting and cementing an army, composed of the citizens of thirteen states, into a band of brothers. Follow him into the field of battle, and behold him the *first* in danger, and the *last* out of it. Follow him into his winter quarters, and see him sharing in the hunger, cold and fatigues of every soldier in his army. Behold his fortitude in adversity, his moderation in victory, and his tenderness and respect upon all occasions for the civil power of his country. But above all, turn your eyes to that illustrious scene he exhibited at Annapolis in 1782, when he resigned his commission, and laid his sword at the feet of Congress, and afterwards resumed the toils of an American farmer on the banks of the Potomac. Survey, my countrymen, these illustrious exploits of patriotism and virtue, and then say, is it possible that the deliverer of our country would have recommended an unsafe form of government for that liberty, for which he had for eight long years contended with such unexampled firmness, con-

stancy and magnanimity." For other Federalists who stress the respectability of the framers, and particularly Washington and Franklin, see McMaster and Stone 117, 129, 136, 168; Ford, *Essays* 23, 26; Ford, *Pamphlets* 64, 74, 221, 245–47. See Federal Republican 3.6.5 n. 4. The Anti-Federalists frequently shared their opponents' high opinion of the framers. The Federal Farmer (V, 2.8.62) thought that "America probably never will be an assembly of men of a like number, more respectable." There were, however, frequent criticisms. See Martin 2.4.13, 19–20; Cato I, 2.6.5–6; Brutus I, 2.9.1–3; Old Whig VII, 3.3.41–42; Aristocrotis 3.16.1–3; Yeomanry of Massachusetts 4.19.1–3; American 4.20.1–3; Countryman from Dutchess County 6.6.2–4.

3. John Adams, *Defence of the Constitutions of Government of the United States.* The first volume of the *Defence* was published in England in 1787, arriving in the United States "in the midst of the agitation caused by the assembling of the convention to form the federal constitution." Editorial note, John Adams, *Works* IV, 275–76. Two more volumes of the *Defence* followed in 1788.

4. See the "Preface" of the first volume of Adams' *Defence (Works* IV, 283ff.); Letters V, XXIII (ibid. 284, 322, 380–82); Conclusion (ibid. 579 ff.); and *Thoughts on Government* (1776) (ibid. 193 ff.). While some Anti-Federalists join *Centinel* in his opposition to balanced government (see Brutus XVI, 2.9.202; [Maryland] Farmer V, 5.1.71–72; Lowndes 5.12.4; Impartial Examiner 5.14.35–40; Republicus 5.13.7; Monroe 5.21.19–28), others display views very similar to Adams' (see *Federal Farmer* VII, 2.8.97 n. 60). Note that Centinel, while opposing a balancing of orders, emphatically supports the principle of separation of powers. See II, 2.7.50 and n. 29.

5. A Federalist writer replied: "The Centinel asserts, that responsibility in the rulers is the best security the people can have of their rights. Now were this true, every discerning person will see that there is as great a responsibility in this plan as if all the powers of government were blended in one body of men. But the assertion is false. Interest is the greatest tie that one man can have on another, I mean taking mankind in general. And for the truth of this I appeal to your own experience and observation. The thief, the robber knows that he is responsible to the state, and in danger of the halter or the wheel-barrow, yet this does not influence his conduct; but convince him in any particular instance that it is more for his interest to forbear this practice, and he will, for that time, be honest. According to the proposed plan, the interest of the rulers and the ruled are the same; they never can be separated, for they are all one mass, having no difference of rights or privileges; or, as I said before, it is the people governing themselves; and therefore their rights will be secure." A Citizen, *Carlisle* [Pennsylvania] *Gazette* 24 October 1787.

6. The argument in this section is repeated and somewhat elaborated in V, 2.7.96. Cf. also II, 2.7.40.

7. See Cato III, 2.6.16 n. 11.

8. See [Gordon and Trenchard], *Cato's Letters* III, no. 71: "In Turky, Printing is forbid, lest by its Means common Sense might get the better of Violence, and be too hard for the Imperial Butcher."

9. Shakespeare, *Julius Caesar* act 3, sc. 2.

10. This is the only essay of the series that did not appear in the *Independent Gazetteer.*

11. Montesquieu, *The Spirit of Laws* XIV, ch. 13.

12. Montesquieu, *Considerations on the Causes of the Greatness of the Romans and Their Decline* ch. 9, "Two Causes of Rome's Ruin."

13. John Dickinson, *Letters from a Farmer in Pennsylvania* (1767) X; reprinted in *Empire and Nation,* ed. Forrest McDonald (Englewood Cliffs, N.J., 1962).

14. Although numerous lengthy speeches by Wilson defending the Constitution in the Pennsylvania convention were published by Thomas Lloyd in 1788—and indeed constituted almost the whole of Lloyd's publication (and Elliot's republication) of the Pennsylvania debates—the piece referred to here was a speech delivered to a meeting of the citizens of Philadelphia on 6 October 1787. The substance of this speech was published in the *Pennsylvania Packet* 10 October 1787, from which it is reprinted by McMaster and Stone 143–49. It was also printed in a separate pamphlet, along with the Examination of an American Citizen (Tench Coxe), from which it is taken by

Ford, *Pamphlets* 155–61. Several lines were inadvertently omitted from the Ford republication (at 159 middle), and the McMaster and Stone version is therefore preferable. This speech was one of the most widely known Federalist statements and was answered by numerous Anti-Federalist writers. For a full version of the Pennsylvania debates and an explanation of the way these debates were published, see McMaster and Stone 211–431.

15. McMaster and Stone 146.

16. Ibid. 147. This argument was widespread. See ibid. 147, 264 (Wilson), 171 (A Federalist); Ford, *Essays* 153–54 (A Landholder); Elliot II, 64 (Sumner), 201 (Law), 202 (Wolcott); Elliot III, 96 (Madison), 301 (Pendleton); Elliot IV, 180–81 (Maclaine).

17. See McMaster and Stone 144.

18. While Centinel dates the Articles of Confederation in 1778, they did not come into force until 1781.

19. McMaster and Stone 143.

20. Regarding the omission of a provision for juries in civil cases, Wilson argued that state practice varied too much to permit a general rule. "Besides it is not in all causes that the trial by jury is adopted in civil questions: for causes depending in courts of admiralty, such as relate to maritime captures, and such as are agitated in the courts of equity, do not require the intervention of that tribunal." Ibid. 145. See Federal Farmer II, 2.8.9 n. 16.

21. I have not found any Federalist who makes this exact argument. See Ford, *Pamphlets* 149 (An American Citizen), 239 (Aristides); Ford, *Essays* 159 (A Landholder).

22. The Constitution does not extend federal judicial power to controversies between a state and citizens of that state. Art. III, sec. 2. See Agrippa V, 4.6.20.

23. See above, n. 20.

24. William Blackstone, *Commentaries on the Laws of England* III, 379–80. Centinel paraphrases or omits several sentences, including this one, after the reference to the few and the many: "On the other hand, if the power of the judicature were placed at random in the hands of the multitude, their decisions would be wild and capricious, and a new rule of action would be every day established in our courts."

25. For a description of this case and references to the primary materials, see Julius Goebel, Jr., and T. Raymond Naughton, *Law Enforcement in Colonial New York* (New York 1944) 235 and n. 47.

26. McMaster and Stone 145. See Brutus VIII, 2.9.97 n. 67.

27. McMaster and Stone 146.

28. See above, I, 2.7.10.

29. *The Spirit of Laws* XI, ch. 6. Cf. above, I, 2.7.6. The Anti-Federalists generally insisted on the necessity of a separation of powers. See Mason 2.2.7–8; Brutus XVI, 2.9.197; Federal Farmer VI, 2.8.86; XIV, 2.8.175; Old Whig V, 3.3.31; Officer of the Late Continental Army 3.8.3; DeWitt 4.3.12–14; Agrippa XVI, 4.6.73; Brutus [Virginia] 5.15.1; Henry 5.16.7, 14; Cincinnatus IV, 6.1.26–32; Plebeian 6.11.16. But see Penn 3.12.16–17; Watchman 4.22.4. Cf. above, n. 4.

30. McMaster and Stone 147–48. See Aristides, "Remarks," Ford, *Pamphlets* 253; cf. Federal Farmer III, 2.8.38; XVII 2.8.209; Old Whig VI, 3.3.33; Federal Republican 3.6.17. It may be noted that Publius does not attempt thus to sweeten the pill and agrees with the critics that "taking into the account the existing debt, foreign and domestic, upon any plan of extinguishment which a man moderately impressed with the importance of public justice and public credit could approve, in addition to the establishments, which all parties will acknowledge to be necessary, we could not reasonably flatter ourselves that this resource alone, upon the most improved scale, would even suffice for its present necessities." *The Federalist* no. 30, 190.

31. On poll taxes, see Cato VI, 2.6.42 and n. 29.

32. McMaster and Stone 149.

33. Ibid. 148–49: "All the officers of government, and all the appointments for the administration of justice and the collection of the public revenue, which are transferred from the individual to the aggregate sovereignty of the States, will necessarily turn the stream of influence and emolument into a new channel. Every person,

therefore, who either enjoys or expects to enjoy a place of profit under the present establishment, will object to the proposed innovation; not, in truth, because it is injurious to the liberties of the country, but because it affects his schemes of wealth and consequence." For other examples of this common argument see above, Martin 2.4.118 n. 44. Both sides could of course play this game. See Centinel XIII, 2.7.159 and n. 85.

34. This essay was first published in the *Independent Gazetteer* 8 November 1787 (from which it is taken by McMaster and Stone in their reprinting of Centinel); but it was, according to the author, very inaccurately printed. A version corrected by the author was published in the *Freeman's Journal* 14 November 1787, and is the one reprinted here.

35. Machiavelli, *Discourses* I, ch. 25.

36. See Farrand II, 583–84, 666–67.

37. See Pennsylvania Convention Minority (3.11).

38. *The Spirit of Laws* II, ch. 2.

39. Pennsylvania Constitution 1776, Declaration of Rights, sec. VIII.

40. See Brutus I, 2.9.10–21. Centinel refers to the reprinting of the first number of Brutus in the *Pennsylvania Packet and Daily Advertiser* 26 October 1787.

41. Centinel IV and a couple of paragraphs from Centinel II were later reprinted, substantially in their original form, in the *Freeman's Journal* 26 March 1788 and 2 April 1788, under the title "The Real Federalist" and signed by Deliberator.

42. See McMaster and Stone 238–48. See also Pennsylvania Convention Minority (3.11).

43. See above, I, 2.7.26. See One of the Four Thousand and A Pennsylvania Farmer in McMaster and Stone 118, 127–28. For other examples of this very common Federalist theme, see Ford, *Essays* 141–42, 149, 402–4; Ford, *Pamphlets* 55, 70–73; *The Federalist* no. 15, 91–92. On Anti-Federalist views of conditions, see Plebeian 6.11.5 n. 6.

44. See above, n. 2. The main references to Federalist discussions of the framers are collected below, Federal Republican 3.6.5 n. 4.

45. See above, n. 43. "There are critical periods in the fate of nations, as well as in the life of man, which are not to be neglected with impunity. I am much mistaken if this is not such a one with us. When we were at the very brink of despair, the late excellent Convention with a unanimity that none could have hoped for, generously discarding all little considerations formed a system of government which I am convinced can stand the nicest examination, if reason and not prejudice is employed in viewing it." Marcus [James Iredell], Ford, *Pamphlets* 369. For other examples, see Ford, *Essays* 191; McMaster and Stone 228; *The Federalist* no. 37; *Virginia Independent Chronicle* 31 October 1787, 14 November 1787 (A True Friend); ibid., 5 December 1787 (Americanus); ibid., 13 February 1788 (A Planter); *Gazette of the State of Georgia* 20 March 1788 (William Pierce to St. George Tucker); *Massachusetts Centinel* 13 October 1787. Anti-Federalists widely conceded that this was a critical period (see Federal Farmer I, 2.8.1 n. 4), while denying that circumstances were as bad as they painted them (see Plebeian 6.11.5 n. 6).

46. See Ford, *Pamphlets* 83, 191; Cato II, 2.6.8 n. 4.

47. See for examples, McMaster and Stone 96, 436, 484, 521–23; Ford, *Pamphlets* 78–83, 123; *The Federalist* no. 38.

48. Centinel's quotations are taken from a pamphlet version of the speech, published by Thomas Bradford, and reprinted in McMaster and Stone 217–31. (Exactly the same portions of the speech are quoted by the Pennsylvania Convention Minority; see 3.11.17.) The version of this speech printed in Elliot II, 418–34, is taken from Thomas Lloyd's report of the Pennsylvania debates and is misdated by Elliot as 26 November. See Federal Farmer XVII, 2.8.204 n. 123.

49. See particularly above, I, 2.7.11–16.

50. See above, n. 6.

51. See above, II, 2.7.41–46.

52. The original reads: ". . . the foregoing sections gives. . . ." On the "pursuant" clause, see Pennsylvania Convention Minority 3.11.22 and n. 11.

53. See above, n. 18.

54. McMaster and Stone 147.

55. Pennsylvania Convention, 28 November, ibid. 265–66; Elliot II, 440–41.

56. See VI, 2.7.105–8. On the subject of good administration see Federal Farmer I, 2.8.1 n. 3; Poplicola 4.11 passim.

57. Cf. Wilson's remarks on 1 December, McMaster and Stone 307.

58. Alexander Pope, *Essay on Man,* Epistle 2.

59. The Pennsylvania ratifying convention had concluded its deliberations on 15 December. The Address of the Minority of the Pennsylvania Convention had been published on 18 December in the *Pennsylvania Packet and Daily Advertiser* (see 3.11 intro.). By this time most of the major Pennsylvania Anti-Federalist pieces had been published or were in the course of publication, such as the Old Whig, the Democratic Federalist, An Officer of the Continental Army, and Philadelphiensis. Pennsylvanians had also had the opportunity to read such out-of-state authors as Cato, Federal Farmer, Brutus, Cincinnatus, Gerry, Mason, and Agrippa.

60. The quotation is not from Montesquieu but from John Dickinson, as Centinel correctly notes above; II, 2.7.33 n. 13.

61. *The Spirit of Laws* XIV, ch. 13.

62. *British Liberties; or, The Free-born Subject's Inheritance, Containing the Laws that Form the Basis of Those Liberties, with Observations Thereon . . .* (London 1766) 184–85.

63. On judicial review, see XVI, 2.7.168 and n. 92.

64. Robert Morris.

65. James Wilson.

66. See McMaster and Stone 483 ff.

67. Greenleaf's newspaper was the *New York Journal,* which was published in daily and weekly editions. See introductions to Cato (2.6), Brutus (2.9), and Cincinnatus (6.1).

68. This question is taken up again in several subsequent papers. See XI, 2.7.144; XII, 2.7.150–56; XIII, 2.7.157–58; XIV, 2.7.163; XV, 2.7.165; XII, 2.7.176–83. There appears in fact to have been no "new arrangement" of postal service, although there was a good deal of confusion and suspicion. The postmaster general, Ebenezar Hazard, defended himself by explaining that the arrangements for carrying newspapers, which were not strictly part of the mail, remained unchanged. The specific issue concerned the free carriage of newspapers exchanged between printers, which was entirely a matter of private arrangement between the carriers and the printers and not the responsibility of the postmaster general. Some of the carriers appear to have declined to take the printers' copies, which the Anti-Federal printers regarded as contrary to an established custom or right. There may have been political motives in some individual cases. It may also have been that some of the postriders, whose use Hazard promoted in favor of stages—the source of the "new arrangements" charge?—found the transportation of the newspapers a greater burden than the stages had and consequently refused to carry them. Yet Hazard said, in a private letter, that "it was while the stages carried the mail that 'Centinel' complained." The evidence suggests a primitive postal service rather than conspiracy. There were some interruptions in the exchange between printers of certain Anti-Federal newspapers at this time; but there is no evidence that it was serious or extensive or that it had its source in any instruction from the postmaster general. The Anti-Federalist essays were in fact widely and rather quickly distributed throughout the country. Following this controversy, the Congress provided that the printers should have the right to a free exchange of their papers by means of the public mail. While there is no adequate account of this matter in the secondary literature, there are discussions of it in McMaster and Stone 24, 529–31; Rutland, *The Ordeal of the Constitution,* 62, 128–34; and Wesley Everett Rich, *History of the United States Post Office to the Year 1829* (Cambridge 1924) 29–67. The main primary sources are *Papers of the Continental Congress* no. 61, 607–10, 567–68, 413, and passim; *Journals of the Continental Congress* XXXII, 55; XXXIII, 670–79; XXXIV, 144; Massachusetts Historical Society *Collections,* series 5, III, 23–45, 66–68; *Proceedings and Debates of the General*

Assembly of Pennsylvania (Philadelphia 1788) III, 198, 232–35; Washington, *Writings* XXX, 15–18; *New York Journal*, and Philadelphia *Independent Gazetteer*, January–April 1788.

69. The *Independent Gazetteer*, 9 January 1788, contains a reply to this charge, asserting that what the Major said was, "that I would rather see five thousand rascals who might wish to disturb the peace and happiness of America, perish by the rope, than that the sword of civil war should be drawn."

70. The references are of course to James Wilson, Robert Morris, and Gouverneur Morris.

71. From the *Independent Gazetteer* 16 January 1788, incorporating errata printed on 5 February 1788.

72. Luther Martin, Genuine Information; see above, 2.4.11–37.

73. See above, IV, 2.7.91 and nn. 43, 45.

74. "Anarchy, with her haggard cheeks and extended jaws, stands ready and all allow that unless some efficient form of government is adopted she will soon swallow us." Cassius [James Sullivan], Ford, *Essays* 15, 18. See *The Federalist* nos. 16 ff; McMaster and Stone 225–26 (Wilson), 93 (P. Webster), 118, 120–23, 127–28, 138, 298; Ford, *Pamphlets* 84 (A Citizen of New York), 269 (E. Randolph), 248–49 (Aristides); Ford, *Essays* 15 (Cassius), 179–80 (Landholder), 405–6 (Williamson). See above, n. 47.

75. See *The Federalist* no. 1, 7; no. 2, 12–13; nos. 6–7; no. 60, 409. For other Federalist warnings against separate confederacies, see Ford, *Pamphlets* 81–82 (A Citizen of New York), 248–49 (Aristides), 269–70 (E. Randolph); McMaster and Stone 225–26 (Wilson). See also An Old State Soldier, *Virginia Independent Chronicle* 6 February 1788; James McClurg to James Madison, 5 August 1787, *Proceedings of the Massachusetts Historical Society* 2d series, XVII (1903), 471; An American, *Virginia Independent Chronicle* 4 June 1788; A Federalist, *Country Journal and the Poughkeepsie Advertiser* 22 April 1788; A Dutchess County Farmer, ibid. 26 February 1788; and the essay ostensibly written by a group of Dutchess county Anti-Federalists and replies, ibid. 4 March, 11 March, 18 March 1788. For allegations that Patrick Henry favored separate confederacies, see Henry 5.16.11 n. 25. Generally the Anti-Federalist treatment was similar to that of Centinel. Cf. Federal Farmer (2.8); vol. 1 above, ch. 4. n. 2. The question is discussed by Jackson Turner Main in *The Antifederalists*, Appendix A, "Separate Confederacies."

76. The name in the original text seems to be a misspelling compounded by a misprint. The reference is to Henry Home Kames, perhaps to his *Sketches of the History of Man* (Edinburgh 1774) I, book 2, sketch 6, 434, "War and Peace Compared."

77. See *New York Journal* 10 January 1787; see also above, n. 68.

78. See A Real Patriot, *Independent Gazetteer* 28 January 1787, reprinted in McMaster and Stone 524–25.

79. See Martin 2.4.36.

80. See above, n. 68.

81. "Puff" is identified as Benjamin Rush by Konkle, *George Bryan* 318.

82. James Wilson.

83. Essays by Conciliator appeared in the Philadelphia *Independent Gazetteer* on 9 January, 15 January, 24 January, 12 February, and 20 February 1788.

84. Three essays by A Freeman, "to the Minority of the Convention of Pennsylvania," were published in the *Pennsylvania Gazette* 23 January, 30 January, and 6 February 1788. These essays appear in fact to have been written by Tench Coxe. See Deliberator 3.13 intro.

85. Wilson must have winced, his biographer suggests, on reading these words. "The Centinel had guessed Wilson's dearest ambition and soiled it." Charles Page Smith, *James Wilson* 284.

86. See above, V, 2.7.94.

87. See above, IX, 2.7.13 n. 68.

88. All of these essays are reprinted here: Brutus 2.9; Cincinnatus 6.1; Cato 2.6.

89. Incorporating corrections of errata printed 25 February 1788.

90. James Wilson.

91. Robert Morris.

92. See above, VIII, 2.7.122, where Centinel says that by virtue of the "necessary and proper" clause "every possible law will be constitutional, as they [Congress] are to be the sole judges of the propriety of such laws. . . ." Cf. I, 2.7.12–19; V, 2.7.97. See Brutus, XII, 2.9.148 n. 97. It should be observed that the statements of congressional omnipotence relate to the interpretation of powers granted to the Congress, especially in relation to the states, while the statement of ultimate judicial authority has to do with a specific restriction on the Congress. The arguments might thus be reconciled, although Centinel does not attempt to do so.

93. For replies by Morris and Mifflin to these charges, see McMaster and Stone 786–89.

94. The "little Fiddler" was Judge Francis Hopkinson, a Federalist writer who had produced a widely reprinted and commented on lampoon of Bryan, "The New Roof"; a mock "intercepted" Centinel essay (numbered XV), very widely reprinted in Federalist papers; and a facetious account of a meeting of the "Wheelbarrow Society." Konkle, *George Bryan* 316–19. The Philadelphiensis essays are printed below, 3.9.

95. Two letters by George Bryan to John Ralston were printed in the *Pennsylvania Gazette* 26 March 1788. See Konkle, *George Bryan* 320–24, who, however, has the dates wrong.

96. The Pennsylvania Minority, Address and Reasons of Dissent (reprinted below, 3.11), was published in the *Pennsylvania Packet* on 18 December 1787. Before the end of 1787 it had been published as a broadside or pamphlet in Philadelphia, Hudson, and Boston. It was very widely reprinted in newspapers across the country.

97. Probably referring to Eleazer Oswald, editor of the Philadelphia *Independent Gazetteer*, and Francis Bailey, editor of the *Freeman's Journal*.

98. See McMaster and Stone 23.

99. The papers were commonly ascribed to Judge George Bryan, who is thus (presuming Samuel Bryan in fact to have been the author) the object of political filial piety of a characteristically overblown kind. On the authorship of Centinel, see above, 2.7 intro.

Observations Leading to a Fair Examination of the System Of Government Proposed by the Late Convention; And to Several Essential and Necessary Alterations in It. In a Number of Letters from the Federal Farmer to the Republican

1787

and
An Additional Number of Letters
From the Federal Farmer to the Republican
Leading to a Fair Examination of the System of Government
Proposed by the Late Convention;
To Several Essential and Necessary Alterations in It;
And Calculated to Illustrate and Support the Principles
And Positions Laid Down in the Preceding Letters

1788

The Observations of The Federal Farmer are generally, and correctly, considered to be one of the ablest Anti-Federalist pieces; they deserve to be read fully and carefully by any student of Anti-Federalist thought. Contrary to a common impression, the letters were surprisingly little reprinted in the newspapers, apparently only the Poughkeepsie *Country Journal* printing the whole series. But they enjoyed wide popularity in pamphlet form.[1] Four editions totaling, according to the publisher, several thousands of the pamphlet were sold in a few months; and in January 1788 the author published An Additional Number of Letters, which, being longer and more diffuse, apparently enjoyed less success. The texts of the original pamphlets are followed here.[2] Paul Leicester Ford printed only the original five letters, finding the Additional Letters largely repetitious. Forrest McDonald gener-

ally agreed and printed only four of the Additional Letters in his 1962 paperback edition.[3] There is no doubt that there *is* much repetition and that the Additional Letters are somewhat loosely constructed; but there is scarcely a letter that does not contain material of the first importance, and it is a mistake to confine one's study of The Federal Farmer's arguments to the first five letters. One of the best criticisms of these letters was made by Timothy Pickering in a letter to Charles Tillinghast dated 24 December 1787. They were also reviewed in Noah Webster's *American Museum*.[4]

The Federal Farmer is generally supposed to have been Richard Henry Lee, but this was unequivocally denied by William W. Crosskey in his *Politics and the Constitution*.[5] Crosskey promised to discuss the matter in a later volume, which, unfortunately, was never published.[6] While Crosskey's case against Lee's authorship does not appear to have been very strong, neither, it turns out, is the case to support the usual view. The present editor's review of the evidence was at an advanced stage when he was pleased to discover that Gordon Wood's independent and often parallel investigation, also stimulated by Crosskey's remark, had led him too to doubt the solidity of the usual attribution.[7]

Wood makes a powerful and substantial rebuttal to the usual assumption that Lee's thought and style are evident in The Federal Farmer. The reader may make his own comparison of The Federal Farmer and Lee's letter to Governor Randolph, also printed here.[8] The yield of such a comparison seems to be, generally speaking, many differences but none that are flatly contradictory, and many similarities, but none that were not shared with many other Anti-Federal writers. Perhaps most telling against the case for Lee's authorship is the fact that the primary concern of The Federal Farmer is the question of consolidation and the destruction of the states, about which Lee's letter says nothing. This is a puzzling difference, and it seems to have been the source of Crosskey's doubt. Of course to attempt to deny, and especially to establish, authorship on such grounds is an extremely treacherous business. Lee's private letters during the fall of 1787 and the first half of 1788 show many points of similarity with The Federal Farmer (though no more, perhaps, than with several other Anti-Federal writers), and they demonstrate in particular that Lee, like The Federal Farmer, was concerned with the issue of consolidation and doubtful that a single government could extend over the whole United States.[9] Crosskey's contention that Lee's opinion changed shortly before the Virginia ratifying convention, while not without some foundation, is not very persuasive.[10] Yet it *is* striking that Lee does not in his official letter of opposition give any attention to the argument that is most prominent in the Observations.

Lee is positively identified as The Federal Farmer in a piece by New England published in the *Connecticut Courant* on 24 December 1787. This piece was quite widely reprinted and seems to have given rise to a handful of essays in Massachusetts in which Lee is named as The Federal Farmer.[11]

This is probably also the source of George Cabot's penciled note, in his copy of the Additional Letters, of Lee's "supposed" authorship. This copy of the Additional Letters was given to the Boston Athenaeum and was, as Wood shows, apparently the authority for the attribution of The Federal Farmer to Lee in the *Athenaeum Catalogue* published in 1874, thence to Sabin's *Dictionary of Books Relating to America*, and thence to Bancroft, Ford, and American historians generally.[12] This is a slim basis for attribution, but the evidence in these matters is usually slim, and it would hardly have been contradicted, even given the discrepancies in tone and argument between The Federal Farmer and Lee's letter, but for silence or ignorance among contemporaries who might be expected to know of Lee's authorship.[13]

Webster and Pickering, in their reviews of the essays, gave no evidence of knowing the author.[14] Virginian Edward Carrington sent The Federal Farmer's two volumes to Jefferson, describing them as reputedly "the best of anything that has been written in the opposition," but reporting that "the author is not known."[15] There is no evidence of authorship in Lee's correspondence or in the Lee family papers.[16] Moreover, while Lee's grandson and early biographer refers to "the objections of Mr. Lee to the constitution, and his arguments in support of them, [which] may be seen by the reader in eloquent and powerful detail, in his letters in the body of correspondence written during the years 1787 and 1788," he makes no reference to The Federal Farmer, as he surely would have done had he thought Lee was the author.[17] Considering the success and reputation of The Federal Farmer, it is strange that Lee never acknowledged authorship if they were his—yet the same could be said of just about any other possible author. The case against Lee's authorship remains inconclusive. But if, as seems probable, the only solid positive evidence is the essay of New England and its derivatives, the case for Lee's authorship is surely a good deal weaker than has usually been assumed.

Why is there so little extant evidence about a pamphlet so widely known and respected? Part of the reason, at least, is that these eighteenth-century Americans, while sharing with the rest of humankind a curiosity and disposition to gossip about personalities, really did think that what counts most (or at least what ought to count most) in political debate is what is said rather than who said it.[18] The Observations fall into four parts: first, a preface dealing with the way in which the Constitution ought to be considered (I, 2.8.1–8); second, an examination of the feasibility of a consolidation of the United States into one government on free principles (I, 2.8.9–14; II, 2.8.15–23); third, an examination of the organization and powers of the proposed government (III, 2.8.24–43; IV, 2.8.44–58); fourth, a conclusion (V, 2.8.59–66). Of particular importance are the excellent discussions of representation and the jury trial that run throughout these and the Additional Letters. The Additional Letters, which are taken up largely with an

examination of the organization of the three branches of the government, also contain especially important discussions of federalism (VI, 2.8.72–73), the federal republic (VI, 2.8.75–80; XVII, 2.8.204–13), and bills of rights (XVI, 2.8.196–203). What follows is an extended outline of the argument of the essays.

OBSERVATIONS

I. *Preface* (I, 2.8.1–8).
There is no reason for hasty or ill-considered adoption.
While the plan proposed appears to be partly federal, it is principally calculated to make the states one consolidated government, as is seen by examining the plan, its history, and the politics of its friends.

II. *The states cannot be consolidated into one entire government on free principles* (I, 2.8.9–14; II, 2.8.15–23; III, 2.8.24).
   A. A consideration of the several forms on which the United States might exist as one nation (I, 2.8.10–13).
   B. Impracticability of free and equal government extending over large and heterogeneous territory (I, 2.8.14).
   C. The Constitution does not, and cannot, provide the two essential parts of free government, a substantial representation of the people in the legislature (II, 2.8.15) and the jury trial of the vicinage (II, 2.8.16).
   D. Other considerations:
      1. The center and the extremes will not share benefits; and, because of the limited operation of the laws of a free government, the law will have to be enforced at the extremes by fear and fraud (II, 2.8.17–18).
      2. It is difficult, though not impossible, to frame a Bill of Rights for such a varied country (II, 2.8.19–21).
   E. The Constitution lodges very extensive powers in an inherently defective government, with the result either of neglected laws or military enforcement leading, in either case, to despotism (II, 2.8.22–23).

III. *Organization and powers of the new government* (III, 2.8.25–43, IV, 2.8.44–58).
   A. Organization (III, 2.8.25–34):
      Each part of the government briefly examined and criticized (III, 2.8.25–30). The deficiencies, particularly the smallness of the House of Representatives, the compromise basis of the Senate, and the blending of powers, are admittedly the inevitable result of our situation, which reinforces the conclusion that it is not possible to consolidate the states on proper principles (III, 2.8.31–34).

B. Powers improperly or prematurely lodged (III, 2.8.35–43; IV, 2.8.44):
   1. Powers regarding external objects and some regarding internal objects ought to be lodged in the general government, but unlimited power to lay taxes and extensive control of military strength of the country are dangerous; power in these critical areas should be granted extremely cautiously so long as the federal government is so defective especially regarding representation (which is further discussed here) (III, 2.8.35–40).
   2. The extensive jurisdiction given to federal judiciary is examined and shown, in many points, to be unnecessary and dangerous. Jury trial of the vicinage is not secured (III, 2.8.41–43; IV, 2.8.44).

C. Undefined powers (IV 2.8.44–45): Provisions regarding direct taxes, regarding qualifications of the vice president, regarding appointment of inferior officers, regarding congressional control over the appellate jurisdiction of the Supreme Court.

D. Powers the exercise of which is unsecured (IV, 2.8.46–58):
   1. Supremacy clause—no provision that treaties shall be made in pursuance of Constitution.
   2. Necessary and proper clause—power of Congress not restricted to a few national objects.
   3. No Bill of Rights with reservations for states and individuals: (a) religion, (b) trial by jury, (c) press.
   4. Provision for amendment—Constitution will transfer power from the many to the few, who will resist further change.

IV. *Conclusion* (V, 2.8.59–66).
Government ought to preserve, not undermine, the equal division of our land and the free and manly habits of our people.

We need improved federal government, and there are many good things here, but the value is lessened by the want of a representation of the people.

Extreme partisans favoring and opposing the Constitution—examination of activities of partisans for the Constitution.

Constitution should be considered freely and carefully and amendments proposed.

ADDITIONAL LETTERS

I. *General and introductory* (VI, 2.8.67–92).
   A. Character of Federalist and Anti-Federalist partisans (VI, 2.8.71–73):

This is a continuation of the preface in letter I and of discussion in V, with important discussion of "honest" federalists, "pretended" federalists, "true" federalists, and of misleading terms, "federalist" and "anti-federalist."

B. General positions and principles (VI, 2.8.74–80):
A (rather miscellaneous) brief restatement of earlier points about the need for a more efficient government, the necessity of a federal republic in such an extensive territory, the importance of a substantial representation and jury trial. A distinction is drawn between natural, constitutional, and common or legal rights.

C. Leading features of the Articles of Confederation (VI, 2.8.81–86).

D. Organization of state governments (VI, 2.8.87–92).

II. *Legislative branch* (VII–XII, 2.8.93–165).

A. Introduction (VII, 2.8.93–96):
Must have government—aim is to have one operating by *persuasion*, or it will operate by *force*.

Criteria of fair and equal representation: same interests, feelings, opinions, and views as people at large.

B. Representation is insubstantial and ought to be increased (VII–X, 2.8.97–142).

1. Substantial representation should contain representatives of all orders of society to maintain balance. Two major classes, aristocracy and democracy; their subordinate classes, their characteristics; and subsidiary interests and parties. (An important discussion.) The representation in the House of Representatives is too small to reflect these classes and interests and will be drawn largely from the aristocracy (VII, 2.8.97–100).

Observations in defense of representation as provided in the Constitution listed (VII, 2.8.101).

2. England as a genuine balance among the several orders (VIII, 2.8.102–10):
Contrast to Rome—the differences lie in substantial representation in England. (Secondary discussion but still important on question of representation.)

3. Observations of advocates answered (IX–X, 2.8.111–42):
People will elect good men (important on representation) (X, 2.8.111–18).

Members of Congress must return home and bear the burdens they impose on others (IX, 2.8.119–26).

People have a strong arm to check their rulers (X, 2.8.127).

States are part of the system and will balance the general government (but states have no *constitutional* check) (X, 2.8.128).

Objects of Congress are few and national (X, 2.8.130–32).

House of Representatives will increase in size in time (X, 2.8.133–34).

Difficulty of assembling many men without making them a mob (X, 2.8.136).

Congress will have no temptation to do wrong (X, 2.8.138).

People will be free as long as they possess habits of free men (X, 2.8.139).

4. Organization, appointment, powers of Senate (XI, 2.8.143–47):
Cannot have genuine representation of aristocracy in the United States; so Senate will contain generally same kind of men as high posts of House of Representatives; checks will be only those limited ones derived from different modes of appointment, different terms of office, mere fact of a second branch, etc.

While Senate is useful, some revisions should be made: terms of office should be shortened, senators should be recallable, and provisions should be made for rotation. Treaty power might be dangerous, but whole Congress has power to make commercial regulations.

C. The elections ought to be better secured (XII, 2.8.148–65):
All general principles regarding electors and elected, mode of election (which should be by majority vote in districts, etc.), should be laid down in Constitution. Any necessary discretion should reside in state legislatures, closest to the people.

III. *Executive branch* (XIII–XIV, 2.8.166–82).

A. Appointments (XIII, 2.8.166–72; XIV, 2.8.173–76):
Executive necessary but dangerous—need to keep it balanced by distributing appointments.

Various methods of appointment sketched and discussed—in selecting from among these the aims are to keep balance in government and to prevent legislature from becoming infected by the spirit of office-men.

B. Election and powers of President (XIV, 2.8.177–82):
Unity in executive; general need for "first man."

Must be given ample powers; chief concern should be to avoid *perpetuation* of power in any man or family. Thus should not be reeligible.

Veto power—combination of executive and judges is best.

IV. *Judicial branch* (XV, 2.8.183–95).

Peculiar character of judicial branch and its dangerous tendency in popular government (2.8.183–84).

Organization of judiciary (2.8.185–88).

Supreme Court appellate jurisdiction over fact and law (2.8.189).

Importance of trial by jury (2.8.190–94).

Law and equity (2.8.195).

V. *Powers of new government* (XVI–XVIII, 2.8.196–230).

A. Bill of Rights (XVI, 2.8.196–203).

1. Basic purpose of Bill of Rights in limited government (XVI, 2.8.196–98).
2. Specific protections needed, relating to trial by jury, ex post facto laws, habeas corpus, judicial procedure, quartering of soldiers, and freedom of press (XVI, 2.8.199–203).

B. Need for federal republic to preserve free and mild government in the United States (XVII, 204–13; XVIII, 214–30).

1. Description of federal republic (XVII, 2.8.204–13).

Essential characteristics of federal republic (2.8.204–5).

Additional powers needed but checks of federal system must be maintained (2.8.206–9).

Additional federal checks that may be desirable (2.8.210).

Enlightened and spirited character of the people will not be sufficient if state governments possess no real power (2.8.211–13).

2. Discussion of powers granted to new government (XVIII, 2.8.214–29).
3. The true bond of the American union must be formed of pure federal principles (XVIII, 2.8.230).

1. See J. Wadsworth to R. King, 16 December 1787, *The Life and Correspondence of Rufus King* X, 264; DePauw, *The Eleventh Pillar* 104, 113; Samuel Bannister

Harding, *The Contest over the Ratification of the Federal Constitution in the State of Massachusetts* (Cambridge, Mass., 1896) 17. Robert Rutland mistakenly says that the letters of The Federal Farmer were published in the *New York Journal;* they were in fact published in the Poughkeepsie *Country Journal,* November 1787 through January 1788, as Rutland later correctly notes; *The Ordeal of the Constitution* 22.

2. Both the Observations and the Additional Letters were printed in New York by Thomas Greenleaf.

3. Ford, *Pamphlets* 277 ff.; *Empire and Nation,* ed. McDonald. The text of the McDonald edition is extremely unreliable, containing numerous alterations of spelling and punctuation which the reader is not led to expect and, more seriously, a substantial number of misreadings, misprints, omitted lines, etc. A copy of the original edition of the Additional Letters was brought out by Quadrangle Books, Chicago, in 1962, but it is now out of print.

4. Octavius Pickering and Charles Upham, *The Life of Timothy Pickering* (Boston 1873) II, 352–68; *American Museum* May 1788, 422–33.

5. (Chicago 1953) II, 1299–1300.

6. [A third volume was completed by Crosskey's literary executor, William Jeffrey, Jr., and published in 1980 under the title *The Political Background of the Federal Convention,* but, since it covers events through 22 May 1788 only, it does not include the Federal Farmer discussion.—M.D.] I am informed by Professor Jeffrey that Crosskey's opinion was based on the following grounds. First, Crosskey reportedly discovered in the John Lamb papers a letter from Lee to Lamb saying that he "would be interested in seeing the Letters of a Federal Farmer." There being no reason why he should conceal his authorship from Lamb, this would strongly suggest that he was not the author. But I find no such letter in the Lamb papers. Lamb's committee did distribute, among other materials, the Observations of The Federal Farmer; and Lee did thank Lamb for sending him some Anti-Federal materials, promising to read them with pleasure; but there is no evidence that The Federal Farmer was included in the packet sent to Lee. See Letter of Joshua Atherton, 23 June 1788, John Lamb Papers, box 5, no. 25, New-York Historical Society; letter of Richard Henry Lee to John Lamb, 27 June 1788, in Leake, *Memoir of the Life and Times of General John Lamb* 309–10. [On reconsidering this question, Professor Jeffrey reports that he may have misled Storing about this ground for Crosskey's opinion. Jeffrey believes that Lamb's letter to Lee, and Lee's response acknowledging receipt of the Anti-Federal materials, including The Federal Farmer, persuaded Crosskey that Lee was not the author.—M.D.] Crosskey's second ground was the fact that Lee published over his own name his objections to the Constitution in his letter to Governor Randolph of 16 October 1787 (see below, 5.6), and would therefore, Crosskey reasoned, have had no motive for concealing his opposition by assuming a pseudonym for the longer pamphlet. But a pseudonym was used not merely or even mainly to enable the author to conceal his opinion or to protect himself; it was a convention aimed at directing attention at the arguments rather than at personalities. A public figure might well declare his own position in a speech or letter and go on to publish a longer, more analytical piece over a pseudonym. Many of the prominent figures in the debate over the Constitution did precisely that.

7. Gordon S. Wood, "The Authorship of *The Letters from the Federal Farmer,*" *William and Mary Quarterly* April 1974.

8. See below, 5.6.

9. Lee, *Letters* II, 433–76.

10. Crosskey, *Politics and the Constitution* II, 1300.

11. New England was reprinted in the *New Hampshire Mercury* 2 January 1788; New York *Daily Advertiser* 4 January; *Massachusetts Centinel* 5 January; *Gazette of the State of Georgia* 21 February; Charleston *City Gazette* 7 April 1788; Charleston *Columbian Herald* 14 April. Subsequent items identifying Lee as The Federal Farmer (and not mentioned by Wood) appeared in the *Massachusetts Gazette* 1 January (and was reprinted in New York and Pennsylvania papers); *Massachusetts Centinel* 2 January; and Boston *American Herald* 7 January. I am indebted for most of this

information to Steven R. Boyd, University of Texas, San Antonio, who finds here a widespread assumption among contemporaries that Lee was the author.

12. Wood, *William and Mary Quarterly* April 1974, 304–7. See Bancroft, *History of the Formation of the Constitution* II, 230; see also 451–52; Ford, *Pamphlets* 277.

13. One further shred of evidence is provided by the title page of the copy of the Observations of The Federal Farmer in the American Antiquarian Society, which bears a notation, "Richard Henry Lee." The handwriting does not, however, appear to be contemporaneous with the publication of the pamphlet.

14. See above, note 4.

15. 9 June 1788. *Proceedings of the Massachusetts Historical Society* 2d series, XVII (1903), 501. Oliver Ellsworth (as A Landholder) contended that Lee had revised Mason's and Gerry's statements of their objections and was "supposed to be the author of most of the scurrility poured out in the New York papers against the new constitution," but he did not mention The Federal Farmer specifically. Ford, *Essays* 161. See letter from J. Wadsworth to Rufus King, 16 December 1787 (above, n. 1), describing the distribution of the Letters, without identifying the author. One of John Lamb's correspondents, Hugh Ledlie, writing from Hartford, reported insinuations made in the Connecticut convention "that out of the impost £8,000 was paid by this State annually to the State of New York out of which you recd. upwards of £900 which enabled you & others to write the foederal farmer and other false Libels and send them into this & the Neighbouring States to poison the minds of the good people against the good C——n." John Lamb Papers, box 5, no. 1; New-York Historical Society.

16. Lee, *Letters* passim; Lee Family Papers, 1742–1795 (microfilm, University of Virginia Library).

17. Richard H. Lee, ed., *Memoir of the Life of Richard Henry Lee* (Philadelphia 1825) I, 240. Lee's most recent biographer calls the Letters of The Federal Farmer "Lee's greatest literary achievement," but he does not consider the grounds of attribution to Lee. Oliver Perry Chitwood, *Richard Henry Lee: Statesman of the Revolution* (Morgantown, W.Va. 1967) 173.

18. "It is not material whether the federal farmer belongs to Virginia or Kamtschatka—whether he owns five hundred negroes, or is a man of no property at all—if his arguments are cogent—his reasonings conclusive. . . . Nor is it of consequence to the publick, or to the general cause, whether mr. *Lee* is an enemy, or a devotee to the fame and to the merit, of general *Washington*. . . . We are not contending for the characters of men. . . . We wish to view every thing on the broad scale of independence to America—*the sovereignty of the United States*, and *the freedom* of the people. . . ." Helvidius Priscus, below, 4.12.9.

I

October 8th, 1787.

Dear Sir,

My letters to you last winter, on the subject of a well balanced national government for the United States, were the result of free enquiry;[1] when I passed from that subject to enquiries relative to our commerce, revenues, past administration, etc. I anticipated the anxieties I feel, on carefully examining the plan of government proposed by the convention. It appears to be a plan retaining some federal features; but to be the first important step, and to aim strongly to one consolidated government of the United States. It leaves the powers of government, and the representation of the people, so 2.8.1

unnaturally divided between the general and state governments, that the operations of our system must be very uncertain. My uniform federal attachments, and the interest I have in the protection of property, and a steady execution of the laws, will convince you, that, if I am under any biass at all, it is in favor of any general system which shall promise those advantages. The instability of our laws increases my wishes for firm and steady government; but then, I can consent to no government, which, in my opinion, is not calculated equally to preserve the rights of all orders of men in the community. My object has been to join with those who have endeavoured to supply the defects in the forms of our governments by a steady and proper administration of them. Though I have long apprehended that fraudalent debtors, and embarrassed men, on the one hand, and men, on the other, unfriendly to republican equality, would produce an uneasiness among the people, and prepare the way, not for cool and deliberate reforms in the governments, but for changes calculated to promote the interests of particular orders of men.[2] Acquit me, sir, of any agency in the formation of the new system; I shall be satisfied with seeing, if it shall be adopted, a prudent administration. Indeed I am so much convinced of the truth of Pope's maxim, that "That which is best administered is best," that I am much inclined to subscribe to it from experience. I am not disposed to unreasonably contend about forms.[3] I know our situation is critical, and it behoves us to make the best of it.[4] A federal government of some sort is necessary. We have suffered the present to languish; and whether the confederation was capable or not originally of answering any valuable purposes, it is now but of little importance. I will pass by the men, and states, who have been particularly instrumental in preparing the way for a change, and, perhaps, for governments not very favourable to the people at large. A constitution is now presented which we may reject, or which we may accept, with or without amendments; and to which point we ought to direct our exertions, is the question. To determine this question, with propriety, we must attentively examine the system itself, and the probable consequences of either step. This I shall endeavour to do, so far as I am able, with candor and fairness; and leave you to decide upon the propriety of my opinions, the weight of my reasons, and how far my conclusions are well drawn. Whatever may be the conduct of others, on the present occasion, I do not mean, hastily and positively to decide on the merits of the constitution proposed. I shall be open to conviction, and always disposed to adopt that which, all things considered, shall appear to me to be most for the happiness of the community. It must be granted, that if men hastily and blindly adopt a system of government, they will as hastily and as blindly be led to alter or abolish it; and changes must ensue, one after another, till the peaceable and better part of the community will grow weary with changes, tumults and disorders, and be disposed to accept any government, however despotic, that shall promise stability and firmness.

The first principal question that occurs, is, Whether, considering our situation, we ought to precipitate the adoption of the proposed constitution? If we remain cool and temperate, we are in no immediate danger of any commotions; we are in a state of perfect peace, and in no danger of invasions; the state governments are in the full exercise of their powers; and our governments answer all present exigencies, except the regulation of trade, securing credit, in some cases, and providing for the interest, in some instances, of the public debts; and whether we adopt a change, three or nine months hence, can make but little odds with the private circumstances of individuals; their happiness and prosperity, after all, depend principally upon their own exertions. We are hardly recovered from a long and distressing war: The farmers, fishmen, &c. have not yet fully repaired the waste made by it. Industry and frugality are again assuming their proper station. Private debts are lessened, and public debts incurred by the war have been, by various ways, diminished; and the public lands have now become a productive source for diminishing them much more. I know uneasy men, who wish very much to precipitate, do not admit all these facts; but they are facts well known to all men who are thoroughly informed in the affairs of this country. It must, however, be admitted, that our federal system is defective, and that some of the state governments are not well administered; but, then, we impute to the defects in our governments many evils and embarrassments which are most clearly the result of the late war. We must allow men to conduct on the present occasion, as on all similar ones. They will urge a thousand pretences to answer their purposes on both sides. When we want a man to change his condition, we describe it as miserable, wretched, and despised; and draw a pleasing picture of that which we would have him assume. And when we wish the contrary, we reverse our descriptions. Whenever a clamor is raised, and idle men get to work, it is highly necessary to examine facts carefully, and without unreasonably suspecting men of falshood, to examine, and enquire attentively, under what impressions they act. It is too often the case in political concerns, that men state facts not as they are, but as they wish them to be; and almost every man, by calling to mind past scenes, will find this to be true. 2.8.2

Nothing but the passions of ambitious, impatient, or disorderly men, I conceive, will plunge us into commotions, if time should be taken fully to examine and consider the system proposed. Men who feel easy in their circumstances, and such as are not sanguine in their expectations relative to the consequences of the proposed change, will remain quiet under the existing governments. Many commercial and monied men, who are uneasy, not without just cause, ought to be respected; and, by no means, unreasonably disappointed in their expectations and hopes; but as to those who expect employments under the new constitution; as to those weak and ardent men who always expect to be gainers by revolutions, and whose lot it generally is to get out of one difficulty into another, they are very little to be 2.8.3

regarded: and as to those who designedly avail themselves of this weakness and ardor, they are to be despised. It is natural for men, who wish to hasten the adoption of a measure, to tell us, now is the crisis—now is the critical moment which must be seized, or all will be lost: and to shut the door against free enquiry, whenever conscious the thing presented has defects in it, which time and investigation will probably discover. This has been the custom of tyrants and their dependants in all ages. If it is true, what has been so often said, that the people of this country cannot change their condition for the worse, I presume it still behoves them to endeavour deliberately to change it for the better. The fickle and ardent, in any community, are the proper tools for establishing despotic government. But it is deliberate and thinking men, who must establish and secure governments on free principles. Before they decide on the plan proposed, they will enquire whether it will probably be a blessing or a curse to this people.

2.8.4 The present moment discovers a new face in our affairs. Our object has been all along, to reform our federal system, and to strengthen our governments—to establish peace, order and justice in the community—but a new object now presents. The plan of government now proposed is evidently calculated totally to change, in time, our condition as a people. Instead of being thirteen republics, under a federal head, it is clearly designed to make us one consolidated government. Of this, I think, I shall fully convince you, in my following letters on this subject. This consolidation of the states has been the object of several men in this country for some time past. Whether such a change can ever be effected in any manner; whether it can be effected without convulsions and civil wars; whether such a change will not totally destroy the liberties of this country—time only can determine.

2.8.5 To have a just idea of the government before us, and to shew that a consolidated one is the object in view, it is necessary not only to examine the plan, but also its history, and the politics of its particular friends.

2.8.6 The confederation was formed when great confidence was placed in the voluntary exertions of individuals, and of the respective states; and the framers of it, to guard against usurpation, so limited and checked the powers, that, in many respects, they are inadequate to the exigencies of the union. We find, therefore, members of congress urging alterations in the federal system almost as soon as it was adopted. It was early proposed to vest congress with powers to levy an impost, to regulate trade, etc. but such was known to be the caution of the states in parting with power, that the vestment, even of these, was proposed to be under several checks and limitations. During the war, the general confusion, and the introduction of paper money, infused in the minds of people vague ideas respecting government and credit. We expected too much from the return of peace, and of course we have been disappointed. Our governments have been new and unsettled; and several legislatures, by making tender, suspension, and paper

money laws, have given just cause of uneasiness to creditors. By these and other causes, several orders of men in the community have been prepared, by degrees, for a change of government; and this very abuse of power in the legislatures, which, in some cases, has been charged upon the democratic part of the community, has furnished aristocratical men with those very weapons, and those very means, with which, in great measure, they are rapidly effecting their favourite object. And should an oppressive government be the consequence of the proposed change, posterity may reproach not only a few overbearing unprincipled men, but those parties in the states which have misused their powers.

The conduct of several legislatures, touching paper money, and tender laws, has prepared many honest men for changes in government, which otherwise they would not have thought of—when by the evils, on the one hand, and by the secret instigations of artful men, on the other, the minds of men were become sufficiently uneasy, a bold step was taken, which is usually followed by a revolution, or a civil war. A general convention for mere commercial purposes was moved for—the authors of this measure saw that the people's attention was turned solely to the amendment of the federal system; and that, had the idea of a total change been started, probably no state would have appointed members to the convention. The idea of destroying, ultimately, the state government, and forming one consolidated system, could not have been admitted—a convention, therefore, merely for vesting in congress power to regulate trade was proposed. This was pleasing to the commercial towns; and the landed people had little or no concern about it. September, 1786, a few men from the middle states met at Annapolis, and hastily proposed a convention to be held in May, 1787, for the purpose, generally, of amending the confederation—this was done before the delegates of Massachusetts, and of the other states arrived—still not a word was said about destroying the old constitution, and making a new one—The states still unsuspecting, and not aware that they were passing the Rubicon, appointed members to the new convention, for the sole and express purpose of revising and amending the confederation—and, probably, not one man in ten thousand in the United States, till within these ten or twelve days, had an idea that the old ship was to be destroyed, and he put to the alternative of embarking in the new ship presented, or of being left in danger of sinking—The States, I believe, universally supposed the convention would report alterations in the confederation, which would pass an examination in congress, and after being agreed to there, would be confirmed by all the legislatures, or be rejected. Virginia made a very respectable appointment, and placed at the head of it the first man in America: In this appointment there was a mixture of political characters; but Pennsylvania appointed principally those men who are esteemed aristocratical. Here the favourite moment for changing the government was evidently discerned by a few men, who seized it with address. Ten other states ap- 2.8.7

pointed, and tho' they chose men principally connected with commerce and the judicial department yet they appointed many good republican characters—had they all attended we should now see, I am persuaded a better system presented. The non-attendance of eight or nine men, who were appointed members of the convention, I shall ever consider as a very unfortunate event to the United States.[5]—Had they attended, I am pretty clear, that the result of the convention would not have had that strong tendency to aristocracy now discernable in every part of the plan.[6] There would not have been so great an accumulation of powers, especially as to the internal police of the country, in a few hands, as the constitution reported proposes to vest in them—the young visionary men, and the consolidating aristocracy, would have been more restrained than they have been. Eleven states met in the convention, and after four months close attention presented the new constitution, to be adopted or rejected by the people. The uneasy and fickle part of the community may be prepared to receive any form of government; but, I presume, the enlightened and substantial part will give any constitution presented for their adoption, a candid and thorough examination; and silence those designing or empty men, who weakly and rashly attempt to precipitate the adoption of a system of so much importance—We shall view the convention with proper respect—and, at the same time, that we reflect there were men of abilities and integrity in it, we must recollect how disproportionably the democratic and aristocratic parts of the community were represented—Perhaps the judicious friends and opposers of the new constitution will agree, that it is best to let it rest solely on its own merits, or be condemned for its own defects.

2.8.8 In the first place, I shall premise, that the plan proposed is a plan of accommodation—and that it is in this way only, and by giving up a part of our opinions, that we can ever expect to obtain a government founded in freedom and compact. This circumstance candid men will always keep in view, in the discussion of this subject.

2.8.9 The plan proposed appears to be partly federal, but principally however, calculated ultimately to make the states one consolidated government.

The first interesting question, therefore suggested, is, how far the states can be consolidated into one entire government on free principles. In considering this question extensive objects are to be taken into view, and important changes in the forms of government to be carefully attended to in all their consequences. The happiness of the people at large must be the great object with every honest statesman, and he will direct every movement to this point. If we are so situated as a people, as not to be able to enjoy equal happiness and advantages under one government, the consolidation of the states cannot be admitted.

2.8.10 There are three different forms of free government under which the United States may exist as one nation; and now is, perhaps, the time to determine to which we will direct our views.[7] 1. Distinct republics con-

nected under a federal head. In this case the respective state governments must be the principal guardians of the peoples rights, and exclusively regulate their internal police; in them must rest the balance of government. The congress of the states, or federal head, must consist of delegates amenable to, and removeable by the respective states: This congress must have general directing powers; powers to require men and monies of the states; to make treaties, peace and war; to direct the operations of armies, etc. Under this federal modification of government, the powers of congress would be rather advisary or recommendatory than coercive. 2. We may do away the several state governments, and form or consolidate all the states into one entire government, with one executive, one judiciary, and one legislature, consisting of senators and representatives collected from all parts of the union: In this case there would be a compleat consolidation of the states. 3. We may consolidate the states as to certain national objects, and leave them severally distinct independent republics, as to internal police generally. Let the general government consist of an executive, a judiciary, and balanced legislature, and its powers extend exclusively to all foreign concerns, causes arising on the seas to commerce, imports, armies, navies, Indian affairs, peace and war, and to a few internal concerns of the community; to the coin, post-offices, weights and measures, a general plan for the militia, to naturalization, *and, perhaps to bankruptcies,*[8] leaving the internal police of the community, in other respects, exclusively to the state governments; as the administration of justice in all causes arising internally, the laying and collecting of internal taxes, and the forming of the militia according to a general plan prescribed. In this case there would be a compleat consolidation, *quoad* certain objects only.[9]

Touching the first, or federal plan, I do not think much can be said in its favor: The sovereignty of the nation, without coercive and efficient powers to collect the strength of it, cannot always be depended on to answer the purposes of government; and in a congress of representatives of sovereign states, there must necessarily be an unreasonable mixture of powers in the same hands. 2.8.11

As to the second, or compleat consolidating plan, it deserves to be carefully considered at this time, by every American: If it be impracticable, it is a fatal error to model our governments, directing our views ultimately to it. 2.8.12

The third plan, or partial consolidation, is, in my opinion, the only one that can secure the freedom and happiness of this people. I once had some general ideas that the second plan was practicable,[10] but from long attention, and the proceedings of the convention, I am fully satisfied, that this third plan is the only one we can with safety and propriety proceed upon. Making this the standard to point out, with candor and fairness, the parts of the new constitution which appear to be improper, is my object. The convention appears to have proposed the partial consolidation evidently with a view to collect all powers ultimately, in the United States into one entire 2.8.13

government; and from its views in this respect, and from the tenacity of the small states to have an equal vote in the senate, probably originated the greatest defects in the proposed plan.

2.8.14 Independant of the opinions of many great authors, that a free elective government cannot be extended over large territories, a few reflections must evince, that one government and general legislation alone, never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded. The United States contain about a million of square miles, and in half a century will, probably, contain ten millions of people; and from the center to the extremes is about 800 miles.

Before we do away the state governments, or adopt measures that will tend to abolish them, and to consolidate the states into one entire government, several principles should be considered and facts ascertained:—These, and my examination into the essential parts of the proposed plan, I shall pursue in my next.

Your's &c.
The Federal Farmer.

II

October 9, 1787.

Dear Sir,

2.8.15 The essential parts of a free and good government are a full and equal representation of the people in the legislature, and the jury trial of the vicinage in the administration of justice—a full and equal representation, is that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled—a fair representation, therefore, should be so regulated, that every order of men in the community, according to the common course of elections, can have a share in it—in order to allow professional men, merchants, traders, farmers, mechanics, etc. to bring a just proportion of their best informed men respectively into the legislature, the representation must be considerably numerous[11]—We have about 200 state senators in the United States, and a less number than that of federal representatives cannot, clearly, be a full representation of this people, in the affairs of internal taxation and police, were there but one legislature for the whole union. The representation cannot be equal, or the situation of the people proper for one government only—if the extreme parts of the society cannot be represented as fully as the central—It is apparently impracticable that this should be the case in this extensive country—it would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government.

Under one general government alone, there could be but one judiciary, 2.8.16
one supreme and a proper number of inferior courts. I think it would be totally impracticable in this case to preserve a due administration of justice, and the real benefits of the jury trial of the vicinage,[12]—there are now supreme courts in each state in the union; and a great number of county and other courts subordinate to each supreme court—most of these supreme and inferior courts are itinerant, and hold their sessions in different parts every year of their respective states, counties and districts—with all these moving courts, our citizens, from the vast extent of the country must travel very considerable distances from home to find the place where justice is administered. I am not for bringing justice so near to individuals as to afford them any temptation to engage in law suits; though I think it one of the greatest benefits in a good government, that each citizen should find a court of justice within a reasonable distance, perhaps, within a day's travel of his home; so that, without great inconveniences and enormous expences, he may have the advantages of his witnesses and jury—it would be impracticable to derive these advantages from one judiciary—the one supreme court at most could only set in the centre of the union, and move once a year into the centre of the eastern and southern extremes of it—and, in this case, each citizen, on an average, would travel 150 or 200 miles to find this court—that, however, inferior courts might be properly placed in the different counties, and districts of the union, the appellate jurisdiction would be intolerable and expensive.

If it were possible to consolidate the states, and preserve the features of a 2.8.17
free government, still it is evident that the middle states, the parts of the union, about the seat of government, would enjoy great advantages, while the remote states would experience the many inconveniences of remote provinces. Wealth, offices, and the benefits of government would collect in the centre: and the extreme states[13] and their principal towns, become much less important.[14]

There are other considerations which tend to prove that the idea of one 2.8.18
consolidated whole, on free principles, is ill-founded—the laws of a free government rest on the confidence of the people, and operate gently—and never can extend their influence very far—if they are executed on free principles, about the centre, where the benefits of the government induce the people to support it voluntarily; yet they must be executed on the principles of fear and force in the extremes—This has been the case with every extensive republic of which we have any accurate account.[15]

There are certain unalienable and fundamental rights, which in forming 2.8.19
the social compact, ought to be explicitly ascertained and fixed—a free and enlightened people, in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who are governed, as well as by those who govern: and the latter will know they cannot be passed un-

perceived by the former, and without giving a general alarm—These rights should be made the basis of every constitution: and if a people be so situated, or have such different opinions that they cannot agree in ascertaining and fixing them, it is a very strong argument against their attempting to form one entire society, to live under one system of laws only.—I confess, I never thought the people of these states differed essentially in these respects; they having derived all these rights from one common source, the British systems; and having in the formation of their state constitutions, discovered that their ideas relative to these rights are very similar. However, it is now said that the states differ so essentially in these respects, and even in the important article of the trial by jury, that when assembled in convention, they can agree to no words by which to establish that trial, or by which to ascertain and establish many other of these rights, as fundamental articles in the social compact.[16] If so, we proceed to consolidate the states on no solid basis whatever.

2.8.20 But I do not pay much regard to the reasons given for not bottoming the new constitution on a better bill of rights. I still believe a complete federal bill of rights to be very practicable.[17] Nevertheless I acknowledge the proceedings of the convention furnish my mind with many new and strong reasons, against a complete consolidation of the states. They tend to convince me, that it cannot be carried with propriety very far—that the convention have gone much farther in one respect than they found it practicable to go in another; that is, they propose to lodge in the general government very extensive powers—*powers* nearly, if not altogether, complete and unlimited, over the purse and the sword. But, in its organization, they furnish the strongest proof that the proper limbs, or parts of a government, to support and execute those powers on proper principles (or in which they can be safely lodged) cannot be formed. These powers must be lodged somewhere in every society; but then they should be lodged where the strength and guardians of the people are collected. They can be wielded, or safely used, in a free country only by an able executive and judiciary, a respectable senate, and a secure, full, and equal representation of the people. I think the principles I have premised or brought into view, are well founded—I think they will not be denied by any fair reasoner. It is in connection with these, and other solid principles, we are to examine the constitution. It is not a few democratic phrases, or a few well formed features, that will prove its merits; or a few small omissions that will produce its rejection among men of sense; they will enquire what are the essential powers in a community, and what are nominal ones; where and how the essential powers shall be lodged to secure government, and to secure true liberty.

2.8.21 In examining the proposed constitution carefully, we must clearly perceive an unnatural separation of these powers from the substantial representation of the people. The state governments will exist, with all their governors, senators, representatives, officers and expences; in these will be

nineteen-twentieths of the representatives of the people; they will have a near connection, and their members an immediate intercourse with the people; and the probability is, that the state governments will possess the confidence of the people, and be considered generally as their immediate guardians.

The general government will consist of a new species of executive, a small senate, and a very small house of representatives. As many citizens will be more than three hundred miles from the seat of this government as will be nearer to it, its judges and officers cannot be very numerous, without making our governments very expensive. Thus will stand the state and the general governments, should the constitution be adopted without any alterations in their organization; but as to powers, the general government will possess all essential ones, at least on paper, and those of the states a mere shadow of power. And therefore, unless the people shall make some great exertions to restore to the state governments their powers in matters of internal police; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long; but the state governments must be annihilated, or continue to exist for no purpose. 2.8.22

It is however to be observed, that many of the essential powers given the national government are not exclusively given; and the general government may have prudence enough to forbear the exercise of those which may still be exercised by the respective states. But this cannot justify the impropriety of giving powers, the exercise of which prudent men will not attempt, and imprudent men will, or probably can, exercise only in a manner destructive of free government. The general government, organized as it is, may be adequate to many valuable objects, and be able to carry its laws into execution on proper principles in several cases; but I think its warmest friends will not contend, that it can carry all the powers proposed to be lodged in it into effect, without calling to its aid a military force, which must very soon destroy all elective governments in the country, produce anarchy, or establish despotism. Though we cannot have now a complete idea of what will be the operations of the proposed system, we may, allowing things to have their common course, have a very tolerable one. The powers lodged in the general government, if exercised by it, must intimately effect the internal police of the states, as well as external concerns; and there is no reason to expect the numerous state governments, and their connections, will be very friendly to the execution of federal laws in those internal affairs, which hitherto have been under their own immediate management. There is more reason to believe, that the general government, far removed from the people, and none of its members elected oftener than once in two years, will be forgot or neglected, and its laws in many cases disregarded, unless a multitude of officers and military force be continually kept in view, and 2.8.23

employed to enforce the execution of the laws, and to make the government feared and respected. No position can be truer than this, that in this country either neglected laws, or a military execution of them, must lead to a revolution, and to the destruction of freedom. Neglected laws must first lead to anarchy and confusion; and a military execution of laws is only a shorter way to the same point—despotic government.[18]

Your's, &c.
The Federal Farmer.

III

October 10th, 1787.

Dear Sir,

2.8.24 The great object of a free people must be so to form their government and laws, and so to administer them, as to create a confidence in, and respect for the laws; and thereby induce the sensible and virtuous part of the community to declare in favor of the laws, and to support them without an expensive military force.[19] I wish, though I confess I have not much hope, that this may be the case with the laws of congress under the new constitution. I am fully convinced that we must organize the national government on different principals, and make the parts of it more efficient, and secure in it more effectually the different interests in the community; or else leave in the state governments some powers propose[d] to be lodged in it—at least till such an organization shall be found to be practicable. Not sanguine in my expectations of a good federal administration, and satisfied, as I am, of the impracticability of consolidating the states, and at the same time of preserving the rights of the people at large, I believe we ought still to leave some of those powers in the state governments, in which the people, in fact, will still be represented—to define some other powers proposed to be vested in the general government, more carefully, and to establish a few principles to secure a proper exercise of the powers given it. It is not my object to multiply objections, or to contend about inconsiderable powers or amendments; I wish the system adopted with a few alterations; but those, in my mind, are essential ones; if adopted without, every good citizen will acquiesce though I shall consider the duration of our governments, and the liberties of this people, very much dependant on the administration of the general government.[20] A wise and honest administration, may make the people happy under any government; but necessity only can justify even our leaving open avenues to the abuse of power, by wicked, unthinking, or ambitious men. I will examine, first, the organization of the proposed government, in order to judge; 2d, with propriety, what powers are improperly,

at least prematurely lodged in it. I shall examine, 3d, the undefined powers; and 4th, those powers, the exercise of which is not secured on safe and proper ground.

First. As to the organization—the house of representatives, the democrative branch, as it is called, is to consist of 65 members: that is, about one representative for fifty thousand inhabitants, to be chosen biennially—the federal legislature may increase this number to one for each thirty thousand inhabitants, abating fractional numbers in each state.—Thirty-three representatives will make a quorum for doing business, and a majority of those present determine the sense of the house.—I have no idea that the interests, feelings, and opinions of three or four millions of people, especially touching internal taxation, can be collected in such a house.—In the nature of things, nine times in ten, men of the elevated classes in the community only can be chosen—Connecticut, for instance, will have five representatives—not one man in a hundred of those who form the democrative branch in the state legislature, will, on a fair computation, be one of the five—The people of this country, in one sense, may all be democratic; but if we make the proper distinction between the few men of wealth and abilities, and consider them, as we ought, as the natural aristocracy of the country,[21] and the great body of the people, the middle and lower classes, as the democracy, this federal representative branch will have but very little democracy in it, even this small representation is not secured on proper principles.—The branches of the legislature are essential parts of the fundamental compact, and ought to be so fixed by the people, that the legislature cannot alter itself by modifying the elections of its own members. This, by a part of Art. 1. Sect. 4. the general legislature may do, it may evidently so regulate elections as to secure the choice of any particular description of men.—It may make the whole state one district—make the capital, or any places in the state, the place or places of election—it may declare that the five men (or whatever the number may be the state may chuse) who shall have the most votes shall be considered as chosen—In this case it is easy to perceive how the people who live scattered in the inland towns will bestow their votes on different men—and how a few men in a city, in any order or profession, may unite and place any five men they please highest among those that may be voted for—and all this may be done constitutionally, and by those silent operations, which are not immediately perceived by the people in general.—I know it is urged, that the general legislature will be disposed to regulate elections on fair and just principles:—This may be true—good men will generally govern well with almost any constitution: but why in laying the foundation of the social system, need we unnecessarily leave a door open to improper regulations?—This is a very general and unguarded clause, and many evils may flow from that part which authorises the congress to regulate elections—Were it omitted, the regulations of elections would be solely in the respective states, where the people are sub- 2.8.25

stantially represented; and where the elections ought to be regulated, otherwise to secure a representation from all parts of the community, in making the constitution, we ought to provide for dividing each state into a proper number of districts, and for confining the electors in each district to the choice of some men, who shall have a permanent interest and residence in it; and also for this essential object, that the representative elected shall have a majority of the votes of those electors who shall attend and give their votes.

2.8.26 In considering the practicability of having a full and equal representation of the people from all parts of the union, not only distances and different opinions, customs, and views, common in extensive tracts of country, are to be taken into view, but many differences peculiar to Eastern, Middle, and Southern states. These differences are not so perceivable among the members of congress, and men of general information in the states, as among the men who would properly form the democratic branch. The Eastern states are very democratic, and composed chiefly of moderate freeholders; they have but few rich men and no slaves; the Southern states are composed chiefly of rich planters and slaves; they have but few moderate freeholders, and the prevailing influence, in them, is generally a dissipated aristocracy: The Middle states partake partly of the Eastern, and partly of the Southern character.

2.8.27 Perhaps, nothing could be more disjointed, unweildly and incompetent to doing business with harmony and dispatch, than a federal house of representatives properly numerous for the great objects of taxation, et cetera collected from the several states; whether such men would ever act in concert; whether they would not worry along a few years, and then be the means of separating the parts of the union, is very problematical?—View this system in whatever form we can, propriety brings us still to this point, a federal government possessed of general and complete powers, as to those national objects which cannot well come under the cognizance of the internal laws of the respective states, and this federal government, accordingly, consisting of branches not very numerous.

2.8.28 The house of representatives is on the plan of consolidation, but the senate is intirely on the federal plan;[22] and Delaware will have as much constitutional influence in the senate, as the largest state in the union: and in this senate are lodged legislative, executive and judicial powers: Ten states in this union urge that they are small states, nine of which were present in the convention.—They were interested in collecting large powers into the hands of the senate, in which each state still will have its equal share of power. I suppose it was impracticable for the three large states, as they were called, to get the senate formed on any other principles: But this only proves, that we cannot form one general government on equal and just principles—and proves, that we ought not to lodge in it such extensive powers before we are convinced of the practicability of organizing it on just

and equal principles. The senate will consist of two members from each state, chosen by the state legislatures, every sixth year. The clause referred to, respecting the elections of representatives, empowers the general legislature to regulate the elections of senators also, "except as to the places of chusing senators."—There is, therefore, but little more security in the elections than in those of representatives: Fourteen senators make a quorum for business, and a majority of the senators present give the vote of the senate, except in giving judgment upon an impeachment, or in making treaties, or in expelling a member, when two-thirds of the senators present must agree—The members of the legislature are not excluded from being elected to any military offices, or any civil offices, except those created, or the emoluments of which shall be increased by themselves: two-thirds of the members present, of either house, may expel a member at pleasure. The senate is an independant branch of the legislature, a court for trying impeachments, and also a part of the executive, having a negative in the making of all treaties, and in appointing almost all officers.

The vice president is not a very important, if not an unncessary part of the system—he may be a part of the senate at one period, and act as the supreme executive magistrate at another—The election of this officer, as well as of the president of the United States seems to be properly secured;[23] but when we examine the powers of the president, and the forms of the executive, we shall perceive that the general government, in this part, will have a strong tendency to aristocracy, or the government of the few. The executive is, in fact, the president and senate in all transactions of any importance; the president is connected with, or tied to the senate; he may always act with the senate, but never can effectually counteract its views: The president can appoint no officer, civil or military, who shall not be agreeable to the senate; and the presumption is, that the will of so important a body will not be very easily controuled, and that it will exercise its powers with great address. 2.8.29

In the judicial department, powers ever kept distinct in well balanced governments, are no less improperly blended in the hands of the same men—in the judges of the supreme court is lodged, the law, the equity and the fact. It is not necessary to pursue the minute organical parts of the general government proposed.—There were various interests in the convention, to be reconciled, especially of large and small states; of carrying and non-carrying states; and of states more and states less democratic—vast labour and attention were by the convention bestowed on the organization of the parts of the constitution offered; still it is acknowledged there are many things radically wrong in the essential parts of this constitution—but it is said that these are the result of our situation: On a full examination of the subject, I believe it; but what do the laborious inquiries and determinations of the convention prove? If they prove any thing, they prove that we cannot consolidate the states on proper principles: The organization of the government presented proves, that we cannot form a general government in which 2.8.30

all power can be safely lodged; and a little attention to the parts of the one proposed will make it appear very evident, that all the powers proposed to be lodged in it, will not be then well deposited, either for the purposes of government, or the preservation of liberty. I will suppose no abuse of powers in those cases, in which the abuse of it is not well guarded against—I will suppose the words authorising the general government to regulate the elections of its own members struck out of the plan, or free district elections, in each state, amply secured.—That the small representation provided for shall be as fair and equal as it is capable of being made—I will suppose the judicial department regulated on pure principles, by future laws, as far as it can be by the constitution, and consist[ent] with the situation of the country—still there will be an unreasonable accumulation of powers in the general government, if all be granted, enumerated in the plan proposed. The plan does not present a well balanced government. The senatorial branch of the legislative and the executive are substantially united, and the president, or the first executive magistrate, may aid the senatorial interest when weakest, but never can effectually support the democratic[,] however it may be oppressed;—the excellency, in my mind, of a well balanced government is that it consists of distinct branches, each sufficiently strong and independant to keep its own station, and to aid either of the other branches which may occasionally want aid.

2.8.31 The convention found that any but a small house of representatives would be expensive, and that it would be impracticable to assemble a large number of representatives. Not only the determination of the convention in this case, but the situation of the states, proves the impracticability of collecting, in any one point, a proper representation.

2.8.32 The formation of the senate, and the smallness of the house, being, therefore, the result of our situation, and the actual state of things, the evils which may attend the exercise of many powers in this national government may be considered as without a remedy.

2.8.33 All officers are impeachable before the senate only—before the men by whom they are appointed, or who are consenting to the appointment of these officers. No judgment of conviction, on an impeachment, can be given unless two thirds of the senators agree. Under these circumstances the right of impeachment, in the house, can be of but little importance; the house cannot expect often to convict the offender; and, therefore, probably, will but seldom or never exercise the right. In addition to the insecurity and inconveniences attending this organization beforementioned, it may be observed, that it is extremely difficult to secure the people against the fatal effects of corruption and influence. The power of making any law will be in the president, eight senators, and seventeen representatives, relative to the important objects enumerated in the constitution. Where there is a small representation a sufficient number to carry any measure, may, with ease, be influenced by bribes, offices and civilities; they may easily form private

juntoes, and out door meetings, agree on measures, and carry them by silent votes.

Impressed, as I am, with a sense of the difficulties there are in the way of forming the parts of a federal government on proper principles, and seeing a government so unsubstantially organized, after so arduous an attempt has been made, I am led to believe, that powers ought to be given to it with great care and caution.[24] 2.8.34

In the second place it is necessary, therefore, to examine the extent, and the probable operations of some of those extensive powers proposed to be vested in this government. These powers, legislative, executive, and judicial, respect internal as well as external objects. Those respecting external objects, as all foreign concerns, commerce, imposts, all causes arising on the seas, peace and war, and Indian affairs, can be lodged no where else, with any propriety, but in this government. Many powers that respect internal objects ought clearly to be lodged in it; as those to regulate trade between the states, weights and measures, the coin or current monies, post-offices, naturalization, etc. These powers may be exercised without essentially effecting the internal police of the respective states: But powers to lay and collect internal taxes, to form the militia, to make bankrupt laws, and to decide on appeals, questions arising on the internal laws of the respective states, are of a very serious nature, and carry with them almost all other powers. These taken in connection with the others, and powers to raise armies and build navies, proposed to be lodged in this government, appear to me to comprehend all the essential powers in the community, and those which will be left to the states will be of no great importance. 2.8.35

A power to lay and collect taxes at discretion, is, in itself, of very great importance. By means of taxes, the government may command the whole or any part of the subject's property. Taxes may be of various kinds; but there is a strong distinction between external and internal taxes. External taxes are impost duties, which are laid on imported goods; they may usually be collected in a few seaport towns, and of a few individuals, though ultimately paid by the consumer; a few officers can collect them, and they can be carried no higher than trade will bear, or smuggling permit—that in the very nature of commerce, bounds are set to them.[25] But internal taxes, as poll and land taxes, excises, duties on all written instruments, etc. may fix themselves on every person and species of property in the community; they may be carried to any lengths, and in proportion as they are extended, numerous officers must be employed to assess them, and to enforce the collection of them. In the United Netherlands the general government has compleat powers, as to external taxation; but as to internal taxes, it makes requisitions on the provinces. Internal taxation in this country is more important, as the country is so very extensive. As many assessors and collectors of federal taxes will be above three hundred miles from the seat of the federal government as will be less. Besides, to lay and collect internal taxes, 2.8.36

in this extensive country, must require a great number of congressional ordinances, immediately operating upon the body of the people; these must continually interfere with the state laws, and thereby produce disorder and general dissatisfaction, till the one system of laws or the other, operating upon the same subjects, shall be abolished. These ordinances alone, to say nothing of those respecting the militia, coin, commerce, federal judiciary, etc. etc. will probably soon defeat the operations of the state laws and governments.

2.8.37 Should the general government think it politic, as some administrations (if not all) probably will, to look for a support in a system of influence, the government will take every occasion to multiply laws, and officers to execute them, considering these as so many necessary props for its own support.[26] Should this system of policy be adopted, taxes more productive than the impost duties will, probably, be wanted to support the government, and to discharge foreign demands, without leaving any thing for the domestic creditors. The internal sources of taxation then must be called into operation, and internal tax laws and federal assessors and collectors spread over this immense country. All these circumstances considered, is it wise, prudent, or safe, to vest the powers of laying and collecting internal taxes in the general government, while imperfectly organized and inadequate; and to trust to amending it hereafter, and making it adequate to this purpose? It is not only unsafe but absurd to lodge power in a government before it is fitted to receive it? [*Sic.*] It is confessed that this power and representation ought to go together. Why give the power first? Why give the power to the few, who, when possessed of it, may have address enough to prevent the increase of representation? Why not keep the power, and, when necessary, amend the constitution, and add to its other parts this power, and a proper increase of representation at the same time? Then men who may want the power will be under strong inducements to let in the people, by their representatives, into the government, to hold their due proportion of this power. If a proper representation be impracticable, then we shall see this power resting in the states, where it at present ought to be, and not inconsiderately given up.

2.8.38 When I recollect how lately congress, conventions, legislatures, and people contended in the cause of liberty, and carefully weighed the importance of taxation, I can scarcely believe we are serious in proposing to vest the powers of laying and collecting internal taxes in a government so imperfectly organized for such purposes. Should the United States be taxed by a house of representatives of two hundred members, which would be about fifteen members for Connecticut, twenty-five for Massachusetts, etc. still the middle and lower classes of people could have no great share, in fact, in taxation. I am aware it is said, that the representation proposed by the new constitution is sufficiently numerous; it may be for many purposes; but to suppose that this branch is sufficiently numerous to guard the rights of

the people in the administration of the government, in which the purse and sword is placed, seems to argue that we have forgot what the true meaning of representation is. I am sensible also, that it is said that congress will not attempt to lay and collect internal taxes; that it is necessary for them to have the power, though it cannot probably be exercised.[27]—I admit that it is not probable that any prudent congress will attempt to lay and collect internal taxes, especially direct taxes: but this only proves, that the power would be improperly lodged in congress, and that it might be abused by imprudent and designing men.

I have heard several gentlemen, to get rid of objections to this part of the 2.8.39
constitution, attempt to construe the powers relative to direct taxes, as those who object to it would have them; as to these, it is said, that congress will only have power to make requisitions, leaving it to the states to lay and collect them.[28] I see but very little colour for this construction, and the attempt only proves that this part of the plan cannot be defended. By this plan there can be no doubt, but that the powers of congress will be complete as to all kinds of taxes whatever—Further, as to internal taxes, the state governments will have concurrent powers with the general government, and both may tax the same objects in the same year; and the objection that the general government may suspend a state tax, as a necessary measure for the promoting the collection of a federal tax, is not without foundation.[29]—As the states owe large debts, and have large demands upon them individually, there clearly would be a propriety in leaving in their possession exclusively, some of the internal sources of taxation, at least until the federal representation shall be properly encreased: The power in the general government to lay and collect internal taxes, will render its powers respecting armies, navies and the militia, the more exceptionable. By the constitution it is proposed that congress shall have power "to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years; to provide and maintain a navy; to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions: to provide for organizing, arming, and disciplining the militia: reserving to the states the right to appoint the officers, and to train the militia according to the discipline prescribed by congress; congress will have unlimited power to raise armies, and to engage officers and men for any number of years; but a legislative act applying money for their support can have operation for no longer term than two years, and if a subsequent congress do not within the two years renew the appropriation, or further appropriate monies for the use of the army, the army will be left to take care of itself. When an army shall once be raised for a number of years, it is not probable that it will find much difficulty in getting congress to pass laws for applying monies to its support. I see so many men in America fond of a standing army, and especially among those who probably will have a large share in administering the federal system; it is very evident to me, that we

shall have a large standing army as soon as the monies to support them can be possibly found. An army is a very agreeable place of employment for the young gentlemen of many families. A power to raise armies must be lodged some where; still this will not justify the lodging this power in a bare majority of so few men without any checks; or in the government in which the great body of the people, in the nature of things, will be only nominally represented. In the state governments the great body of the people, the yeomanry, etc. of the country, are represented: It is true they will chuse the members of congress, and may now and then chuse a man of their own way of thinking; but it is impossible for forty, or thirty thousand people in this country, one time in ten to find a man who can possess similar feelings, views, and interests with themselves: Powers to lay and collect taxes and to raise armies are of the greatest moment; for carrying them into effect, laws need not be frequently made, and the yeomanry, etc of the country ought substantially to have a check upon the passing of these laws; this check ought to be placed in the legislatures, or at least, in the few men the common people of the country, will, probably, have in congress, in the true sense of the word, "from among themselves."[30] It is true, the yeomanry of the country possess the lands, the weight of property, possess arms, and are too strong a body of men to be openly offended—and, therefore, it is urged, they will take care of themselves, that men who shall govern will not dare pay any disrespect to their opinions. It is easily perceived, that if they have not their proper negative upon passing laws in congress, or on the passage of laws relative to taxes and armies, they may in twenty or thirty years be by means imperceptible to them, totally deprived of that boasted weight and strength: This may be done in a great measure by congress, if disposed to do it, by modelling the militia. Should one fifth, or one eighth part of the men capable of bearing arms, be made a select militia, as has been proposed, and those the young and ardent part of the community, possessed of but little or no property, and all the others put upon a plan that will render them of no importance, the former will answer all the purposes of an army, while the latter will be defenceless. The state must train the militia in such form and according to such systems and rules as congress shall prescribe: and the only actual influence the respective states will have respecting the militia will be in appointing the officers. I see no provision made for calling out the *posse commitatus* for executing the laws of the union, but provision is made for congress to call forth the militia for the execution of them—and the militia in general, or any select part of it, may be called out under military officers, instead of the sheriff to enforce an execution of federal laws, in the first instance and thereby introduce an entire military execution of the laws.[31] I know that powers to raise taxes, to regulate the military strength of the community on some uniform plan, to provide for its defence and internal order, and for duly executing the laws, must be lodged somewhere; but still we ought not so to lodge them, as evidently to give one order of men in the

community, undue advantages over others; or commit the many to the mercy, prudence, and moderation of the few. And so far as it may be necessary to lodge any of the peculiar powers in the general government, a more safe exercise of them ought to be secured, by requiring the consent of two-thirds or three-fourths of congress thereto—until the federal representation can be increased, so that the democratic members in congress may stand some tolerable chance of a reasonable negative, in behalf of the numerous, important, and democratic part of the community.

I am not sufficiently acquainted with the laws and internal police of all the states to discern fully, how general bankrupt laws, made by the union, would effect them, or promote the public good. I believe the property of debtors, in the several states, is held responsible for their debts in modes and forms very different. If uniform bankrupt laws can be made without producing real and substantial inconveniences, I wish them to be made by congress.[32] 2.8.40

There are some powers proposed to be lodged in the general government in the judicial department, I think very unnecessarily,[33] I mean powers respecting questions arising upon the internal laws of the respective states. It is proper the federal judiciary should have powers co-extensive with the federal legislature—that is, the power of deciding finally on the laws of the union. By Art. 3. Sect. 2. the powers of the federal judiciary are extended (among other things) to all cases between a state and citizens of another state—between citizens of different states—between a state or the citizens thereof, and foreign states, citizens or subjects. Actions in all these cases, except against a state government, are now brought and finally determined in the law courts of the states respectively; and as there are no words to exclude these courts of their jurisdiction in these cases, they will have concurrent jurisdiction with the inferior federal courts in them; and, therefore, if the new constitution be adopted without any amendment in this respect, all those numerous actions, now brought in the state courts between our citizens and foreigners, between citizens of different states, by state governments against foreigners, and by state governments against citizens of other states, may also be brought in the federal courts; and an appeal will lay in them from the state courts, or federal inferior courts, to the supreme judicial court of the union. In almost all these cases, either party may have the trial by jury in the state courts; excepting paper money and tender laws, which are wisely guarded against in the proposed constitution, justice may be obtained in these courts on reasonable terms; they must be more competent to proper decisions on the laws of their respective states, than the federal courts can possibly be. I do not, in any point of view, see the need of opening a new jurisdiction to these causes—of opening a new scene of expensive law suits—of suffering foreigners, and citizens of different states, to drag each other many hundred miles into the federal courts. It is true, those courts may be so organized by a wise and prudent legislature, 2.8.41

as to make the obtaining of justice in them tolerably easy; they may in general be organized on the common law principles of the country: But this benefit is by no means secured by the constitution. The trial by jury is secured only in those few criminal cases, to which the federal laws will extend—as crimes committed on the seas, against the laws of nations, treason, and counterfeiting the federal securities and coin: But even in these cases, the jury trial of the vicinage is not secured—particularly in the large states, a citizen may be tried for a crime committed in the state, and yet tried in some states 500 miles from the place where it was committed; but the jury trial is not secured at all in civil causes. Though the convention have not established this trial, it is to be hoped that congress, in putting the new system into execution, will do it by a legislative act, in all cases in which it can be done with propriety. Whether the jury trial is not excluded [from] the supreme judicial court, is an important question. By Art. 3. Sect. 2. all cases affecting ambassadors, other public ministers, and consuls, and in those cases in which a state shall be party, the supreme court shall have jurisdiction. In all the other cases beforementioned, the supreme court shall have appellate jurisdiction, both as to *law and fact,* with such exception, and under such regulations, as the congress shall make. By court is understood a court consisting of judges; and the idea of a jury is excluded. This court, or the judges, are to have jurisdiction on appeals, in all the cases enumerated, as to law and fact; the judges are to decide the law and try the fact, and the trial of the fact being assigned to the judges by the constitution, a jury for trying the fact is excluded; however, under the exceptions and powers to make regulations, congress may, perhaps introduce the jury, to try the fact in most necessary cases.[34]

2.8.42 There can be but one supreme court in which the final jurisdiction will centre in all federal causes—except in cases where appeals by law shall not be allowed: The judicial powers of the federal courts extends in law and equity to certain cases: and, therefore, the powers to determine on the law, in equity, and as to the fact, all will concentre in the supreme court:—These powers, which by this constitution are blended in the same hands, the same judges, are in Great-Britain deposited in different hands—to wit, the decision of the law in the law judges, the decision in equity in the chancellor, and the trial of the fact in the jury. It is a very dangerous thing to vest in the same judge power to decide on the law, and also general powers in equity; for if the law restrain him, he is only to step into his shoes of equity, and give what judgment his reason or opinion may dictate; we have no precedents in this country, as yet, to regulate the divisions in equity as in Great Britain; equity, therefore, in the supreme court for many years will be mere discretion. I confess in the constitution of this supreme court, as left by the constitution, I do not see a spark of freedom or a shadow of our own or the British common law.

2.8.43 This court is to have appellate jurisdiction in all the other cases before

mentioned: Many sensible men suppose that cases before mentioned respect, as well the criminal cases as the civil ones, mentioned antecedently in the constitution, if so an appeal is allowed in criminal cases—contrary to the usual sense of law. How far it may be proper to admit a foreigner or the citizen of another state to bring actions against state governments, which have failed in performing so many promises made during the war, is doubtful: How far it may be proper so to humble a state, as to oblige it to answer to an individual in a court of law, is worthy of consideration; the states are now subject to no such actions; and this new jurisdiction will subject the states, and many defendants to actions, and processes, which were not in the contemplation of the parties, when the contract was made; all engagements existing between citizens of different states, citizens and foreigners, states and foreigners; and states and citizens of other states were made the parties contemplating the remedies then existing on the laws of the states—and the new remedy proposed to be given in the federal courts, can be founded on no principle whatever.

Your's &c.
The Federal Farmer.

IV

October 12th, 1787.

Dear Sir,

It will not be possible to establish in the federal courts the jury trial of the vicinage so well as in the state courts. 2.8.44

Third. There appears to me to be not only a premature deposit of some important powers in the general government—but many of those deposited there are undefined, and may be used to good or bad purposes as honest or designing men shall prevail. By Art. 1, Sect. 2, representatives and direct taxes shall be apportioned among the several states, etc.—same art. sect. 8, the congress shall have powers to lay and collect taxes, duties, etc. for the common defence and general welfare, but all duties, imposts and excises, shall be uniform throughout the United States: By the first recited clause, direct taxes shall be apportioned on the states. This seems to favour the idea suggested by some sensible men and writers, that congress, as to direct taxes, will only have power to make requisitions,[35] but the latter clause, power to lay and collect taxes, etc seems clearly to favour the contrary opinion and, in my mind, the true one, that congress shall have power to tax immediately individuals, without the intervention of the state legislatures[;] in fact the first clause appears to me only to provide that each state shall pay a certain portion of the tax, and the latter to provide that congress shall have

power to lay and collect taxes, that is to assess upon, and to collect of the individuals in the state, the state[']s quota; but these still I consider as undefined powers, because judicious men understand them differently.

2.8.45 It is doubtful whether the vice president is to have any qualifications; none are mentioned; but he may serve as president, and it may be inferred, he ought to be qualified therefore as the president; but the qualifications of the president are required only of the person to be elected president. By art. the 2, sect. 2. "But the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of the departments:" Who are inferior officers? May not a congress disposed to vest the appointment of all officers in the president, under this clause, vest the appointment of almost every officer in the president alone, and destroy the check mentioned in the first part of the clause, and lodged in the senate. It is true, this check is badly lodged, but then some check upon the first magistrate in appointing officers, ought it appears by the opinion of the convention, and by the general opinion, to be established in the constitution. By art. 3, sect. 2, the supreme court shall have appellate jurisdiction as to law and facts with such exceptions, etc. to what extent is it intended the exceptions shall be carried—Congress may carry them so far as to annihilate substantially the appellate jurisdiction, and the clause be rendered of very little importance.

2.8.46 4th. There are certain rights which we have always held sacred in the United States, and recognized in all our constitutions, and which, by the adoption of the new constitution in its present form, will be left unsecured.[36] By article 6, the proposed constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.

2.8.47 It is to be observed that when the people shall adopt the proposed constitution it will be their last and supreme act; it will be adopted not by the people of New-Hampshire, Massachusetts, etc. but by the people of the United States;[37] and wherever this constitution, or any part of it, shall be incompatible with the ancient customs, rights, the laws or the constitutions heretofore established in the United States, it will entirely abolish them and do them away: And not only this, but the laws of the United States which shall be made in pursuance of the federal constitution will be also supreme laws, and wherever they shall be incompatible with those customs, rights, laws or constitutions heretofore established, they will also entirely abolish them and do them away.

2.8.48 By the article before recited, treaties also made under the authority of the United States, shall be the supreme law: It is not said that these treaties shall be made in pursuance of the constitution—nor are there any con-

stitutional bounds set to those who shall make them: The president and two thirds of the senate will be empowered to make treaties indefinitely, and when these treaties shall be made, they will also abolish all laws and state constitutions incompatible with them. This power in the president and senate is absolute, and the judges will be bound to allow full force to whatever rule, article or thing the president and senate shall establish by treaty, whether it be practicable to set any bounds to those who make treaties, I am not able to say: if not, it proves that this power ought to be more safely lodged.

2.8.49 The federal constitution, the laws of congress made in pursuance of the constitution, and all treaties must have full force and effect in all parts of the United States; and all other laws, rights and constitutions which stand in their way must yield: It is proper the national laws should be supreme, and superior to state or district laws: but then the national laws ought to yield to unalienable or fundamental rights—and national laws, made by a few men, should extend only to a few national objects. This will not be the case with the laws of congress: To have any proper idea of their extent, we must carefully examine the legislative, executive and judicial powers proposed to be lodged in the general government, and consider them in connection with a general clause in art. 1. sect. 8, in these words (after inumerating a number of powers) "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."—The powers of this government as has been observed, extend to internal as well as external objects, and to those objects to which all others are subordinate; it is almost impossible to have a just conception of these powers, or of the extent and number of the laws which may be deemed necessary and proper to carry them into effect, till we shall come to exercise those powers and make the laws. In making laws to carry those powers into effect, it is to be expected, that a wise and prudent congress will pay respect to the opinions of a free people, and bottom their laws on those principles which have been considered as essential and fundamental in the British, and in our government. But a congress of a different character will not be bound by the constitution to pay respect to those principles.

2.8.50 It is said, that when the people make a constitution, and delegate powers that all powers not delegated by them to those who govern is [*sic*] reserved in the people;[38] and that the people, in the present case, have reserved in themselves, and in their state governments, every right and power not expressly given by the federal constitution to those who shall administer the national government.[39] It is said on the other hand, that the people, when they make a constitution, yield all power not expressly reserved to themselves.[40] The truth is, in either case, it is mere matter of opinion and men usually take either side of the argument, as will best answer their purposes:

But the general presumption being, that men who govern, will, in doubtful cases, construe laws and constitutions most favourably for encreasing their own powers; all wise and prudent people, in forming constitutions, have drawn the line, and carefully described the powers parted with and the powers reserved. By the state constitutions, certain rights have been reserved in the people; or rather, they have been recognized and established in such a manner, that state legislatures are bound to respect them, and to make no laws infringing upon them. The state legislatures are obliged to take notice of the bills of rights of their respective states. The bills of rights, and the state constitutions, are fundamental compacts only between those who govern, and the people of the same state.

2.8.51 In the year 1788 the people of the United States make a federal constitution, which is a fundamental compact between them and their federal rulers; these rulers, in the nature of things, cannot be bound to take notice of any other compact. It would be absurd for them, in making laws, to look over thirteen, fifteen, or twenty state constitutions, to see what rights are established as fundamental, and must not be infringed upon, in making laws in the society. It is true, they would be bound to do it if the people, in their federal compact, should refer to the state constitutions, recognize all parts not inconsistent with the federal constitution, and direct their federal rulers to take notice of them accordingly; but this is not the case, as the plan stands proposed at present; and it is absurd, to suppose so unnatural an idea is intended or implied. I think my opinion is not only founded in reason, but I think it is supported by the report of the convention itself. If there are a number of rights established by the state constitutions, and which will remain sacred, and the general government is bound to take notice of them—it must take notice of one as well as another; and if unnecessary to recognize or establish one by the federal constitution, it would be unnecessary to recognize or establish another by it.[41] If the federal constitution is to be construed so far in connection with the state constitutions, as to leave the trial by jury in civil causes, for instance, secured; on the same principles it would have left the trial by jury in criminal causes, the benefits of the writ of habeas corpus, etc. secured; they all stand on the same footing; they are the common rights of Americans, and have been recognized by the state constitutions: But the convention found it necessary to recognize or re-establish the benefits of that writ, and the jury trial in criminal cases. As to *expost facto* laws, the convention has done the same in one case, and gone further in another. It is part of the compact between the people of each state and their rulers, that no *expost facto* laws shall be made. But the convention, by Art. I Sect. 10 have put a sanction upon this part even of the state compacts. In fact, the 9th and 10th Sections in Art. I. in the proposed constitution, are no more nor less, than a partial bill of rights; they establish certain principles as part of the compact upon which the federal legislators and officers can never infringe. It is here wisely stipulated, that the federal legislature shall

never pass a bill of attainder, or *expost facto* law; that no tax shall be laid on articles exported, etc. The establishing of one right implies the necessity of establishing another and similar one.

On the whole, the position appears to me to be undeniable, that this bill of rights ought to be carried farther, and some other principles established, as a part of this fundamental compact between the people of the United States and their federal rulers. 2.8.52

It is true, we are not disposed to differ much, at present, about religion; but when we are making a constitution, it is to be hoped, for ages and millions yet unborn, why not establish the free exercise of religion, as a part of the national compact. There are other essential rights, which we have justly understood to be the rights of freemen; as freedom from hasty and unreasonable search warrants, warrants not founded on oath, and not issued with due caution, for searching and seizing men's papers, property, and persons. The trials by jury in civil causes, it is said, varies so much in the several states, that no words could be found for the uniform establishment of it.[42] If so, the federal legislation will not be able to establish it by any general laws. I confess I am of opinion it may be established, but not in that beneficial manner in which we may enjoy it, for the reasons beforementioned. When I speak of the jury trial of the vicinage, or the trial of the fact in the neighbourhood,—I do not lay so much stress upon the circumstance of our being tried by our neighbours: in this enlightened country men may be probably impartially tried by those who do not live very near them: but the trial of facts in the neighbourhood is of great importance in other respects. Nothing can be more essential than the cross examining witnesses, and generally before the triers of the facts in question. The common people can establish facts with much more ease with oral than written evidence; when trials of facts are removed to a distance from the homes of the parties and witnesses, oral evidence becomes intolerably expensive, and the parties must depend on written evidence, which to the common people is expensive and almost useless; it must be frequently taken ex parte, and but very seldom leads to the proper discovery of truth. 2.8.53

The trial by jury is very important in another point of view. It is essential in every free country, that common people should have a part and share of influence, in the judicial as well as in the legislative department. To hold open to them the offices of senators, judges, and offices to fill which an expensive education is required, cannot answer any valuable purposes for them; they are not in a situation to be brought forward and to fill those offices; these, and most other offices of any considerable importance, will be occupied by the few. The few, the well born, etc. as Mr. Adams calls them,[43] in judicial decisions as well as in legislation, are generally disposed, and very naturally too, to favour those of their own description. 2.8.54

The trial by jury in the judicial department, and the collection of the people by their representatives in the legislature, are those fortunate in- 2.8.55

ventions which have procured for them, in this country, their true proportion of influence, and the wisest and most fit means of protecting themselves in the community. Their situation, as jurors and representatives, enables them to acquire information and knowledge in the affairs and government of the society; and to come forward, in turn, as the centinels and guardians of each other. I am very sorry that even a few of our countrymen should consider jurors and representatives in a different point of view, as ignorant troublesome bodies, which ought not to have any share in the concerns of government.

2.8.56 I confess I do not see in what cases the congress can, with any pretence of right, make a law to suppress the freedom of the press; though I am not clear, that congress is restrained from laying any duties whatever on printing, and from laying duties particularly heavy on certain pieces printed, and perhaps congress may require large bonds for the payment of these duties. Should the printer say, the freedom of the press was secured by the constitution of the state in which he lived, congress might, and perhaps, with great propriety, answer, that the federal constitution is the only compact existing between them and the people; in this compact the people have named no others, and therefore congress, in exercising the powers assigned them, and in making laws to carry them into execution, are restrained by nothing beside the federal constitution, any more than a state legislature is restrained by a compact between the magistrates and people of a county, city, or town of which the people, in forming the state constitution, have taken no notice.

It is not my object to enumerate rights of inconsiderable importance; but there are others, no doubt, which ought to be established as a fundamental part of the national system.

2.8.57 It is worthy observation, that all treaties are made by foreign nations with a confederacy of thirteen states—that the western country is attached to thirteen states—thirteen states have jointly and severally engaged to pay the public debts.—Should a new government be formed of nine, ten, eleven, or twelve states, those treaties could not be considered as binding on the foreign nations who made them. However, I believe the probability to be, that if nine states adopt the constitution, the others will.

2.8.58 It may also be worthy our examination, how far the provision for amending this plan, when it shall be adopted, is of any importance. No measures can be taken towards amendments, unless two-thirds of the congress, or two-thirds of the legislatures of the several states shall agree.—While power is in the hands of the people, or democratic part of the community, more especially as at present, it is easy, according to the general course of human affairs, for the few influential men in the community, to obtain conventions, alterations in government, and to persuade the common people they may change for the better, and to get from them a part of the power: But when power is once transferred from the many to the few, all changes become

extremely difficult; the government, in this case, being beneficial to the few, they will be exceedingly artful and adroit in preventing any measures which may lead to a change; and nothing will produce it, but great exertions and severe struggles on the part of the common people. Every man of reflection must see, that the change now proposed, is a transfer of power from the many to the few, and the probability is, the artful and ever active aristocracy, will prevent all peaceable measures for changes, unless when they shall discover some favourable moment to increase their own influence.[44] I am sensible, thousands of men in the United States, are disposed to adopt the proposed constitution, though they perceive it to be essentially defective, under an idea that amendments of it, may be obtained when necessary. This is a pernicious idea, it argues a servility of character totally unfit for the support of free government; it is very repugnant to that perpetual jealousy respecting liberty, so absolutely necessary in all free states, spoken of by Mr. Dickinson.[45]—However, if our countrymen are so soon changed, and the language of 1774, is become odious to them, it will be in vain to use the language of freedom, or to attempt to rouse them to free enquiries: But I shall never believe this is the case with them, whatever present appearances may be, till I shall have very strong evidence indeed of it.

Your's, &c.
The Federal Farmer.

V

October 13th, 1787

Dear Sir,

Thus I have examined the federal constitution as far as a few days leisure would permit. It opens to my mind a new scene; instead of seeing powers cautiously lodged in the hands of numerous legislators, and many magistrates, we see all important powers collecting in one centre, where a few men will possess them almost at discretion. And instead of checks in the formation of the government, to secure the rights of the people against the usurpations of those they appoint to govern, we are to understand the equal division of lands among our people, and the strong arm furnished them by nature and situation, are to secure them against those usurpations. If there are advantages in the equal division of our lands, and the strong and manly habits of our people, we ought to establish governments calculated to give duration to them, and not governments which never can work naturally, till that equality of property, and those free and manly habits shall be destroyed; these evidently are not the natural basis of the proposed constitution. No man of reflection, and skilled in the science of government, can 2.8.59

suppose these will move on harmoniously together for ages, or even for fifty years.[46] As to the little circumstances commented upon, by some writers, with applause—as the age of a representative, of the president, etc.—they have, in my mind, no weight in the general tendency of the system.

2.8.60 There are, however, in my opinion, many good things in the proposed system. It is founded on elective principles, and the deposits of powers in different hands, is essentially right. The guards against those evils we have experienced in some states in legislation are valuable indeed; but the value of every feature in this system is vastly lessened for the want of that one important feature in a free government, a representation of the people.[47] Because we have sometimes abused democracy, I am not among those men who think a democratic branch a nuisance; which branch shall be sufficiently numerous, to admit some of the best informed men of each order in the community into the administration of government.

2.8.61 While the radical defects in the proposed system are not so soon discovered, some temptations to each state, and to many classes of men to adopt it, are very visible. It uses the democratic language of several of the state constitutions, particularly that of Massachusetts; the eastern states will receive advantages so far as the regulation of trade, by a bare majority, is committed to it: Connecticut and New-Jersey will receive their share of a general impost: The middle states will receive the advantages surrounding the seat of government: The southern states will receive protection, and have their negroes represented in the legislature, and large back countries will soon have a majority in it. This system promises a large field of employment to military gentlemen, and gentlemen of the law; and in case the government shall be executed without convulsions, it will afford security to creditors, to the clergy, salary-men and others depending on money payments. So far as the system promises justice and reasonable advantages, in these respects, it ought to be supported by all honest men: but whenever it promises unequal and improper advantages to any particular states, or orders of men, it ought to be opposed.

2.8.62 I have, in the course of these letters observed, that there are many good things in the proposed constitution, and I have endeavoured to point out many important defects in it. I have admitted that we want a federal system—that we have a system presented, which, with several alterations may be made a tolerable good one—I have admitted there is a well founded uneasiness among creditors and mercantile men. In this situation of things, you ask me what I think ought to be done? My opinion in this case is only the opinion of an individual, and so far only as it corresponds with the opinions of the honest and substantial part of the community, is it entitled to consideration. Though I am fully satisfied that the state conventions ought most seriously to direct their exertions to altering and amending the system proposed before they shall adopt it—yet I have not sufficiently examined the subject, or formed an opinion, how far it will be practicable for those con-

ventions to carry their amendments. As to the idea, that it will be in vain for those conventions to attempt amendments, it cannot be admitted; it is impossible to say whether they can or not until the attempt shall be made; and when it shall be determined, by experience, that the conventions cannot agree in amendments, it will then be an important question before the people of the United States, whether they will adopt or not the system proposed in its present form. This subject of consolidating the states is new; and because forty or fifty men have agreed in a system, to suppose the good sense of this country, an enlightened nation, must adopt it without examination, and though in a state of profound peace, without endeavouring to amend those parts they perceive are defective, dangerous to freedom, and destructive of the valuable principles of republican government—is truly humiliating. It is true there may be danger in delay; but there is danger in adopting the system in its present form; and I see the danger in either case will arise principally from the conduct and views of two very unprincipled parties in the United States—two fires, between which the honest and substantial people have long found themselves situated. One party is composed of little insurgents, men in debt, who want no law, and who want a share of the property of others; these are called levellers, Shayites, etc. The other party is composed of a few, but more dangerous men, with their servile dependents; these avariciously grasp at all power and property; you may discover in all the actions of these men, an evident dislike to free and equal government, and they will go systematically to work to change, essentially, the forms of government in this country; these are called aristocrats, M[onarch]ites [?], etc. etc. Between these two parties is the weight of the community; the men of middling property, men not in debt on the one hand, and men, on the other, content with republican governments, and not aiming at immense fortunes, offices, and power. In 1786, the little insurgents, the levellers, came forth, invaded the rights of others, and attempted to establish governments according to their wills. Their movements evidently gave encouragement to the other party, which, in 1787, has taken the political field, and with its fashionable dependants, and the tongue and the pen, is endeavouring to establish in great haste, a politer kind of government. These two parties, which will probably be opposed or united as it may suit their interests and views, are really insignificant, compared with the solid, free, and independent part of the community. It is not my intention to suggest, that either of these parties, and the real friends of the proposed constitution, are the same men. The fact is, these aristocrats support and hasten the adoption of the proposed constitution, merely because they think it is a stepping stone to their favorite object. I think I am well founded in this idea; I think the general politics of these men support it, as well as the common observation among them, That the proffered plan is the best that can be got at present, it will do for a few years, and lead to something better. The sensible and judicious part of the community will carefully weigh all these circum-

stances; they will view the late convention as a respectable assembly of men—America probably never will see an assembly of men of a like number, more respectable. But the members of the convention met without knowing the sentiments of one man in ten thousand in these states, respecting the new ground taken. Their doings are but the first attempts in the most important scene ever opened. Though each individual in the state conventions will not, probably, be so respectable as each individual in the federal convention, yet as the state conventions will probably consist of fifteen hundred or two thousand men of abilities, and versed in the science of government, collected from all parts of the community and from all orders of men, it must be acknowledged that the weight of respectability will be in them—In them will be collected the solid sense and the real political character of the country. Being revisers of the subject, they will possess peculiar advantages. To say that these conventions ought not to attempt, coolly and deliberately, the revision of the system, or that they cannot amend it, is very foolish or very assuming. If these conventions, after examining the system, adopt it, I shall be perfectly satisfied, and wish to see men make the administration of the government an equal blessing to all orders of men. I believe the great body of our people to be virtuous and friendly to good government, to the protection of liberty and property; and it is the duty of all good men, especially of those who are placed as centinels to guard their rights—it is their duty to examine into the prevailing politics of parties, and to disclose them—while they avoid exciting undue suspicions, to lay facts before the people, which will enable them to form a proper judgment. Men who wish the people of this country to determine for themselves, and deliberately to fit the government to their situation, must feel some degree of indignation at those attempts to hurry the adoption of a system, and to shut the door against examination. The very attempts create suspicions, that those who make them have secret views, or see some defects in the system, which, in the hurry of affairs, they expect will escape thee ye of a free people.

2.8.63 What can be the views of those gentlemen in Pennsylvania, who precipitated decisions on this subject?[48] What can be the views of those gentlemen in Boston, who countenanced the Printers in shutting up the press against a fair and free investigation of this important system in the usual way.[49] The members of the convention have done their duty—why should some of them fly to their states—almost forget a propriety of behaviour, and precipitate measures for the adoption of a system of their own making? I confess candidly, when I consider these circumstances in connection with the unguarded parts of the system I have mentioned, I feel disposed to proceed with very great caution, and to pay more attention than usual to the conduct of particular characters. If the constitution presented be a good one, it will stand the test with a well informed people: all are agreed there

shall be state conventions to examine it; and we must believe it will be adopted, unless we suppose it is a bad one, or that those conventions will make false divisions respecting it. I admit improper measures are taken against the adoption of the system as well [as] for it—all who object to the plan proposed ought to point out the defects objected to, and to propose those amendments with which they can accept it, or to propose some other system of government, that the public mind may be known, and that we may be brought to agree in some system of government, to strengthen and execute the present, or to provide a substitute. I consider the field of enquiry just opened, and that we are to look to the state conventions for ultimate decisions on the subject before us; it is not to be presumed, that they will differ about small amendments, and lose a system when they shall have made it substantially good; but touching the essential amendments, it is to be presumed the several conventions will pursue the most rational measures to agree in and obtain them; and such defects as they shall discover and not remove, they will probably notice, keep them in view as the ground work of future amendments, and in the firm and manly language which every free people ought to use, will suggest to those who may hereafter administer the government, that it is their expectation, that the system will be so organized by legislative acts, and the government so administered, as to render those defects as little injurious as possible. Our countrymen are entitled to an honest and faithful government; to a government of laws and not of men; and also to one of their chusing—as a citizen of the country, I wish to see these objects secured, and licentious, assuming, and overbearing men restrained; if the constitution or social compact be vague and unguarded, then we depend wholly upon the prudence, wisdom and moderation of those who manage the affairs of government; or on what, probably, is equally uncertain and precarious, the success of the people oppressed by the abuse of government, in receiving it from the hands of those who abuse it, and placing it in the hands of those who will use it well.

In every point of view, therefore, in which I have been able, as yet, to 2.8.64
contemplate this subject, I can discern but one rational mode of proceeding relative to it: and that is to examine it with freedom and candour, to have state conventions some months hence, which shall examine coolly every article, clause, and word in the system proposed, and to adopt it with such amendments as they shall think fit. How far the state conventions ought to pursue the mode prescribed by the federal convention of adopting or rejecting the plan in toto, I leave it to them to determine. Our examination of the subject hitherto has been rather of a general nature. The republican characters in the several states, who wish to make this plan more adequate to security of liberty and property, and to the duration of the principles of a free government, will, no doubt, collect their opinions to certain points, and accurately define those alterations and amendments they wish; if it shall be

found they essentially disagree in them, the conventions will then be able to determine whether to adopt the plan as it is, or what will be proper to be done.

2.8.65 Under these impressions, and keeping in view the improper and unadvisable lodgment of powers in the general government, organized as it at present is, touching internal taxes, armies and militia, the elections of its own members, causes between citizens of different states, etc. and the want of a more perfect bill of rights, etc. I drop the subject for the present, and when I shall have leisure to revise and correct my ideas respecting it, and to collect into points the opinions of those who wish to make the system more secure and safe, perhaps I may proceed to point out particularly for your consideration, the amendments which ought to be ingrafted into this system, not only in conformity to my own, but the deliberate opinions of others—you will with me perceive, that the objections to the plan proposed may, by a more leisure examination be set in a stronger point of view, especially the important one, that there is no substantial representation of the people provided for in a government in which the most essential powers, even as to the internal police of the country, is proposed to be lodged.

2.8.66 I think the honest and substantial part of the community will wish to see this system altered, permanency and consistency given to the constitution we shall adopt; and therefore they will be anxious to apportion the powers to the features and organization of the government, and to see abuse in the exercise of power more effectually guarded against. It is suggested, that state officers, from interested motives will oppose the constitution presented—I see no reason for this, their places in general will not be effected, but new openings to offices and places of profit must evidently be made by the adoption of the constitution in its present form.

Your's &c.
The Federal Farmer.

[The Additional Letters]

VI

December 25, 1787.

Dear Sir,

2.8.67 My former letters to you, respecting the constitution proposed, were calculated merely to lead to a fuller investigation of the subject; having more extensively considered it, and the opinions of others relative to it, I shall, in a few letters, more particularly endeavour to point out the defects, and

propose amendments. I shall in this make only a few general and introductory observations, which, in the present state of the momentous question, may not be improper; and I leave you, in all cases, to decide by a careful examination of my works, upon the weight of my arguments, the propriety of my remarks, the uprightness of my intentions, and the extent of my candor—I presume I am writing to a man of candor and reflection, and not to an ardent, peevish, or impatient man.

When the constitution was first published, there appeared to prevail a misguided zeal to prevent a fair unbiassed examination of a subject of infinite importance to this people and their posterity—to the cause of liberty and the rights of mankind—and it was the duty of those who saw a restless ardor, or design, attempting to mislead the people by a parade of names and misrepresentations, to endeavour to prevent their having their intended effects. The only way to stop the passions of men in their career is, coolly to state facts, and deliberately to avow the truth—and to do this we are frequently forced into a painful view of men and measures. 2.8.68

Since I wrote to you in October, I have heard much said, and seen many pieces written, upon the subject in question; and on carefully examining them on both sides, I find much less reason for changing my sentiments, respecting the good and defective parts of the system proposed than I expected—The opposers, as well as the advocates of it, confirm me in my opinion, that this system affords, all circumstances considered, a better basis to build upon than the confederation. And as to the principal defects, as the smallness of the representation, the insecurity of elections, the undue mixture of powers in the senate, the insecurity of some essential rights, &c. the opposition appears, generally, to agree respecting them, and many of the ablest advocates virtually to admit them—Clear it is, the latter do not attempt manfully to defend these defective parts, but to cover them with a mysterious veil; they concede, they retract; they say we could do no better; and some of them, when a little out of temper, and hard pushed, use arguments that do more honor to their ingenuity, than to their candor and firmness. 2.8.69

Three states have now adopted the constitution without amendments;[50] these, and other circumstances, ought to have their weight in deciding the question, whether we will put the system into operation, adopt it, enumerate and recommend the necessary amendments, which afterwards, by three-fourths of the states, may be ingrafted into the system, or whether we will make the amendments prior to the adoption—I only undertake to shew amendments are essential and necessary—how far it is practicable to ingraft them into the plan, prior to the adoption, the state conventions must determine. Our situation is critical, and we have but our choice of evils—We may hazard much by adopting the constitution in its present form—we may hazard more by rejecting it wholly—we may hazard much by long contending about amendments prior to the adoption. The greatest political evils that 2.8.70

can befal us, are discords and civil wars—the greatest blessings we can wish for, are peace, union, and industry, under a mild, free, and steady government. Amendments recommended will tend to guard and direct the administration—but there will be danger that the people, after the system shall be adopted, will become inattentive to amendments—Their attention is now awake—the discussion of the subject, which has already taken place, has had a happy effect—it has called forth the able advocates of liberty, and tends to renew, in the minds of the people, their true republican jealousy and vigilance, the strongest guard against the abuses of power; but the vigilance of the people is not sufficiently constant to be depended on—Fortunate it is for the body of a people, if they can continue attentive to their liberties, long enough to erect for them a temple, and constitutional barriers for their permanent security: when they are well fixed between the powers of the rulers and the rights of the people, they become visible boundaries, constantly seen by all, and any transgression of them is immediately discovered: they serve as centinels for the people at all times, and especially in those unavoidable intervals of inattention.

2.8.71 Some of the advocates, I believe, will agree to recommend *good* amendments; but some of them will only consent to recommend indefinite, specious, but unimportant ones; and this only with a view to keep the door open for obtaining, in some favourable moment, their main object, a complete consolidation of the states, and a government much higher toned, less republican and free than the one proposed. If necessity, therefore, should ever oblige us to adopt the system, and recommend amendments, the true friends of a federal republic must see they are well defined, and well calculated, not only to prevent our system of government moving further from republican principles and equality, but to bring it back nearer to them—they must be constantly on their guard against the address, flattery, and manœuvres of their adversaries.

2.8.72 The gentlemen who oppose the constitution, or contend for amendments in it, are frequently, and with much bitterness, charged with wantonly attacking the men who framed it. The unjustness of this charge leads me to make one observation upon the conduct of parties, &c.[51] Some of the advocates are only pretended federalists; in fact they wish for an abolition of the state governments. Some of them I believe to be honest federalists, who wish to preserve *substantially* the state governments united under an efficient federal head; and many of them are blind tools without any object. Some of the opposers also are only pretended federalists, who want no federal government, or one merely advisory. Some of them are the true federalists, their object, perhaps, more clearly seen, is the same with that of the honest federalists; and some of them, probably, have no distinct object. We might as well call the advocates and opposers tories and whigs, or any thing else, as federalists and anti-federalists. To be for or against the constitution, as it stands, is not much evidence of a federal disposition; if any

names are applicable to the parties, on account of their general politics, they are those of republicans and anti-republicans. The opposers are generally men who support the rights of the body of the people, and are properly republicans. The advocates are generally men not very friendly to those rights, and properly anti republicans.

Had the advocates left the constitution, as they ought to have done, to be adopted or rejected on account of its own merits or imperfections, I do not believe the gentlemen who framed it would ever have been even alluded to in the contest by the opposers. Instead of this, the ardent advocates begun by quoting names as incontestible authorities for the implicit adoption of the system, without any examination—treated all who opposed it as friends of anarchy; and with an indecent virulence addressed M[aso]n G[err]y, L[e]e, and almost every man of weight they could find in the opposition by name.[52] If they had been candid men they would have applauded the moderation of the opposers for not retaliating in this pointed manner, when so fair an opportunity was given them; but the opposers generally saw that it was no time to heat the passions; but, at the same time, they saw there was something more than mere zeal in many of their adversaries; they saw them attempting to mislead the people, and to precipitate their divisions, by the sound of names, and forced to do it, the opposers, in general terms, alledged those names were not of sufficient authority to justify the hasty adoption of the system contended for. The convention, as a body, was undoubtedly respectable; it was, generally, composed of members of the then and preceding Congresses: as a body of respectable men we ought to view it. To select individual names, is an invitation to personal attacks, and the advocates, for their own sake, ought to have known the abilities, politics, and situation of some of their favourite characters better, before they held them up to view in the manner they did, as men entitled to our implicit political belief: they ought to have known, whether all the men they so held up to view could, for their past conduct in public offices, be approved or not by the public records, and the honest part of the community. These ardent advocates seem now to be peevish and angry, because, by their own folly, they have led to an investigation of facts and of political characters, unfavourable to them, which they had not the discernment to foresee. They may well apprehend they have opened a door to some Junius,[53] or to some man, after his manner, with his polite addresses to men by name, to state serious facts, and unfold the truth; but these advocates may rest assured, that cool men in the opposition, best acquainted with the affairs of the country, will not, in the critical passage of a people from one constitution to another, pursue inquiries, which, in other circumstances, will be deserving of the highest praise. I will say nothing further about political characters, but examine the constitution; and as a necessary and previous measure to a particular examination, I shall state a few general positions and principles, which receive a general assent, and briefly notice the leading features of the

2.8.73

confederation, and several state conventions, to which, through the whole investigation, we must frequently have recourse, to aid the mind in its determinations.

2.8.74 We can put but little dependance on the partial and vague information transmitted to us respecting antient governments; our situation as a people is peculiar: our people in general have a high sense of freedom; they are high spirited, though capable of deliberate measures; they are intelligent, discerning, and well informed; and it is to their condition we must mould the constitution and laws. We have no royal or noble families, and all things concur in favour of a government entirely elective. We have tried our abilities as free men in a most arduous contest, and have succeeded; but we now find the main spring of our movements were the love of liberty, and a temporary ardor, and not any energetic principle in the federal system.[54]

2.8.75 Our territories are far too extensive for a limited monarchy, in which the representatives must frequently assemble, and the laws operate mildly and systematically. The most elligible system is a federal republic, that is, a system in which national concerns may be transacted in the centre, and local affairs in state or district governments.

The powers of the union ought to be extended to commerce, the coin, and national objects; and a division of powers, and a deposit of them in different hands, is safest.

2.8.76 Good government is generally the result of experience and gradual improvements, and a punctual execution of the laws is essential to the preservation of life, liberty, and property. Taxes are always necessary, and the power to raise them can never be safely lodged without checks and limitation, but in a full and substantial representation of the body of the people; the quantity of power delegated ought to be compensated by the brevity of the time of holding it, in order to prevent the possessors increasing it. The supreme power is in the people, and rulers possess only that portion which is expressly given them; yet the wisest people have often declared this is the case on proper occasions, and have carefully formed stipulation to fix the extent, and limit the exercise of the power given.

2.8.77 The people by Magna Charta, &c. did not acquire powers, or receive privileges from the king, they only ascertained and fixed those they were entitled to as Englishmen; the title used by the king "we grant," was mere form. Representation, and the jury trial, are the best features of a free government ever as yet discovered, and the only means by which the body of the people can have their proper influence in the affairs of government.

2.8.78 In a federal system we must not only balance the parts of the same government, as that of the state, or that of the union; but we must find a balancing influence between the general and local governments—the latter is what men or writers have but very little or imperfectly considered.

2.8.79 A free and mild government is that in which no laws can be made without the formal and free consent of the people, or of their constitutional repre-

sentatives; that is, of a substantial representative branch. Liberty, in its genuine sense, is security to enjoy the effects of our honest industry and labours, in a free and mild government, and personal security from all illegal restraints.

Of rights, some are natural and unalienable, of which even the people cannot deprive individuals: Some are constitutional or fundamental: these cannot be altered or abolished by the ordinary laws; but the people, by express acts, may alter or abolish them—These, such as the trial by jury, the benefits of the writ of habeas corpus, &c. individuals claim under the solemn compacts of the people, as constitutions, or at least under laws so strengthened by long usuage as not to be repealable by the ordinary legislature—and some are common or mere legal rights, that is, such as individuals claim under laws which the ordinary legislature may alter or abolish at pleasure.[55] 2.8.80

The confederation is a league of friendship among the states or sovereignties for the common defence and mutual welfare—Each state expressly retains its sovereignty, and all powers not expressly given to congress—All federal powers are lodged in a congress of delegates annually elected by the state legislatures, except in Connecticut and Rhode-Island, where they are chosen by the people—Each state has a vote in congress, pays its delegates, and may instruct or recall them; no delegate can hold any office of profit, or serve more than three years in any six years—Each state may be represented by not less than two, or more than seven delegates. 2.8.81

Congress (nine states agreeing) may make peace and war, treaties and alliances, grant letters of marque and reprisal, coin money, regulate the alloy and value of the coin, require men and monies of the states by fixed proportions, and appropriate monies, form armies and navies, emit bills of credit, and borrow monies. 2.8.82

Congress (seven states agreeing) may send and receive ambassadors, regulate captures, make rules for governing the army and navy, institute courts for the trial of piracies and felonies committed on the high seas, and for settling territorial disputes between the individual states, regulate weight and measures, post-offices, and Indian affairs. 2.8.83

No state, without the consent of congress, can send or receive embassies, make any agreement with any other state, or a foreign state, keep up any vessels of war or bodies of forces in time of peace, or engage in war, or lay any duties which may interfere with the treaties of congress—Each state must appoint regimental officers, and keep up a well regulated militia—Each state may prohibit the importation or exportation of any species of goods. 2.8.84

The free inhabitants of one state are intitled to the privileges and immunities of the free citizens of the other states—Credit in each state shall be given to the records and judicial proceedings in the others. 2.8.85

Canada, acceding, may be admitted, and any other colony may be admitted by the consent of nine states.

Alterations may be made by the agreement of congress, and confirmation of all the state legislatures.

2.8.86 The following, I think, will be allowed to be unalienable or fundamental rights in the United States:—

No man, demeaning himself peaceably, shall be molested on account of his religion or mode of worship—The people have a right to hold and enjoy their property according to known standing laws, and which cannot be taken from them without their consent, or the consent of their representatives; and whenever taken in the pressing urgencies of government, they are to receive a reasonable compensation for it—Individual security consists in having free recourse to the laws—The people are subject to no laws or taxes not assented to by their representatives constitutionally assembled—They are at all times intitled to the benefits of the writ of habeas corpus, the trial by jury in criminal and civil causes—They have a right, when charged, to a speedy trial in the vicinage; to be heard by themselves or counsel, not to be compelled to furnish evidence against themselves, to have witnesses face to face, and to confront their adversaries before the judge—No man is held to answer a crime charged upon him till it be substantially described to him; and he is subject to no unreasonable searches or seizures of his person, papers or effects—The people have a right to assemble in an orderly manner, and petition the government for a redress of wrongs—The freedom of the press ought not to be restrained—No emoluments, except for actual service—No hereditary honors, or orders of nobility, ought to be allowed—The military ought to be subordinate to the civil authority, and no soldier be quartered on the citizens without their consent—The militia ought always to be armed and disciplined, and the usual defence of the country—The supreme power is in the people, and power delegated ought to return to them at stated periods, and frequently—The legislative, executive, and judicial powers, ought always to be kept distinct—others perhaps might be added.

2.8.87 The organization of the state governments—Each state has a legislature, an executive, and a judicial branch—In general legislators are excluded from the important executive and judicial offices—Except in the Carolinas there is no constitutional distinction among Christian sects—The constitutions of New York, Delaware, and Virginia, exclude the clergy from offices civil and military—the other states do nearly the same in practice.

2.8.88 Each state has a democratic branch elected twice a-year in Rhode-Island and Connecticut, biennially in South Carolina, and annually in the other states—There are about 1500 representatives in all the states, or one to each 1700 inhabitants, reckoning five blacks for three whites—The states do not differ as to the age or moral characters of the electors or elected, nor materially as to their property.

2.8.89 Pennsylvania has lodged all her legislative powers in a single branch, and Georgia has done the same; the other eleven states have each in their legis-

latures a second or senatorial branch. In forming this they have combined various principles, and aimed at several checks and balances. It is amazing to see how ingenuity has worked in the several states to fix a barrier against popular instability. In Massachusetts the senators are apportioned on districts according to the taxes they pay, nearly according to property. In Connecticut the freemen, in September, vote for twenty counsellers, and return the names of those voted for in the several towns; the legislature takes the twenty who have the most votes, and give them to the people, who, in April, chuse twelve of them, who, with the governor and deputy governor, form the senatorial branch. In Maryland the senators are chosen by two electors from each county; these electors are chosen by the freemen, and qualified as the members in the democratic branch are: In these two cases checks are aimed at in the mode of election. Several states have taken into view the periods of service, age, property, &c. In South-Carolina a senator is elected for two years, in Delaware three, and in New-York and Virginia four, in Maryland five, and in the other states for one. In New-York and Virginia one-fourth part go out yearly. In Virginia a senator must be twenty-five years old, in South Carolina thirty. In New-York the electors must each have a freehold worth 250 dollars, in North-Carolina a freehold of fifty acres of land; in the other states the electors of senators are qualified as electors of representatives are. In Massachusetts a senator must have a freehold in his own right worth 1000 dollars, or any estate worth 2000, in New-Jersey any estate worth 2666, in South Carolina worth 1300 dollars, in North-Carolina 300 acres of land in fee, &c. The numbers of senators in each state are from ten to thirty-one, about 160 in the eleven states, about one of 14000 inhabitants.

2.8.90 Two states, Massachusetts and New-York, have each introduced into their legislatures a third, but incomplete branch. In the former, the governor may negative any law not supported by two-thirds of the senators, and two-thirds of the representatives: in the latter, the governor, chancellor, and judges of the supreme court may do the same.

2.8.91 Each state has a single executive branch. In the five eastern states the people at large elect their governors; in the other states the legislatures elect them. In South Carolina the governor is elected once in two years; in New-York and Delaware once in three, and in the other states annually. The governor of New-York has no executive council, the other governors have. In several states the governor has a vote in the senatorial branch—the governors have similar powers in some instances, and quite dissimilar ones in others. The number of executive counsellers in the states are from five to twelve. In the four eastern states, New-Jersey, Pennsylvania, and Georgia, they are of the men returned legislators by the people. In Pennsylvania the counsellers are chosen triennially, in Delaware every fourth year, in Virginia every three years, in South-Carolina biennially, and in the other states yearly.

2.9.92 Each state has a judicial branch; each common law courts, superior and inferior; some chancery and admiralty courts: The courts in general sit in different places, in order to accommodate the citizens. The trial by jury is had in all the common law courts, and in some of the admiralty courts. The democratic freemen principally form the juries; men destitute of property, of character, or under age, are excluded as in elections. Some of the judges are during good behaviour, and some appointed for a year, and some for years; and all are dependant on the legislatures for their salaries—Particulars respecting this department are too many to be noticed here.

The Federal Farmer.

VII

December 31, 1787.

Dear Sir,

2.8.93 In viewing the various governments instituted by mankind, we see their whole force reducible to two principles—the important springs which alone move the machines, and give them their intended influence and controul, are force and persuasion: by the former men are compelled, by the latter they are drawn. We denominate a government despotic or free, as the one or other principle prevails in it. Perhaps it is not possible for a government to be so despotic, as not to operate persuasively on some of its subjects; nor is it, in the nature of things, I conceive, for a government to be so free, or so supported by voluntary consent, as never to want force to compel obedience to the laws. In despotic governments one man, or a few men, independant of the people, generally make the laws, command obedience, and inforce it by the sword: one-fourth part of the people are armed, and obliged to endure the fatigues of soldiers, to oppress the others and keep them subject to the laws. In free governments the people, or their representatives, make the laws; their execution is principally the effect of voluntary consent and aid; the people respect the magistrate, follow their private pursuits, and enjoy the fruits of their labour with very small deductions for the public use.[56] The body of the people must evidently prefer the latter species of government; and it can be only those few who may be well paid for the part they take in enforcing despotism, that can, for a moment, prefer the former. Our true object is to give full efficacy to one principle, to arm persuasion on every side, and to render force as little necessary as possible. Persuasion is never dangerous not even in despotic governments; but military force, if often applied internally, can never fail to destroy the love and confidence, and break the spirits, of the people: and to render it totally impracticable

and unnatural for him or them who govern, and yield to this force against the people, to hold their places by the peoples' elections.

I repeat my observation, that the plan proposed will have a doubtful operation between the two principles; and whether it will preponderate towards persuasion or force is uncertain.

Government must exist—If the persuasive principle be feeble, force is infallibly the next resort. The moment the laws of congress shall be disregarded they must languish, and the whole system be convulsed—that moment we must have recourse to this next resort, and all freedom vanish. 2.8.94

It being impracticable for the people to assemble to make laws, they must elect legislators, and assign men to the different departments of the government.[57] In the representative branch we must expect chiefly to collect the confidence of the people, and in it to find almost entirely the force of persuasion. In forming this branch, therefore, several important considerations must be attended to. It must possess abilities to discern the situation of the people and of public affairs, a disposition to sympathize with the people, and a capacity and inclination to make laws congenial to their circumstances and condition: it must afford security against interested combinations, corruption and influence; it must possess the confidence, and have the voluntary support of the people. 2.8.95

I think these positions will not be controverted, nor the one I formerly advanced, that a fair and equal representation is that in which the interests, feelings, opinions and views of the people are collected, in such manner as they would be were the people all assembled. Having made these general observations, I shall proceed to consider further my principal position, viz. that there is no substantial representation of the people provided for in a government, in which the most essential powers, even as to the internal police of the country, are proposed to be lodged; and to propose certain amendments as to the representative branch: 1st, That there ought to be *an increase of the numbers of representatives:* And, 2dly, That the elections of them ought to be better secured. 2.8.96

1.[58] The representation is unsubstantial and ought to be increased. In matters where there is much room for opinion, you will not expect me to establish my positions with mathematical certainty; you must only expect my observations to be candid, and such as are well founded in the mind of the writer. I am in a field where doctors disagree; and as to genuine representation, though no feature in government can be more important, perhaps, no one has been less understood, and no one that has received so imperfect a consideration by political writers. The ephori in Sparta, and the tribunes in Rome, were but the shadow; the representation in Great-Britain is unequal and insecure. In America we have done more in establishing this important branch on its true principles, than, perhaps, all the world besides: yet even here, I conceive, that very great improvements in representation may be made. In fixing this branch, the situation of the people must be surveyed, 2.8.97

and the number of representatives and forms of election apportioned to that situation. When we find a numerous people settled in a fertile and extensive country, possessing equality, and few or none of them oppressed with riches or wants, it ought to be the anxious care of the constitution and laws, to arrest them from national depravity, and to preserve them in their happy condition.[59] A virtuous people make just laws, and good laws tend to preserve unchanged a virtuous people. A virtuous and happy people by laws uncongenial to their characters, may easily be gradually changed into servile and depraved creatures. Where the people, or their representatives, make the laws, it is probable they will generally be fitted to the national character and circumstances, unless the representation be partial, and the imperfect substitute of the people. However, the people may be electors, if the representation be so formed as to give one or more of the natural classes of men in the society an undue ascendency over the others, it is imperfect; the former will gradually become masters, and the latter slaves. It is the first of all among the political balances, to preserve in its proper station each of these classes. We talk of balances in the legislature, and among the departments of government; we ought to carry them to the body of the people. Since I advanced the idea of balancing the several orders of men in a community, in forming a genuine representation, and seen that idea considered as chemerical,[60] I have been sensibly struck with a sentence in the marquis Beccaria's treatise: this sentence was quoted by congress in 1774, and is as follows:—"In every society there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the others to the extreme of weakness and misery; the intent of good laws is to oppose this effort, and to diffuse their influence universally and equally."[61] Add to this Montesquieu's opinion, that "in a free state every man, who is supposed to be a free agent, ought to be concerned in his own government: therefore, the legislative should reside in the whole body of the people, or their representatives."[62] It is extremely clear that these writers had in view the several orders of men in society, which we call aristocratical, democratical, merchantile, mechanic, &c. and perceived the efforts they are constantly, from interested and ambitious views, disposed to make [efforts?] to elevate themselves and oppress others. Each order must have a share in the business of legislation actually and efficiently. It is deceiving a people to tell them they are electors, and can chuse their legislators, if they cannot, in the nature of things, chuse men from among themselves, and genuinely like themselves. I wish you to take another idea along with you; we are not only to balance these natural efforts, but we are also to guard against accidental combinations; combinations founded in the connections of offices and private interests, both evils which are increased in proportion as the number of men, among which the elected must be, are decreased. To set this matter in a proper point of view, we must form some general ideas and descriptions of the different classes of men, as they may be divided by

occupations and politically: the first class is the aristocratical. There are three kinds of aristocracy spoken of in this country—the first is a constitutional one, which does not exist in the United States in our common acceptation of the word. Montesquieu, it is true, observes, that where a part of the persons in a society, for want of property, age, or moral character, are excluded any share in the government, the others, who alone are the constitutional electors and elected, form this aristocracy;[63] this, according to him, exists in each of the United States, where a considerable number of persons, as all convicted of crimes, under age, or not possessed of certain property, are excluded any share in the government;—the second is an aristocratic faction; a junto of unprincipled men, often distinguished for their wealth or abilities, who combine together and make their object their private interests and aggrandizement; the existence of this description is merely accidental, but particularly to be guarded against. The third is the natural aristocracy; this term we use to designate a respectable order of men, the line between whom and the natural democracy is in some degree arbitrary; we may place men on one side of this line, which others may place on the other, and in all disputes between the few and the many, a considerable number are wavering and uncertain themselves on which side they are, or ought to be. In my idea of our natural aristocracy in the United States, I include about four or five thousand men; and among these I reckon those who have been placed in the offices of governors, of members of Congress, and state senators generally, in the principal officers of Congress, of the army and militia, the superior judges, the most eminent professional men, &c. and men of large property[64]—the other persons and orders in the community form the natural democracy; this includes in general the yeomanry, the subordinate officers, civil and military, the fishermen, mechanics and traders, many of the merchants and professional men. It is easy to perceive that men of these two classes, the aristocratical, and democratical, with views equally honest, have sentiments widely different, especially respecting public and private expences, salaries, taxes, &c. Men of the first class associate more extensively, have a high sense of honor, possess abilities, ambition, and general knowledge; men of the second class are not so much used to combining great objects; they possess less ambition, and a larger share of honesty: their dependence is principally on middling and small estates, industrious pursuits, and hard labour, while that of the former is principally on the emoluments of large estates, and of the chief offices of government. Not only the efforts of these two great parties are to be balanced, but other interests and parties also, which do not always oppress each other merely for want of power, and for fear of the consequences; though they, in fact, mutually depend on each other; yet such are their general views, that the merchants alone would never fail to make laws favourable to themselves and oppressive to the farmers, &c. the farmers alone would act on like principles; the former would tax the land, the latter

the trade. The manufacturers are often disposed to contend for monopolies, buyers make every exertion to lower prices, and sellers to raise them; men who live by fees and salaries endeavour to raise them, and the part of the people who pay them, endeavour to lower them; the public creditors to augment the taxes, and the people at large to lessen them. Thus, in every period of society, and in all the transactions of men, we see parties verifying the observation made by the Marquis; and those classes which have not their centinels in the government, in proportion to what they have to gain or lose, most infallibly be ruined.

2.8.98 Efforts among parties are not merely confined to property; they contend for rank and distinctions; all their passions in turn are enlisted in political controversies—Men, elevated in society, are often disgusted with the changeableness of the democracy, and the latter are often agitated with the passions of jealousy and envy: the yeomanry possess a large share of property and strength, are nervous and firm in their opinions and habits—the mechanics of towns are ardent and changeable, honest and credulous, they are inconsiderable for numbers, weight and strength, not always sufficiently stable for the supporting free governments: the fishing interest partakes partly of the strength and stability of the landed, and partly of the changeableness of the mechanic interest. As to merchants and traders, they are our agents in almost all money transactions; give activity to government, and possess a considerable share of influence in it. It has been observed by an able writer, that frugal industrious merchants are generally advocates for liberty. It is an observation, I believe, well founded, that the schools produce but few advocates for republican forms of government; [65] gentlemen of the law, divinity, physic, &c. probably form about a fourth part of the people; yet their political influence, perhaps, is equal to that of all the other descriptions of men; if we may judge from the appointments to Congress, the legal characters will often, in a small representation, be the majority; but the more the representatives are encreased, the more of the farmers, merchants, &c. will be found to be brought into the government.

2.8.99 These general observations will enable you to discern what I intend by different classes, and the general scope of my ideas, when I contend for uniting and balancing their interests, feelings, opinions, and views in the legislature; we may not only so unite and balance these as to prevent a change in the government by the gradual exaltation of one part to the depression of others, but we may derive many other advantages from the combination and full representation; a small representation can never be well informed as to the circumstances of the people, the members of it must be too far removed from the people, in general, to sympathize with them, and too few to communicate with them: a representation must be extremely imperfect where the representatives are not circumstanced to make the proper communications to their constituents, and where the constituents in

turn cannot, with tolerable convenience, make known their wants, circumstances, and opinions, to their representatives; where there is but one representative to 30,000 or 40,000 inhabitants, it appears to me, he can only mix, and be acquainted with a few respectable characters among his constituents, even double the federal representation, and then there must be a very great distance between the representatives and the people in general represented. On the proposed plan, the state of Delaware, the city of Philadelphia, the state of Rhode Island, the province of Main, the county of Suffolk in Massachusetts will have one representative each; there can be but little personal knowledge, or but few communications, between him and the people at large of either of those districts. It has been observed, that mixing only with the respectable men, he will get the best information and ideas from them; he will also receive impressions favourable to their purposes particularly. Many plausible shifts have been made to divert the mind from dwelling on this defective representation, these I shall consider in another place.[66]

Could we get over all our difficulties respecting a balance of interests and party efforts, to raise some and oppress others, the want of sympathy, information and intercourse between the representatives and the people, an insuperable difficulty will still remain, I mean the constant liability of a small number of representatives to private combinations; the tyranny of the one, or the licentiousness of the multitude, are, in my mind, but small evils, compared with the factions of the few. It is a consideration well worth pursuing, how far this house of representatives will be liable to be formed into private juntos, how far influenced by expectations of appointments and offices, how far liable to be managed by the president and senate, and how far the people will have confidence in them. To obviate difficulties on this head, as well as objections to the representative branch, generally, several observations have been made—these I will now examine, and if they shall appear to be unfounded, the objections must stand unanswered. 2.8.100

That the people are the electors, must elect good men, and attend to the administration. 2.8.101

It is said that the members of Congress, at stated periods, must return home, and that they must be subject to the laws they may make, and to a share of the burdens they may impose.

That the people possess the strong arm to overawe their rulers, and the best checks in their national character against the abuses of power, that the supreme power will remain in them.

That the state governments will form a part of, and a balance in the system.

That Congress will have only a few national objects to attend to, and the state governments many and local ones.

That the new Congress will be more numerous than the present, and that any numerous body is unwieldy and mobbish.

That the states only are represented in the present Congress, and that the people will require a representation in the new one that in fifty or an hundred years the representation will be numerous.

That congress will have no temptation to do wrong; and that no system to enslave the people is practicable.

That as long as the people are free they will preserve free governments; and that when they shall become tired of freedom, arbitrary government must take place.

These observations I shall examine in the course of my letters; and, I think, not only shew that they are not well founded, but point out the fallacy of some of them; and shew that others do not very well comport with the dignified and manly sentiments of a free and enlightened people.

The Federal Farmer.

VIII

January 3, 1788.

Dear Sir,

2.8.102 Before I proceed to examine the objections, I beg leave to add a valuable idea respecting representation, to be collected from De Lome, and other able writers, which essentially tends to confirm my positions: They very justly impute the establishment of general and equal liberty in England to a balance of interests and powers among the different orders of men; aided by a series of fortunate events, that never before, and possibly never again will happen.[67]

2.8.103 Before the Norman conquest the people of England enjoyed much of this liberty. The first of the Norman kings, aided by foreign mercenaries and foreign attendants, obnoxious to the English, immediately laid arbitrary taxes, and established arbitrary courts, and severely oppress[ed] all orders of people: The barons and people, who recollected their former liberties, were induced, by those oppressions, to unite their efforts in their common defence: Here it became necessary for the great men, instead of deceiving and depressing the people, to enlighten and court them; the royal power was too strongly fixed to be annihilated, and rational means were, therefore directed to limiting it within proper bounds. In this long and arduous task, in this new species of contests, the barons and people succeeded, because they had been freemen, and knew the value of the object they were contending for; because they were the people of a small island—one people who found it practicable to meet and deliberate in one assembly, and act under one system of resolves, and who were not obliged to meet in different provincial

assemblies, as is the case in large countries, as was the case in France, Spain, &c. where their determinations were inconsistent with each other, and where the king could play off one assembly against another.

2.8.104 It was in this united situation the people of England were for several centuries, enabled to combine their exertions, and by compacts, as Magna Charta, a bill of rights, &c. were able to limit, by degrees, the royal prerogatives, and establish their own liberties. The first combination was, probably, the accidental effect of pre-existing circumstances; but there was an admirable balance of interests in it, which has been the parent of English liberty, and excellent regulations enjoyed since that time. The executive power having been uniformly in the king, and he the visible head of the nation, it was chimerical for the greatest lord or most popular leader, consistent with the state of the government, and opinion of the people, to seriously think of becoming the king's rival, or to aim at even a share of the executive power; the greatest subject's prospect was only in acquiring a respectable influence in the house of commons, house of lords, or in the ministry; circumstances at once made it the interests of the leaders of the people to stand by them. Far otherwise was it with the ephori in Sparta, and tribunes in Rome. The leaders in England have led the people to freedom, in almost all other countries to servitude. The people in England have made use of deliberate exertions, their safest and most efficient weapons. In other countries they have often acted like mobs, and been enslaved by their enemies, or by their own leaders. In England, the people have been led uniformly, and systematically by their representatives to secure their rights by compact, and to abolish innovations upon the government: they successively obtained Magna Charta, the powers of taxation, the power to propose laws, the habeas corpus act, bill of rights, &c. they, in short, secured general and equal liberty, security to their persons and property; and, as an everlasting security and bulwark of their liberties, they fixed the democratic branch in the legislature, and jury trial in the execution of the laws, the freedom of the press, etc.

2.8.105 In Rome, and most other countries, the reverse of all this is true. In Greece, Rome, and wherever the civil law has been adopted, torture has been admitted. In Rome the people were subject to arbitrary confiscations, and even their lives would be arbitrarily disposed of by consuls, tribunes, dictators, masters, &c. half of the inhabitants were slaves, and the other half never knew what equal liberty was; yet in England the people have had king, lords, and commons; in Rome they had consuls, senators and tribunes: why then was the government of England so mild and favorable to the body of the people, and that of Rome an ambitious and oppressive aristocracy? Why in England have the revolutions always ended in stipulations in favour of general liberty, equal laws, and the common rights of the people and in most other countries in favour only of a few influential men? The reasons, in

my mind, are obvious: In England the people have been substantially represented in many respects; in the other countries it has not been so. Perhaps a small degree of attention to a few simple facts will illustrate this.—In England, from the oppressions of the Norman kings to the revolution in 1688, during which period of two or three hundred years, the English liberties were ascertained and established, the aristocratic part of that nation was substantially represented by a very large number of nobles, possessing similar interests and feelings with those they represented. The body of the people, about four or five millions, then mostly a frugal landed people, were represented by about five hundred representatives, taken not from the order of men which formed the aristocracy, but from the body of the people, and possessed of the same interests and feelings. De Lome, speaking of the British representation, expressly founds all his reasons on this union; this similitude of interests, feelings, views and circumstances. He observes, the English have preserved their liberties, because they and their leaders or representatives have been strictly united in interests, and in contending for general liberty.[68] Here we see a genuine balance founded in the actual state of things. The whole community, probably, not more than two-fifths more numerous than we now are, were represented by seven or eight hundred men; the barons stipulated with the common people, and the king with the whole. Had the legal distinction between lords and commons been broken down, and the people of that island been called upon to elect forty-five senators, and one hundred and twenty representatives, about the proportion we propose to establish, their whole legislature evidently would have been of the natural aristocracy, and the body of the people would not have had scarcely a single sincere advocate; their interests would have been neglected, general and equal liberty forgot, and the balance lost; contests and conciliations, as in most other countries, would have been merely among the few, and as it might have been necessary to serve their purposes, the people at large would have been flattered or threatened, and probably not a single stipulation made in their favour.

2.8.106 In Rome the people were miserable, though they had three orders, the consuls, senators and tribunes, and approved the laws, and all for want of a genuine representation. The people were too numerous to assemble, and do any thing properly themselves; the voice of a few, the dupes of artifice, was called the voice of the people. It is difficult for the people to defend themselves against the arts and intrigues of the great, but by selecting a suitable number of men fixed to their interests to represent them, and to oppose ministers and senators. And the people's all depends on the number of the men selected, and the manner of doing it. To be convinced of this, we need only attend to the reason of the case, the conduct of the British commons, and of the Roman tribunes: equal liberty prevails in England, because there was a representation of the people, in fact and reality, to establish it; equal

liberty never prevailed in Rome, because there was but the shadow of a representation. There were consuls in Rome annually elected to execute the laws; several hundred senators represented the great families; the body of the people annually chose tribunes from among themselves to defend them and to secure their rights; I think the number of tribunes annually chosen never exceeded ten. This representation, perhaps, was not proportionally so numerous as the representation proposed in the new plan; but the difference will not appear to be so great, when it shall be recollected, that these tribunes were chosen annually; that the great patrician families were not admitted to these offices of tribunes, and that the people of Italy who elected the tribunes were a long while, if not always, a small people compared with the people of the United States. What was the consequence of this triffling representation? The people of Rome always elected for their tribunes men conspicuous for their riches, military commands, professional popularity, &c. great commoners, between whom and the noble families there was only the shadowy difference of legal distinction. Among all the tribunes the people chose for several centuries, they had scarcely five real friends to their interests. These tribunes lived, felt and saw, not like the people, but like the great patrician families, like senators and great officers of state, to get into which it was evident, by their conduct, was their sole object. These tribunes often talked about the rights and prerogatives of the people, and that was all; for they never even attempted to establish equal liberty: so far from establishing the rights of the people, they suffered the senate, to the exclusion of the people, to engross the powers of taxation; those excellent and almost only real weapons of defence even the people of England possess. The tribunes obtained that the people should be eligible to some of the great offices of state, and marry, if they pleased, into the noble families; these were advantages in their nature, confined to a few elevated commoners, and of triffling importance to the people at large. Nearly the same observations may be made as to the ephori of Sparta.

We may amuse ourselves with names; but the fact is, men will be governed by the motives and temptations that surround their situation. Political evils to be guarded against are in the human character, and not in the name of patrician or plebian. Had the people of Italy, in the early period of the republic, selected yearly, or biennially, four or five hundred of their best informed men, emphatically from among themselves, these representatives would have formed an honest respectable assembly, capable of combining in them the views and exertions of the people, and their respectability would have procured them honest and able leaders, and we should have seen equal liberty established. True liberty stands in need of a fostering hand; from the days of Adam she has found but one temple to dwell in securely; she has laid the foundation of one, perhaps her last, in America; whether this is to be compleated and have duration, is yet a question. Equal liberty never yet 2.8.107

found many advocates among the great: it is a disagreeable truth, that power perverts mens views in a greater degree, than public employments inform their understandings—they become hardened in certain maxims, and more lost to fellow feelings. Men may always be too cautious to commit alarming and glaring iniquities; but they, as well as systems, are liable to be corrupted by slow degrees. Junius well observes, we are not only to guard against what men will do, but even against what they may do.[69] Men in high public offices are in stations where they gradually lose sight of the people, and do not often think of attending to them, except when necessary to answer private purposes.

2.8.108 The body of the people must have this true representative security placed some where in the nation; and in the United States, or in any extended empire, I am fully persuaded can be placed no where, but in the forms of a federal republic, where we can divide and place it in several state or district legislatures, giving the people in these the means of opposing heavy internal taxes and oppressive measures in the proper stages. A great empire contains the amities and animosities of a world within itself.[70] We are not like the people of England, one people compactly settled on a small island, with a great city filled with frugal merchants, serving as a common centre of liberty and union: we are dispersed, and it is impracticable for any but the few to assemble in one place: the few must be watched, checked, and often resisted—tyranny has ever shewn a prediliction to be in close amity with them, or the one man. Drive it from kings and it flies to senators, to dicemvirs, to dictators, to tribunes, to popular leaders, to military chiefs, &c.

2.8.109 De Lome well observes, that in societies, laws which were to be equal to all are soon warped to the private interests of the administrators, and made to defend the usurpations of a few.[71] The English, who had tasted the sweets of equal laws, were aware of this, and though they restored their king, they carefully delegated to parliament the advocates of freedom.

2.8.110 I have often lately heard it observed, that it will do very well for a people to make a constitution, and ordain, that at stated periods they will chuse, in a certain manner, a first magistrate, a given number of senators and representatives, and let them have all power to do as they please.[72] This doctrine, however it may do for a small republic, as Connecticut, for instance, where the people may chuse so many senators and representatives to assemble in the legislature, in an eminent degree, the interests, the views, feelings, and genuine sentiments of the people themselves, can never be admitted in an extensive country; and when this power is lodged in the hands of a few, not to limit the few, is but one step short of giving absolute power to one man—in a numerous representation the abuse of power is a common injury, and has no temptation—among the few, the abuse of power may often operate to the private emolument of those who abuse it.

The Federal Farmer.

IX

January 4. 1788.

Dear Sir,

The advocates of the constitution say we must trust to the administration, and elect good men for representatives. I admit, that in forming the social compact, we can fix only general principles, and, of necessity, must trust something to the wisdom and integrity of the administration. But the question is, do we not trust too much, and to men also placed in the vortex of temptation, to lay hold of proffered advantages for themselves and their connections, and to oppress the body of the people. 2.8.111

It is one thing to authorise a well organized legislature to make laws, under the restraints of a well guarded constitution, and another to assemble a few men, and to tell them to do what they please. I am not the more shaken in my principles, or disposed to despair of the cause of liberty, because some of our able men have adopted the yielding language of non-resistance, and writers dare insult the people with the signatures of Caesar, Mark Antony, and of other tyrants; because I see even moderate and amiable men, forced to let go of monarchy in 1775, still in love with it, to use the simile of our countrymen, when the political pot boils, the skum will often get uppermost and make its appearance. I believe the people of America, when they shall fully understand any political subject brought before them, will talk in a very different stile, and use the manly language of freedom. 2.8.112

But "the people must elect good men:"—Examine the system, Is it practicable for them to elect fit and proper representatives where the number is so small? "But the people may chuse whom they please."[73] This is an observation, I believe, made without due attention to facts and the state of the community. To explain my meaning, I will consider the descriptions of men commonly presented to the people as candidates for the offices of representatives—we may rank them in three classes: 1. The men who form the natural aristocracy, as before defined. 2. Popular demagogues: these men also are often politically elevated, so as to be seen by the people through the extent of large districts; they often have some abilities, without principle, and rise into notice by their noise and arts. 3. The substantial and respectable part of the democracy: they are a numerous and valuable set of men, who discern and judge well, but from being generally silent in public assemblies are often overlooked: they are the most substantial and best informed men in the several towns, who occasionally fill the middle grades of offices, &c. who hold not a splendid, but a respectable rank in private concerns: these men are extensively diffused through all the counties, towns, and small districts in the union; even they, and their immediate connections, are raised above the majority of the people, and as representatives are only brought to a level with a more numerous part of the commu- 2.8.113

nity, the middle orders, and a degree nearer the mass of the people. Hence it is that the best practical representation, even in a small state, must be several degrees more aristocratical than the body of the people. A representation so formed as to admit but few or none of the third class, is, in my opinion, not deserving of the name—even in armies, courts-martial are so formed as to admit subaltern officers into them. The true idea is, so to open and enlarge the representation as to let in a due proportion of the third class with those of the first. Now, my opinion is, that the representation proposed is so small as that ordinarily very few or none of them can be elected; and, therefore, after all the parade of words and forms the government must possess the soul of aristocracy, or something worse, the spirit of popular leaders.

2.8.114 I observed in a former letter, that the state of Delaware[,] of Rhode-Island[,] the Province of Main, and each of the great counties in Massachusetts &c. would have one member, and rather more than one when the representatives shall be increased to one for each 30,000 inhabitants.[74] In some districts the people are more dispersed and unequal than in others: In Delaware they are compact, in the Province of Main dispersed; how can the elections in either of those districts be regulated so as that a man of the third class can be elected?—Exactly the same principles and motives, the same uncontroulable circumstances, must govern the elections as in the choice of the governors. Call upon the people of either of those districts to chuse a governor, and it will, probably, never happen that they will not bestow a major part, or the greatest number, of their votes on some very conspicuous or very popular character. A man that is known among a few thousands of people, may be quite unknown among thirty or forty thousand. On the whole, it appears to me to be almost a self-evident position, that when we call on thirty or forty thousand inhabitants to unite in giving their votes for one man, it will be uniformly impracticable for them to unite in any men, except those few who have became eminent for their civil or military rank, or their popular legal abilities: it will be found totally impracticable for men in the private walks of life, except in the profession of the law, to become conspicuous enough to attract the notice of so many electors and have their suffrages.[75]

2.8.115 But if I am right, it is asked why so many respectable men advocate the adoption of the proposed system. Several reasons may be given—many of our gentlemen are attached to the principles of monarchy and aristocracy; they have an aversion to democratic republics. The body of the people have acquired large powers and substantial influence by the revolution. In the unsettled state of things, their numerous representatives, in some instances, misused their powers and have induced many good men suddenly to adopt ideas unfavourable to such republics, and which ideas they will discard on reflection. Without scrutinizing into the particulars of the proposed system, we immediately perceive that its general tendency is to collect the powers of government, now in the body of the people in reality, and to place them in

the higher orders and fewer hands; no wonder then that all those of and about these orders are attached to it; they feel there is something in this system advantageous to them. On the other hand, the body of the people evidently feel there is something wrong and disadvantageous to them; both descriptions perceive there is something tending to bestow on the former the height of power and happiness, and to reduce the latter to weakness, insignificance, and misery. The people evidently feel all this though they want expressions to convey their ideas. Further, even the respectable part of the democracy, have never yet been able to distinguish clearly where the fallacy lies; they find there are defects in the confederation; they see a system presented, they think something must be done; and, while their minds are in suspence, the zealous advocates force a reluctant consent. Nothing can be a stronger evidence of the nature of this system, than the general sense of the several orders in the community respecting its tendency: the parts taken generally by them proves my position, that notwithstanding the parade of words and forms, the government must possess the soul of aristocracy.

Congress, heretofore, have asked for moderate additional powers, the cry was give them—be federal: but the proper distinction between the cases that produce this disposition, and the system proposed, has not been fairly made and seen in all its consequences. We have seen some of our state representations too numerous and without examining a medium we run into the opposite extreme. It is true, the proper number of federal representatives, is matter of opinion in some degree: but there are extremes which we immediately perceive, and others, which we clearly discover on examination. We should readily pronounce a representative branch of 15 members small in a federal government, having complete powers as to taxes, military matters, commerce, the coin, &c &c. On the other hand, we should readily pronounce a federal representation as numerous as those of the several states, consisting of about 1500 representatives, unwieldly and totally improper. It is asked, has not the wisdom of the convention found the medium? perhaps not: The convention was divided on this point of numbers: at least some of its ablest members urged, that instead of 65 representatives there ought to be 130 in the first instance: They fixed one representative for each 40,000 inhabitants, and at the close of the work, the president suggested, that the representation appeared to be too small and without debate, it was put at, not exceeding one for each 30,000. I mention these facts to shew, that the convention went on no fixed data. In this extensive country it is difficult to get a representation sufficiently numerous: Necessity, I believe, will oblige us to sacrifice in some degree the true genuine principles of representation. But this sacrifice ought to be as little as possible: How far we ought to increase the representation I will not pretend to say; but that we ought to increase it very considerably, is clear—to double it at least, making full allowances for the state representations: and this we may evidently do, and approach accordingly towards safety and perfection, without encountering any inconveniences. It is with great difficulty the

2.8.116

people can unite these different interests and views even tolerably, in the state senators, who are more than twice as numerous as the federal representatives, as proposed by the convention; even these senators are considered as so far removed from the people, that they are not allowed immediately to hold their purse strings.

2.8.117 The principle objections made to the increase of the representation are, the expence and difficulty in getting the members to attend.[76] The first cannot be important; the last, if founded, is against any federal government. As to the expence, I presume, the house of representatives will not be in sessions more than four months in the year. We find by experience, that about two-thirds of the members of representative assemblies usually attend; therefore, of the representation proposed by the convention, about forty five members probably will attend, doubling their number, about 90 will probably attend: their pay, in one case, at four dollars a day each (which is putting it high enough) will amount to, yearly, 21,600 dollars; in the other case, 43,200 dollars: difference 21,600 dollars;—reduce the state representatives from 1500 down to 1000, and thereby save the attendance of two-thirds of the 500, say three months in a year at one dollar and a quarter a day each: 37,125 dollars. Thus we may leave the state representations sufficient large, and yet save enough by the reduction nearly to support exceeding well the whole federal representation I propose. Surely we never can be so unwise as to sacrifice, essentially, the all-important principles of representation for so small a sum as 21,600 dollars a year for the United States; a single company of soldiers would cost this sum. It is a fact that can easily be shewn, that we expend three times this sum every year upon useless inferior offices and very triffling concerns. It is also a fact which can be shewn, that the United States in the late war suffered more by a faction in the federal government, than the pay of the federal representation will amount to for twenty years.

2.8.118 As to the attendance—Can we be so unwise as to establish an unsafe and inadequate representative branch, and give it as a reason, that we believe only a few members will be induced to attend; we ought certainly to establish an adequate representative branch, and adopt measures to induce an attendance; I believe that a due proportion of 130 or 140 members may be induced to attend: there are various reasons for the non-attendance of the members of the present congress; it is to be presumed that these will not exist under the new system.

To compensate for the want of a genuine representation in a government, where the purse and sword, and all important powers, are proposed to be lodged, a variety of unimportant things are enumerated by the advocates of it.

2.8.119 In the second place, it is said the members of congress must return home, and share in the burdens they may impose; and, therefore, private motives will induce them to make mild laws, to support liberty, and ease the burdens of the people:[77] this brings us to a mere question of interest under this head.

I think these observations will appear, on examination, altogether fallacious; because this individual interest, which may coincide with the rights and interests of the people, will be far more than balanced by opposite motives and opposite interests. If, on a fair calculation, a man will gain more by measures oppressive to others than he will lose by them, he is interested in their adoption. It is true, that those who govern, generally, by increasing the public burdens increase their own share of them; but by this increase they may, and often do, increase their salaries, fees, and emoluments, in a ten-fold proportion, by increasing salaries, forming armies and navies, and by making offices—If it shall appear the members of congress will have these temptations before them, the argument is on my side—they will view the account, and be induced continually to make efforts advantageous to themselves and connections, and oppressive to others.

We must examine facts—Congress, in its present form, have but few 2.8.120
offices to dispose of worth the attention of the members, or of men of the aristocracy; yet, from 1774 to this time, we find a large proportion of those offices assigned to those who were or had been members of congress, and though the states chuse annually sixty or seventy members, many of them have been provided for: but few men are known to congress in this extensive country, and, probably, but few will be to the president and senate, except those who have or shall appear as members of congress, or those whom the members may bring forward. The states may now chuse yearly ninety-one members of congress; under the new constitution they will have it in their power to chuse exactly the same number, perhaps afterwards, one hundred and fifteen, but these must be chosen once in two and six years; so that, in the course of ten years together, not more than two-thirds so many members of congress will be elected and brought into view, as there now are under the confederation in the same term of time: but at least there will be five, if not ten times, as many offices and places worthy the attention of the members, under the new constitution, as there are under the confederation: therefore, we may fairly presume, that a very great proportion of the members of congress, especially the influential ones, instead of returning to private life, will be provided for with lucrative offices, in the civil or military department, and not only the members, but many of their sons, friends, and connection. These offices will be in the constitutional disposition of the president and senate, and, corruption out of the question, what kind of security can we expect in a representation, so many of the members of which may rationally feel themselves candidates for these offices?—let common sense decide. It is true, that members chosen to offices must leave their seats in congress, and to some few offices they cannot be elected till the time shall be expired for which they were elected members; but this scarcely will effect the biass arising from the hopes and expectations of office.

It is not only in this point of view, the members of congress, by their 2.8.121
efforts, may make themselves and friends powerful and happy, while the

people may be oppressed: but there is another way in which they may soon warp laws, which ought to be equal, to their own advantages, by those imperceptible means, and on those doubtful principles which may not alarm. No society can do without taxes; they are the efficient means of safety and defence, and they too have often been the weapons by which the blessings of society have been destroyed. Congress will have power to lay taxes at pleasure for the general welfare; and if they mis-judge of the general welfare, and lay unnecessary oppressive taxes, the constitution will provide, as I shall hereafter shew, no remedy for the people or states—the people must bear them, or have recourse, not to any constitutional checks or remedies, but to that resistence which is the last resort, and founded in self-defence.[78]

2.8.122 It is well stipulated, that all duties, imposts, and excises shall be equal; and that direct taxes shall be apportioned on the several states by a fixed rule, but nothing further. Here commences a dangerous power in matters of taxation, lodged without any regard to the balance of interests of the different orders of men, and without any regard to the internal policy of the states. Congress having assigned to any state its quota, say to New-Jersey, 80,000 dollars in a given tax, congress will be entirely at liberty to apportion that sum on the counties and towns, polls, lands, houses, labour, &c. and appoint the assessors and collectors in that state in what manner they please; there will be nothing to prevent a system of tax laws being made, unduly to ease some descriptions of men and burden others: though such a system may be unjust and injudicious, though we may complain, the answer will be, congress have the power delegated by the people, and, probably, congress has done what it thought best.

2.8.123 By the confederation taxes must be quotaed on the several states by fixed rules, as before mentioned: but then each state's quota is apportioned on the several numbers and classes of citizens in the state, by the state legislature, assessed and collected by state laws. Great pains have been taken to counfound the two cases, which are as distinct as light and darkness; this I shall endeavour to illustrate, when I come to the amendment respecting internal taxes. I shall only observe, at present, that in the state legislatures the body of the people will be genuinely represented, and in congress not; that the right of resisting oppressive measures is inherent in the people, and that a constitutional barrier should be so formed, that their genuine representatives may stop an oppressive ruinous measure in its early progress, before it shall come to maturity, and the evils of it become in a degree fixed.

2.8.124 It has lately been often observed, that the power or body of men intrusted with the national defence and tranquility, must necessarily possess the purse unlimitedly, that the purse and sword must go together[79]—this is new doctrine in a free country, and by no means tenable. In the British government the king is particularly intrusted with the national honor and defence, but the commons solely hold the purse. I think I have amply shewn that the representation in congress will be totally inadequate in matters of taxation,

&c. and, therefore, that the ultimate controul over the purse must be lodged elsewhere.

We are not to expect even honest men rigidly to adhere to the line of strict impartiality, where the interest of themselves or friends is particularly concerned; if we do expect it, we shall deceive ourselves, and make a wrong estimate of human nature. 2.8.125

But it is asked how shall we remedy the evil, so as to complete and perpetuate the temple of equal laws and equal liberty? Perhaps we never can do it. Possibly we never may be able to do it in this immense country, under any one system of laws however modified; nevertheless, at present, I think the experiment worth a making. I feel an aversion to the disunion of the states, and to separate confederacies; the states have fought and bled in a common cause, and great dangers too may attend these confederacies. I think the system proposed capable of very considerable degrees of perfection, if we pursue first principles. I do not think that De Lome, or any writer I have seen, has sufficiently pursued the proper inquiries and efficient means for making representation and balances in government more perfect; it is our task to do this in America. Our object is equal liberty, and equal laws diffusing their influence among all orders of men; to obtain this we must guard against the biass of interest and passions, against interested combinations, secret or open; we must aim at a balance of efforts and strength.

Clear it is, by increasing the representation we lessen the prospects of each member of congress being provided for in public offices; we proportionably lessen official influence and strengthen his prospects of becoming a private citizen, subject to the common burdens, without the compensation of the emoluments of office. By increasing the representation we make it more difficult to corrupt and influence the members; we diffuse them more extensively among the body of the people, perfect the balance, multiply information, strengthen the confidence of the people, and consequently support the laws on equal and free principles. There are two other ways, I think, of obtaining in some degree the security we want; the one is, by excluding more extensively the members from being appointed to offices; the other is, by limiting some of their powers; but these two I shall examine hereafter. 2.8.126

The Federal Farmer.

X

January 7, 1788.

Dear Sir,

It is said that our people have a high sense of freedom, possess power, property, and the strong arm; meaning, I presume, that the body of the 2.8.127

people can take care of themselves, and awe their rulers; and, therefore, particular provision in the constitution for their security may not be essential.[80] When I come to examine these observations, they appear to me too triffling and loose to deserve a serious answer.

2.8.128 To palliate for the smallness of the representation, it is observed, that the state governments in which the people are fully represented, necessarily form a part of the system.[81] This idea ought to be fully examined. We ought to enquire if the convention have made the proper use of these essential parts; the state governments then we are told will stand between the arbitrary exercise of power and the people: true they may, but armless and helpless, perhaps, with the privilege of making a noise when hurt—this is no more than individuals may do. Does the constitution provide a single check for a single measure, by which the state governments can constitutionally and regularly check the arbitrary measures of congress?[82] Congress may raise immediately fifty thousand men, and twenty millions of dollars in taxes, build a navy, model the militia, &c. and all this constitutionally. Congress may arm on every point, and the state governments can do no more than an individual, by petition to congress, suggest their measures are alarming and not right.

2.8.129 I conceive the position to be undeniable, that the federal government will be principally in the hands of the natural aristocracy, and the state governments principally in the hands of the democracy, the representatives of the body of the people. These representatives in Great-Britain hold the purse, and have a negative upon all laws. We must yield to circumstances, and depart something from this plan, and strike out a new medium, so as to give efficacy to the whole system, supply the wants of the union, and leave the several states, or the people assembled in the state legislatures, the means of defence.

2.8.130 It has been often mentioned, that the objects of congress will be few and national, and require a small representation; that the objects of each state will be many and local, and require a numerous representation.[83] This circumstance has not the weight of a feather in my mind. It is certainly unadvisable to lodge in 65 representatives, and 26 senators, unlimited power to establish systems of taxation, armies, navies, model the militia, and to do every thing that may essentially tend soon to change, totally, the affairs of the community; and to assemble 1500 state representatives, and 160 senators, to make fence laws, and laws to regulate the descent and conveyance of property, the administration of justice between man and man, to appoint militia officers, &c.

2.8.131 It is not merely the quantity of information I contend for. Two taxing powers may be inconvenient; but the point is, congress, like the senate of Rome, will have taxing powers, and the people no check—when the power is abused, the people may complain and grow angry, so may the state governments; they may remonstrate and counteract, by passing laws to

prohibit the collection of the congressional taxes; but these will be acts of the people, acts of sovereign power, the denier resort unknown to the constitution; acts operating in terrorum, acts of resistence, and not the exercise of any constitutional power to stop or check a measure before matured: a check properly is the stopping, by one branch in the same legislature, a measure proposed by the other in it. In fact the constitution provides for the states no check, properly speaking, upon the measures of congress—Congress can immediately enlist soldiers, and apply to the pockets of the people.

These few considerations bring us to the very strong distinction between 2.8.132
the plan that operates on federal principles, and the plan that operates on consolidated principles. A plan may be federal or not as to its organization; each state may retain its vote or not; the sovereignty of the state may be represented, or the people of it. A plan may be federal or not as to its operations—federal when it requires men and monies of the states, and the states as such make the laws for raising the men and monies—Not federal, when it leaves the states governments out of the question, and operates immediately upon the persons and property of the citizens. The first is the case with the confederation, the second with the new plan: in the first the state governments may be check, in the last none at all. This distinction I shall pursue further hereafter, under the head before mentioned, of amendments as to internal taxes.[84] And here I shall pursue a species of checks which writers have not often noticed.

To excuse the smallness of the representation, it is said the new congress 2.8.133
will be more numerous than the old one.[85] This is not true; and for the facts I refer you to my letter of the 4th instant, to the plan and confederation; besides there is no kind of similitude between the two plans. The confederation is a mere league of the states, and congress is formed with the particular checks, and possess the united powers, enumerated in my letter of the 25th ult. The new plan is totally a different thing: a national government to many purposes administered, by men chosen for two, four, and six years, not recallable, and among whom there will be no rotation; operating immediately in all money and military matters, &c. on the persons and property of the citizens—I think, therefore, that no part of the confederation ought to be adduced for supporting or injuring the new constitution. It is also said that the constitution gives no more power to congress than the confederation, respecting money and military matters; that congress, under the confederation, may require men and monies to any amount, and the states are bound to comply. This is generally true; but, I think, I shall in a subsequent letter satisfactorily prove, that the states have well founded checks for securing their liberties.[86]

I admit the force of the observation, that all the federal powers, by the 2.8.134
confederation, are lodged in a single assembly; however, I think much more may be said in defence of the leading principles of the confederation. I do

not object to the qualifications of the electors of representatives, and I fully agree that the people ought to elect one branch.

2.8.135 Further, it may be observed, that the present congress is principally an executive body, which ought not to be numerous; that the house of representatives will be a mere legislative branch, and being the democratic one, ought to be numerous. It is one of the greatest advantages of a government of different branches, that each branch may be conveniently made conformable to the nature of the business assigned it, and all be made conformable to the condition of the several orders of the people. After all the possible checks and limitations we can devise, the powers of the union must be very extensive; the sovereignty of the nation cannot produce the object in view, the defence and tranquility of the whole, without such powers, executive and judicial. I dislike the present congress a single, assembly, because it is impossible to fit it to receive those powers: the executive and judicial powers, in the nature of things, ought to be lodged in a few hands, the legislature in many hands; therefore, want of safety, and unavoidable hasty measures, out of the question, they never can all be lodged in one assembly properly—it, in its very formation, must imply a contradiction.

2.8.136 In objection to increasing the representation, it has also been observed, that it is difficult to assemble a hundred men or more without making them tumultuous and a mere mob;[87] reason and experience do not support this observation. The most respectable assemblies we have any knowledge of and the wisest, have been those, each of which consisted of several hundred members; as the senate of Rome, of Carthage, of Venice, the British Parliament, &c. &c. I think I may without hazarding much, affirm, that our more numerous state assemblies and conventions have universally discovered more wisdom, and as much order, as the less numerous ones: There must be also a very great difference between the characters of two or three hundred men assembled from a single state, and the characters of the number or half the number assembled from all the united states.

2.8.137 It is added, that on the proposed plan the house of representatives in fifty or a hundred years, will consist of several hundred members:[88] The plan will begin with sixty-five, and we have no certainty that the number ever will be encreased, for this plain reason—that all that combination of interests and influence which has produced this plan, and supported so far, will constantly oppose the increase of the representation, knowing that thereby the government will become more free and democratic: But admitting, after a few years, there will be a member for each 30,000 inhabitants, the observation is trifling, the government is in a considerable measure to take its tone from its early movements, and by means of a small representation it may in half of 50 or 100 years, get moved from its basis, or at least so far as to be incapable of ever being recovered. We ought, therefore, on every principle now to fix the government on proper principles, and fit to our present condition—when the representation shall become too numerous, alter it; or

we may now make provision, that when the representation shall be increased to a given number, that then there shall be one for each given number of inhabitants, &c.

Another observation is, that congress will have no temptations to do wrong[89]—the men that make it must be very uninformed, or suppose they are talking to children. In the first place, the members will be governed by all those motives which govern the conduct of men, and have before them all the allurements of offices and temptations, to establish unequal burdens, before described. In the second place, they and their friends, probably, will find it for their interests to keep up large armies, navies, salaries, &c. and in laying adequate taxes. In the third place, we have no good grounds to presume, from reason or experience, that it will be agreeable to their characters or views, that the body of the people should continue to have power effectually to interfere in the affairs of government. But it is confidently added, that congress will not have it in their power to oppress or enslave the people, that the people will not bear it.[90] It is not supposed that congress will act the tyrant immediately, and in the face of day light. It is not supposed congress will adopt important measures, without plausible pretences, especially those which may tend to alarm or produce opposition. We are to consider the natural progress of things: that men unfriendly to republican equality will go systematically to work, gradually to exclude the body of the people from any share in the government, first of the substance, and then of the forms. The men who will have these views will not be without their agents and supporters. When we reflect, that a few years ago we established democratic republics, and fixed the state governments as the barriers between congress and the pockets of the people; what great progress has been made in less than seven years to break down those barriers, and essentially to change the principles of our governments, even by the armless few: is it chimerical to suppose that in fifteen or twenty years to come, that much more can be performed, especially after the adoption of the constitution, when the few will be so much better armed with power and influence, to continue the struggle? probably, they will be wise enough never to alarm, but gradually prepare the minds of the people for one specious change after another, till the final object shall be obtained. Say the advocates, these are only possibilities—they are probabilities, a wise people ought to guard against; and the address made use of to keep the evils out of sight, and the means to prevent them, confirm my opinion. 2.8.138

But to obviate all objections to the proposed plan in the last resort: it is said our people will be free, so long as they possess the habits of freemen, and when they lose them, they must receive some other forms of government.[91] To this I shall only observe, that this is very humiliating language, and can, I trust, never suit a manly people, who have contended nobly for liberty, and declared to the world they will be free. 2.8.139

I have dwelt much longer than I expected upon the increasing the repre- 2.8.140

sentation, the democratic interest in the federal system; but I hope the importance of the subject will justify my dwelling upon it. I have pursued it in a manner new, and I have found it necessary to be somewhat prolix, to illustrate the point I had in view. My idea has ever been, when the democratic branch is weak and small, the body of the people have no defence, and every thing to fear; if they expect to find genuine political friends in kings and nobles, in great and powerful men, they deceive themselves. On the other hand, fix a genuine democratic branch in the government, solely to hold the purse, and with the power of impeachment, and to propose and negative laws, cautiously limit the king and nobles, or the executive and the senate, as the case may be, and the people, I conceive, have but little to fear, and their liberties will be always secure.

2.8.141 I think we are now arrived to a new æra in the affairs of men, when the true principles of government will be more fully unfolded than heretofore, and a new world, as it were, grow up in America. In contemplating representation, the next thing is the security of elections. Before I proceed to this, I beg leave to observe, that the pay of the representatives of the people is essentially connected with their interests.

2.8.142 Congress may put the pay of the members unreasonably high, or so low as that none but the rich and opulent can attend; there are very strong reasons for supposing the latter, probably, will be the case, and a part of the same policy, which uniformly and constantly exerts itself to transfer power from the many to the few. Should the pay be well fixed, and made alterable by congress, with the consent of a majority of the state legislatures, perhaps, all the evils to be feared on this head might, in the best practicable manner, be guarded against, and proper security introduced. It is said the state legislatures fix their own pay—the answer is, that congress is not, nor can it ever be well formed on those equal principles the state legislatures are. I shall not dwell on this point, but conclude this letter with one general observation, that the check[s] I contend for in the system proposed, do not, in the least, any of them tend to lessen the energy of it; but giving grounds for the confidence of the people, greatly to increase its real energy, by insuring their constant and hearty support.

The Federal Farmer.

XI

January 10, 1788.

Dear Sir,

2.8.143 I shall now add a few observations respecting the organization of the senate, the manner of appointing it, and its powers.

The senate is an assembly of 26 members, two from each state, though the senators are apportioned on the federal plan, they will vote individually; they represent the states, as bodies politic, sovereign to certain purposes; the states being sovereign and independent, are all considered equal, each with the other in the senate. In this we are governed solely by the ideal equalities of sovereignties; the federal and state governments forming one whole, and the state governments an essential part, which ought always to be kept distinctly in view, and preserved: I feel more disposed, on reflection, to acquiesce in making them the basis of the senate, and thereby to make it the interest and duty of the senators to preserve distinct, and to perpetuate the respective sovereignties they shall represent.[92]

As to the appointments of senators, I have already observed, that they must be appointed by the legislatures, by concurrent acts, and each branch have an equal share of power, as I do not see any probability of amendments, if advisable, in these points, I shall not dwell upon them. 2.8.144

The senate, as a legislative branch, is not large, but as an executive branch quite too numerous. It is not to be presumed that we can form a genuine senatorial branch in the United States, a real representation of the aristocracy and balance in the legislature, any more than we can form a genuine representation of the people. Could we separate the aristocratical and democratical interests; compose the senate of the former, and the house of assembly of the latter, they are too unequal in the United States to produce a balance. Form them on pure principles, and leave each to be supported by its real weight and connections, the senate would be feeble, and the house powerful:—I say, on pure principles; because I make a distinction between a senate that derives its weight and influence from a pure source, its numbers and wisdom, its extensive property, its extensive and permanent connections; and a senate composed of a few men, possessing small property, small and unstable connections, that derives its weight and influence from a corrupt or pernicious source; that is, merely from the power given it by the constitution and laws, to dispose of the public offices, and the annexed emoluments, and by those means to interest officers, and the hungry expectants of offices, in support of its measures. I wish the proposed senate may not partake too much of the latter description.[93] 2.8.145

To produce a balance and checks, the constitution proposes two branches in the legislature; but they are so formed, that the members of both must generally be the same kind of men—men having similar interests and views, feelings and connections—men of the same grade in society, and who associate on all occasions (probably, if there be any difference, the senators will be the most democratic.) Senators and representatives thus circumstanced, as men, though convened in two rooms, to make laws, must be governed generally by the same motives and views, and therefore pursue the same system of politics; the partitions between the two branches will be merely those of the building in which they sit: there will not be found in them 2.8.146

any of those genuine balances and checks, among the real different interests, and efforts of the several classes of men in the community we aim at; nor can any such balances and checks be formed in the present condition of the United States in any considerable degree of perfection: but to give them the greatest degree of perfection practicable, we ought to make the senate respectable as to numbers, the qualifications of the electors and of the elected; to increase the numbers of the representatives, and so to model the elections of them, as always to draw a majority of them substantially from the body of the people. Though I conclude the senators and representatives will not form in the legislature those balances and checks which correspond with the actual state of the people; yet I approve of two branches, because we may notwithstanding derive several advantages from them. The senate, from the mode of its appointment, will probably be influenced to support the state governments, and, from its periods of service will produce stability in legislation, while frequent elections may take place in the other branch. There is generally a degree of competition between two assemblies even composed of the same kind of men; and by this, and by means of every law's passing a revision in the second branch, caution, coolness, and deliberation are produced in the business of making laws. By means of a democratic branch we may particularly secure personal liberty; and by means of a senatorial branch we may particularly protect property. By the division, the house becomes the proper body to impeach all officers for misconduct in office, and the senate the proper court to try them; and in a country where limited powers must be lodged in the first magistrate, the senate, perhaps, may be the most proper body to be found to have a negative upon him in making treaties, and in managing foreign affairs.

2.8.147 Though I agree the federal senate, in the form proposed, may be useful to many purposes, and that it is not very necessary to alter the organization, modes of appointment, and powers of it in several respects; yet, without alterations in others, I sincerely believe it will, in a very few years, become the source of the greatest evils. Some of these alterations, I conceive, to be absolutely necessary, and some of them at least advisable.

1. By the confederation the members of congress are chosen annually. By art 1. sect. 2. of the constitution, the senators shall be chosen for six years. As the period of service must be, in a considerable degree, matter of opinion on this head, I shall only make a few observations, to explain why I think it more advisable to limit it to three or four years.

The people of this country have not been accustomed to so long appointments in their state governments, they have generally adopted annual elections. The members of the present congress are chosen yearly, who, from the nature and multiplicity of their business, ought to be chosen for longer periods than the federal senators—Men six years in office absolutely contract callous habits, and cease, in too great a degree, to feel their dependance, and for the condition of their constitutents. Senators continued in

offices three or four years, will be in them longer than any popular erroneous opinions will probably continue to actuate their electors—men appointed for three or four years, will generally be long enough in office to give stability, and amply to acquire political information. By a change of legislators, as often as circumstances will permit, political knowledge is diffused more extensively among the people, and the attention of the electors and elected more constantly kept alive; circumstances of infinite importance in a free country. Other reasons might be added, but my subject is too extensive to admit of my dwelling upon less material points.

2. When the confederation was formed, it was considered essentially necessary that the members of congress should at any time be recalled by their respective states, when the states should see fit, and others be sent in their room. I do not think it less necessary that this principle should be extended to the members of congress under the new constitution, and especially to the senators. I have had occasion several times to observe, that let us form a federal constitution as extensively, and on the best principles in our power, we must, after all, trust a vast deal to a few men, who, far removed from their constituents, will administer the federal government; there is but little danger these men will feel too great a degree of dependance: the necessary and important object to be attended to, is to make them feel dependant enough. Men elected for several years, several hundred miles distant from their states, possessed of very extensive powers, and the means of paying themselves, will not, probably, be oppressed with a sense of dependance and responsibility.

The senators will represent sovereignties, which generally have, and always ought to retain, the power of recalling their agents; the principle of responsibility is strongly felt in men who are liable to be recalled and censured for their misconduct; and, if we may judge from experience, the latter will not abuse the power of recalling their members; to possess it, will, at least be a valuable check. It is in the nature of all delegated power, that the constituents should retain the right to judge concerning the conduct of their representatives; they must exercise the power, and their decision itself, their approving or disapproving that conduct implies a right, a power to continue in office, or to remove from it. But whenever the substitute acts under a constitution, then it becomes necessary that the power of recalling him be expressed. The reasons for lodging a power to recall are stronger, as they respect the senate, than as they respect the representatives; the latter will be more frequently elected, and changed of course, and being chosen by the people at large, it would be more difficult for the people than for the legislatures to take the necessary measures for recalling: but even the people, if the powers will be more beneficial to them than injurious, ought to possess it. The people are not apt to wrong a man who is steady and true to their interests; they may for a while be misled by party representations, and leave a good man out of office unheard; but every recall supposes a de-

liberate decision, and a fair hearing; and no man who believes his conduct proper, and the result of honest views, will be the less useful in his public character, on account of the examination his actions may be liable to; and a man conscious of the contrary conduct, ought clearly to be restrained by the apprehensions of a trial. I repeat it, it is interested combinations and factions we are particularly to guard against in the federal government, and all the rational means that can be put into the hands of the people to prevent them, ought to be provided and furnished for them. Where there is a power to recall, trusty centinels among the people, or in the state legislatures, will have a fair opportunity to become useful. If the members in congress from the states join in such combinations, or favour them, or pursue a pernicious line of conduct, the most attentive among the people, or in the state legislatures, may formally charge them before their constituents: the very apprehensions of such constitutional charges may prevent many of the evils mentioned, and the recalling the members of a single state, a single senator, or representative, may often prevent many more; nor do I, at present, discover any danger in such proceedings, as every man who shall move for a recall will put his reputation at stake, to shew he has reasonable grounds for his motion; and it is not probable such motions will be made unless there be good apparent grounds for succeeding; nor can the charge or motion be any thing more than the attack of an individual or individuals, unless a majority of the constituents shall see cause to go into the enquiry. Further, the circumstance of such a power being lodged in the constituents, will tend continually to keep up their watchfulness, as well as the attention and dependance of the federal senators and representatives.

3. By the confederation it is provided, that no delegate shall serve more than three years in any term of six years, and thus, by the forms of the government, a rotation of members is produced: a like principle has been adopted in some of the state governments, and also in some antient and modern republics. Whether this exclusion of a man for a given period, after he shall have served a given time, ought to be ingra[f]ted into a constitution or not, is a question, the proper decision materially depends upon the leading features of the government: some governments are so formed as to produce a sufficient fluctuation and change of members of course, in the ordinary course of elections, proper numbers of new members are, from time to time, brought into the legislature, and a proportionate number of old ones go out, mix, and become diffused among the people. This is the case with all numerous representative legislatures, the members of which are frequently elected, and constantly within the view of their constituents. This is the case with our state governments, and in them a constitutional rotation is unimportant. But in a government consisting of but a few members, elected for long periods, and far removed from the observation of the people, but few changes in the ordinary course of elections take place among the members; they become in some measure a fixed body, and often inattentive to the

public good, callous, selfish, and the fountain of corruption. To prevent these evils, and to force a principle of pure animation into the federal government, which will be formed much in this last manner mentioned, and to produce attention, activity, and a diffusion of knowledge in the community, we ought to establish among others the principle of rotation. Even good men in office, in time, imperceptibly lose sight of the people, and gradually fall into measures prejudicial to them. It is only a rotation among the members of the federal legislature I shall contend for: judges and officers at the heads of the judicial and executive departments, are in a very different situation, their offices and duties require the information and studies of many years for performing them in a manner advantageous to the people. These judges and officers must apply their whole time to the detail business of their offices, and depend on them for their support: then they always act under masters or superiors, and may be removed from office for misconduct; they pursue a certain round of executive business: their offices must be in all societies confined to a few men, because but few can become qualified to fill them: and were they, by annual appointments, open to the people at large, they are offices of such a nature as to be of no service to them; they must leave these offices in the possession of the few individuals qualified to fill them, or have them badly filled. In the judicial and executive departments also, the body of the people possess a large share of power and influence, as jurors and subordinate officers, among whom there are many and frequent rotations. But in every free country the legislatures are all on a level, and legislation becomes partial whenever, in practice, it rests for any considerable time in a few hands. It is the true republican principle to diffuse the power of making the laws among the people, and so to modify the forms of the government as to draw in turn the well informed of every class into the legislature.

To determine the propriety or impropriety of this rotation, we must take the inconveniencies as well as the advantages attending it into view: on the one hand, by this rotation, we may sometimes exclude good men from being elected. On the other hand, we guard against those pernicious connections, which usually grow up among men left to continue long periods in office, we increase the number of those who make the laws and return to their constituents; and thereby spread information, and preserve a spirit of activity and investigation among the people: hence a balance of interests and exertions are preserved, and the ruinous measures of factions rendered more impracticable. I would not urge the principle of rotation, if I believed the consequence would be an uninformed federal legislature; but I have no apprehension of this in this enlightened country. The members of congress, at any one time, must be but very few, compared with the respectable well informed men in the United States; and I have no idea there will be any want of such men for members of congress, though by a principle of rotation the constitution should exclude from being elected for two years those federal legislators, who may have served the four years immediately preceding, or

any four years in the six preceding years. If we may judge from experience and fair calculations, this principle will never operate to exclude at any one period a fifteenth part, even of those men who have been members of congress. Though no man can sit in congress, by the confederation, more than three years in any term of six years, yet not more than three, four, or five men in any one state, have been made ineligible at any one period; and if a good man happen to be excluded by this rotation, it is only for a short time. All things considered, the inconveniencies of the principle must be very inconsiderable compared with the many advantages of it. It will generally be expedient for a man who has served four years in congress to return home, mix with the people, and reside some time with them: this will tend to reinstate him in the interests, feelings, and views similar to theirs, and thereby confirm in him the essential qualifications of a legislator. Even in point of information, it may be observed, the useful information of legislators is not acquired merely in studies in offices, and in meeting to make laws from day to day; they must learn the actual situation of the people, by being among them, and when they have made laws, return home, and observe how they operate. Thus occasionally to be among the people, is not only necessary to prevent or banish the callous habits and self interested views of office in legislators, but to afford them necessary information, and to render them useful: another valuable end is answered by it, sympathy, and the means of communication between them and their constituents, is substantially promoted; so that on every principle legislators, at certain periods, ought to live among their constituents.

Some men of science are undoubtedly necessary in every legislature; but the knowledge, generally, necessary for men who make laws, is a knowledge of the common concerns, and particular circumstances of the people. In a republican government seats in the legislature are highly honorable; I believe but few do, and surely none ought to consider them as places of profit and permanent support. Were the people always properly attentive, they would, at proper periods, call their law makers home, by sending others in their room: but this is not often the case, and therefore, in making constitutions, when the people are attentive, they ought cautiously to provide for those benefits, those advantageous changes in the administration of their affairs, which they are often apt to be inattentive to in practice. On the whole, to guard against the evils, and to secure the advantages I have mentioned, with the greatest degree of certainty, we ought clearly, in my opinion, to increase the federal representation, to secure elections on proper principles, to establish a right to recall members, and a rotation among them.

4. By the art. 2. sect. 2. treaties must be made with the advice and consent of the senate, and two-thirds of those present must concur: also, with consent of the senate, almost all federal officers, civil and military, must be appointed. As to treaties I have my doubts; but as to the appoint-

ments of officers, I think we may clearly shew the senate to be a very improper body indeed to have any thing to do with them. I am not perfectly satisfied, that the senate, a branch of the legislature, and court for trying impeachments, ought to have a controuling power in making all treaties; yet, I confess, I do not discern how a restraint upon the president in this important business, can be better or more safely lodged: a power to make and conclude all treaties is too important to be vested in him alone, or in him and an executive council, only sufficiently numerous for other purpose, and the house of representatives is too numerous to be concerned in treaties of peace and of alliance. This power is now lodged in congress, to be exercised by the consent of nine states. The federal senate, like the delegations in the present congress, will represent the states, and the consent of two-thirds of that senate will bear some similitude to the consent of nine states. It is probable the United States will not make more than one treaty, on an average, in two or three years, and this power may always be exercised with great deliberation: perhaps the senate is sufficiently numerous to be trusted with this power, sufficiently small to proceed with secrecy, and sufficiently permanent to exercise this power with proper consistency and due deliberation. To lodge this power in a less respectable and less numerous body might not be safe; we must place great confidence in the hands that hold it, and we deceive ourselves if we give it under an idea, that we can impeach, to any valuable purpose, the man or men who may abuse it.

On a fair construction of the constitution, I think the legislature has a proper controul over the president and senate in settling commercial treaties. By art. 1. sect. 2. the legislature will have power to regulate commerce with foreign nations, &c. By art. 2. sect. 2. the president, with the advice and consent of two-thirds of the senate, may make treaties. These clauses must be considered together, and we ought never to make one part of the same instrument contradict another, if it can be avoided by any reasonable construction. By the first recited clause, the legislature has the power, that is, as I understand it, the sole power to regulate commerce with foreign nations, or to make all the rules and regulations respecting trade and commerce between our citizens and foreigners: by the second recited clause, the president and senate have power generally to make treaties.—There are several kinds of treaties—as treaties of commerce, of peace, of alliance, &c. I think the words to "make treaties," may be consistently construed, and yet so as it shall be left to the legislature to confirm commercial treaties; they are in their nature and operation very distinct from treaties of peace and of alliance; the latter generally require secrecy, it is but very seldom they interfere with the laws and internal police of the country; to make them is properly the exercise of executive powers, and the constitution authorises the president and senate to make treaties, and gives the legislature no power, directly or indirectly, respecting these treaties of peace and alliance. As to treaties of commerce, they do not generally re-

quire secrecy, they almost always involve in them legislative powers, interfere with the laws and internal police of the country, and operate immediately on persons and property, especially in the commercial towns: (they have in Great-Britain usually been confirmed by parliament;) they consist of rules and regulations respecting commerce; and to regulate commerce, or to make regulations respecting commerce, the federal legislature, by the constitution, has the power. I do not see that any commercial regulations can be made in treaties, that will not infringe upon this power in the legislature: therefore, I infer, that the true construction is, that the president and senate shall make treaties; but all commercial treaties shall be subject to be confirmed by the legislature. This construction will render the clauses consistent, and make the powers of the president and senate, respecting treaties, much less exceptionable.

The Federal Farmer.

XII

January 12, 1788.

Dear Sir,

2.8.148 On carefully examining the parts of the proposed system, respecting the elections of senators, and especially of the representatives, they appear to me to be both ambiguous and very defective. I shall endeavour to pursue a course of reasoning, which shall fairly lead to establishing the impartiality and security of elections, and then to point out an amendment in this respect.

It is well observed by Montesquieu, that in republican governments, the forms of elections are fundamental; and that it is an essential part of the social compact, to ascertain by whom, to whom, when, and in what manner suffrages are to be given.[94]

2.8.149 Wherever we find the regulation of elections have not been carefully fixed by the constitution, or the principles of them, we constantly see the legislatures new modifying its own form, and changing the spirit of the government to answer partial purposes.

By the proposed plan it is fixed, that the qualifications of the electors of the federal representatives shall be the same as those of the electors of state representatives; though these vary some in the several states the electors are fixed and designated.

2.8.150 The qualifications of the representatives are also fixed and designated, and no person under 25 years of age, not an inhabitant of the state, and not having been seven years a citizen of the United States, can be elected; the clear inference is, that all persons 25 years of age, and upwards, inhabitants

of the state, and having been, at any period or periods, seven years citizens of the United States, may be elected representatives. They have a right to be elected by the constitution, and the electors have a right to chuse them. This is fixing the federal representation, as to the elected, on a very broad basis: it can be no objection to the elected, that they are Christians, Pagans, Mahometans, or Jews; that they are of any colour, rich or poor, convict or not: Hence many men may be elected, who cannot be electors. Gentlemen who have commented so largely upon the wisdom of the constitution, for excluding from being elected young men under a certain age, would have done well to have recollected, that it positively makes pagans, convicts, &c. eligible. The people make the constitution; they exclude a few persons, by certain descriptions, from being elected, and all not thus excluded are clearly admitted. Now a man 25 years old, an inhabitant of the state, and having been a citizen of the states seven years, though afterwards convicted, may be elected, because not within any of the excluding clauses; the same of a beggar, an absentee, &c.

The right of the electors, and eligibility of the elected being fixed by the people, they cannot be narrowed by the state legislatures, or congress: it is established, that a man being (among other qualifications) an inhabitant of the state, shall be eligible. Now it would be narrowing the right of the people to confine them in their choice to a man, an inhabitant of a particular county or district in the state. Hence it follows, that neither the state legislatures or congress can establish district elections; that is, divide the state into districts, and confine the electors of each district to the choice of a man resident in it. If the electors could be thus limited in one respect, they might in another be confined to chuse a man of a particular religion, of certain property, &c. and thereby half of the persons made eligible by the constitution be excluded. All laws, therefore, for regulating elections must be made on the broad basis of the constitution. 2.8.151

Next, we may observe, that representatives are to be chosen by the people of the state. What is a choice by the people of the state? If each given district in it choose one, will that be a choice within the meaning of the constitution? Must the choice be by plurality of votes, or a majority? In connection with these questions, we must take the 4th sect. art. 1. where it is said the state legislatures shall prescribe the times, places, and manner of holding elections; but congress may make or alter such regulations. By this clause, I suppose, the electors of different towns and districts in the state may be assembled in different places, to give their votes; but when so assembled, by another clause they cannot, by congress or the state legislatures, be restrained from giving their votes for any man an inhabitant of the state, and qualified as to age, and having been a citizen the time required. But I see nothing in the constitution by which to decide, whether the choice shall be by a plurality or a majority of votes: this, in my mind, is by far the most important question in the business of elections. When we say a repre- 2.8.152

sentative shall be chosen by the people, it seems to imply that he shall be chosen by a majority of them; but states which use the same phraseology in this respect, practice both ways. I believe a majority of the states, chuse by pluralities, and, I think it probable, that the federal house of representatives will decide that a choice of its members by pluralities is constitutional. A man who has the most votes is chosen in Great-Britain. It is this, among other things, that gives every man fair play in the game of influence and corruption. I believe that not much stress was laid upon the objection that congress may assemble the electors at some out of the way place. However, the advocates seem to think they obtain a victory of no small glory and importance, when they can shew, with some degree of colour, that the evils is rather a possibility than a probability.

2.8.153 When I observed that the elections were not secured on proper principles,[95] I had an idea of far more probable and extensive evils, secret mischiefs, and not so glaring transgressions, the exclusions of proper district elections, and of the choice by a majority.

2.8.154 It is easy to perceive that there is an essential difference between elections by pluralities and by majorities, between choosing a man in a small or limited district, and choosing a number of men promiscuously by the people of a large state; and while we are almost secure of judicious unbiassed elections by majorities in such districts, we have no security against deceptions, influence and corruption in states or large districts in electing by pluralities. When a choice is made by a plurality of votes, it is often made by a very small part of the electors, who attend and give their votes, when by a majority, never by so few as one half of them. The partialities and improprieties attending the former mode may be illustrated by a case that lately happened in one of the middle states.—Several representatives were to be chosen by a large number of inhabitants compactly settled, among whom there were four or five thousand voters. Previous to the time of election a number of lists of candidates were published, to divide and distract the voters in general—about half a dozen men of some influence, who had a favourite list to carry, met several times, fixed their list, and agreed to hand it about among all who could probably be induced to adopt it, and to circulate the other lists among their opponents, to divide them. The poll was opened, and several hundred electors, suspecting nothing, attended and put in their votes; the list of the half dozen was carried, and men were found to be chosen, some of whom were very disagreeable to a large majority of the electors: though several hundred electors voted, men on that list were chosen who had only 45, 43, 44, &c. votes each; they had a plurality, that is, more than any other persons: the votes generally were scattered, and those who made even a feeble combination succeeded in placing highest upon the list several very unthought of and very unpopular men. This evil never could have happened in a town where all the voters meet in one place, and consider no man as elected unless he have a majority, or more than half of all

the votes; clear it is, that the men on whom thus but a small part of the votes are bestowed, cannot possess the confidence of the people, or have any considerable degree of influence over them.

But as partial, as liable to secret influence, and corruption as the choice by pluralities may be, I think, we cannot avoid it, without essentially increasing the federal representation, and adopting the principles of district elections. There is but one case in which the choice by the majority is practicable, and that is, where districts are formed of such moderate extent that the electors in each can conveniently meet in one place, and at one time, and proceed to the choice of a representative; when, if no man have a majority, or more than half of all the votes the first time, the voters may examine the characters of those brought forward, accommodate, and proceed to repeat their votes till some one shall have that majority. This, I believe, cannot be a case under the constitution proposed in its present form. To explain my ideas, take Massachusetts, for instance, she is entitled to eight representatives, she has 370,000 inhabitants, about 46,000 to one representative; if the elections be so held that the electors throughout the state meet in their several towns or places, and each elector puts in his vote for eight representatives, the votes of the electors will ninety-nine times in a hundred, be so scattered that on collecting the votes from the several towns or places, no men will be found, each of whom have a majority of the votes, and therefore the election will not be made. On the other hand, there may be such a combination of votes, that in thus attempting to chuse eight representatives, the electors may chuse even fifteen. Suppose 10,000 voters to attend and give their votes, each voter will give eight votes, one for each of eight representatives; in the whole 80,000 votes will be given—eight men, each having 5001 votes, in the whole 40,008 will have each a majority, and be chosen—39,092 votes will be bestowed on other men, and if they all be bestowed on seven men, they may have each a considerable majority, and also be chosen. This indeed is a very rare combination: but the bestowing all the votes pretty equally upon nine, ten, or eleven men, and chusing them all, is an event too probable not to be guarded against. 2.8.155

If Massachusetts be divided into eight districts, each having about 46,000 inhabitants, and each district directed to chuse one representative, it will be found totally impracticable for the electors of it to meet in one place; and, when they meet in several towns and places in the district, they will vote for different men, and nineteen times in twenty, so scatter their votes, that no one man will have a majority of the whole and be chosen: we must, therefore, take the man who has the most votes, whether he has three quarters, one quarter, or one tenth part of the whole; the inconveniencies of scattering votes will be increased, as men not of the district, as well as those that are in it, may be voted for. 2.8.156

I might add many other observations to evince the superiority and solid advantages of proper district elections, and a choice by a majority, and to 2.8.157

prove, that many evils attend the contrary practice: these evils we must encounter as the constitution now stands.

2.8.158 I see no way to fix elections on a proper footing, and to render tolerably equal and secure the federal representation, but by increasing the representation, so as to have one representative for each district, in which the electors may conveniently meet in one place, and at one time, and chuse by a majority. Perhaps this might be effected pretty generally, by fixing one representative for each twelve thousand inhabitants; dividing, or fixing the principles for dividing the states into proper districts; and directing the electors of each district to the choice, by a majority, of some men having a permanent interest and residence in it. I speak of a representation tolerably equal, &c. because I am still of opinion, that it is impracticable in this extensive country to have a federal representation sufficiently democratic, or substantially drawn from the body of the people: the principles just mentioned may be the best practical ones we can expect to establish. By thus increasing the representation, we not only make it more democratical and secure, strengthen the confidence of the people in it, and thereby render it more nervous and energetic; but it will also enable the people essentially to change, for the better, the principles and forms of elections. To provide for the people's wandering throughout the state for a representative, may sometimes enable them to elect a more brilliant or an abler man, than by confining them to districts, but generally this latitude will be used to pernicious purposes, especially connected with the choice by plurality: when a man in the remote part of the state, perhaps, obnoxious at home, but ambitious and intriguing, may be chosen to represent the people in another part of the state far distant, and by a small part of them, or by a faction, or by a combination of some particular description of men among them. This has been long the case in Great-Britain, it is the case in several of the states, nor do I think that such pernicious practices will be merely possible in our federal concerns, but highly probable. By establishing district elections, we exclude none of the best men from being elected; and we fix what, in my mind, is of far more importance than brilliant talents, I mean a sameness, as to residence and interests, between the representative and his constituents; and by the election by a majority, he is sure to be the man, the choice of more than half of them.

2.8.159 Though it is impossible to put elections on a proper footing as the constitution stands, yet I think regulations respecting them may be introduced of considerable service: it is not only, therefore, important to enquire how they may be made, but also what body has the controuling power over them. An intelligent, free and unbiassed choice of representatives by the people is of the last importance: we must then carefully guard against all combinations, secret arts, and influence to the contrary. Various expedients have been adopted in different countries and states to effect genuine elections; as the constitution now stands, I confess, I do not discover any better than

those adopted in Connecticut, in the choice of counsellers, before mentioned.[96]

The federal representatives are to be chosen every second year (an odd mode of expression). In all the states, except South-Carolina, the people, the same electors, meet twice in that time to elect state representatives. For instance, let the electors in Massachusetts, when they meet to chuse state representatives, put in their votes for eight federal representatives, the number that state may chuse, (merely for distinction sake, we may call these the votes of nomination), and return a list of the men voted for, in the several towns and places, to the legislature, or some proper body; let this list be immediately examined and published, and some proper number, say 15 or 20, who shall have the most votes upon the list, be sent out to the people; and when the electors shall meet the next year to chuse state representatives, let them put in their votes for the eight federal representatives, confining their votes to the proper number so sent out; and let the eight highest of those thus voted for in the two votes (which we may call, by way of distinction, votes of election), be the federal representatives: thus a choice may be made by the people, once in two years, without much trouble and expence, and, I believe, with some degree of security. As soon as the votes of nomination shall be collected and made known, the people will know who are voted for, and who are candidates for their votes the succeeding year; the electors will have near a year to enquire into their characters and politics, and also into any undue means, if any were taken, to bring any of them forward; and such as they find to be the best men, and agreeable to the people, they may vote for in giving the votes of election. By these means the men chosen will ultimately always have a majority, or near a majority, of the votes of the electors, who shall attend and give their votes. The mode itself will lead to the discovery of truth and of political characters, and to prevent private combinations, by rendering them in a great measure of no effect. As the choice is to be made by the people, all combinations and checks must be confined to their votes. No supplying the want of a majority by the legislatures, as in Massachusetts in the choice of senators, &c. can be admitted: the people generally judge right when informed, and, in giving their votes the second time, they may always correct their former errors. 2.8.160

I think we are all sufficiently acquainted with the progress of elections to see, that the regulations, as to times, places, and the manner merely of holding elections, may, under the constitution, easily be made useful or injurious. It is important then to enquire, who has the power to make regulations, and who ought to have it. By the constitution, the state legislatures shall prescribe the times, places, and manner of holding elections, but congress may make or alter such regulations. Power in congress merely to alter those regulations, made by the states, could answer no valuable purposes; the states might make, and congress alter them *ad infinitum:* and when the state should cease to make, or should annihilate its regulations, congress 2.8.161

would have nothing to alter. But the states shall make regulations, and congress may make such regulations as the clause stands: the true construction is, that when congress shall see fit to regulate the times, places, and manner of holding elections, congress may do it, and state regulations, on this head, must cease; for if state regulations could exist, after congress should make a system of regulations, there would, or might, be two incompatible systems of regulations relative to the same subject.

2.8.162 It has been often urged, that congress ought to have power to make these regulations, otherwise the state legislatures, by neglecting to make provision for elections, or by making improper regulations, may destroy the general government. It is very improbable that any state legislature will adopt measures to destroy the representation of its own constituents in congress, especially when the state must, represented in congress or not, pay its proportion of the expence of keeping up the government, and even of the representatives of the other states, and be subject to their laws. Should the state legislatures be disposed to be negligent, or to combine to break up congress, they have a very simple way to do it, as the constitution now stands—they have only to neglect to chuse senators, or to appoint the electors of the president, and vice-president: there is no remedy provided against these last evils: nor is it to be presumed, that if a sufficient number of state legislatures to break up congress, should, by neglect or otherwise, attempt to do it, that the people, who yearly elect those legislatures, would elect under the regulations of congress. These and many other reasons must evince, that it was not merely to prevent an annihilation of the federal government that congress has power to regulate elections.

2.8.163 It has been urged also, that the state legislatures chuse the federal senators, one branch, and may injure the people, who chuse the other, by improper regulations; that therefore congress, in which the people will immediately have one, the representative branch, ought to have power to interfere in behalf of the people, and rectify such improper regulations. The advocates have said much about the opponents dwelling upon possibilities; but to suppose the people will find it necessary to appeal to congress to restrain the oppressions of the state legislatures, is supposing a possibility indeed. Can any man in his senses suppose that the state legislatures, which are so numerous as almost to be the people themselves, all branches of them depending yearly, for the most part, on the elections of the people, will abuse them in regulating federal elections, and make it proper to transfer the power to congress, a body, one branch of which is chosen once in six years by these very legislatures, and the other biennially, and not half so numerous as even the senatorial branches in those legislatures?

2.8.164 Senators are to be chosen by the state legislatures, where there are two branches the appointment must be, I presume, by a concurrent resolution, in passing which, as in passing all other legislative acts each branch will have a negative; this will give the senatorial branch just as much weight in

the appointment as the democratic: the two branches form a legislature only when acting separately, and therefore, whenever the members of the two branches meet, mix and vote individually in one room, for making an election, it is expressly so directed by the constitutions. If the constitution, by fixing the choice to be made by the legislatures, has given each branch an equal vote, as I think it has, it cannot be altered by any regulations.

On the whole, I think, all general principles respecting electors ought to 2.8.165
be carefully established by the constitution, as the qualifications of the electors and of elected: the number of the representatives, and the inhabitants of each given district, called on to chuse a man from among themselves by a majority of votes; leaving it to the legislature only so to regulate, from time to time, the extent of the districts so as to keep the representatives proportionate to the number of inhabitants in the several parts of the country; and so far as regulations as to elections cannot be fixed by the constitution, they ought to be left to the state legislatures, they coming far nearest to the people themselves; at most, congress ought to have power to regulate elections only where a state shall neglect to make them.

The Federal Farmer.

XIII

January 14, 1788.

Dear Sir,

In this letter I shall further examine two clauses in the proposed constitu- 2.8.166
tion respecting appointments to office.[97]—By art. 2. sect. 2. the president shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments, &c. By art. 1, sect. 6. No senator or representative shall, during the term for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time.

Thus the president must nominate, and the senate concur in the appoint- 2.8.167
ment of all federal officers, civil and military, and the senators and representatives are made ineligible only to the few civil offices abovementioned. To preserve the federal government pure and uncorrupt, peculiar precautions relative to appointments to office will be found highly necessary from the very forms and character of the government itself. The honours and emoluments of public offices are the objects in all communities, that ambitious and necessitous men never lose sight of. The honest, the modest,

and the industrious part of the community content themselves, generally, with their private concerns; they do not solicit those offices which are the perpetual source of cabals, intrigues, and contests among men of the former description, men embarrassed, intriguing, and destitute of modesty. Even in the most happy country and virtuous government, corrupt influence in appointments cannot always be avoided; perhaps we may boast of our share of virtue as a people, and if we are only sufficiently aware of the influence, biasses, and prejudices, common to the affairs of men, we may go far towards guarding against the effects of them.

2.8.168 We all agree, that a large standing army has a strong tendency to depress and inslave the people; it is equally true that a large body of selfish, unfeeling, unprincipled civil officers has a like, or a more pernicious tendency to the same point. Military, and especially civil establishments, are the necessary appendages of society; they are deductions from productive labour, and substantial wealth, in proportion to the number of men employed in them; they are oppressive where unnecessarily extended and supported by men unfriendly to the people; they are injurious when too small, and supported by men too timid and dependant. It is of the last importance to decide well upon the necessary number of offices, to fill them with proper characters, and to establish efficiently the means of punctually punishing those officers who may do wrong.

2.8.169 To discern the nature and extent of this power of appointments, we need only to consider the vast number of officers necessary to execute a national system in this extensive country, the prodigious biasses the hopes and expectations of offices have on their conduct, and the influence public officers have among the people—these necessary officers, as judges, state's attornies, clerks, sheriffs, &c. in the federal supreme and inferior courts, admirals and generals, and subordinate officers in the army and navy, ministers, consuls, &c. sent to foreign countries; officers in the federal city, in the revenue, post-office departments, &c. &c. must, probably, amount to several thousands, without taking into view the very inferior ones. There can be no doubt but that the most active men in politics, in and out of congress, will be the foremost candidates for the best of these offices; the man or men who shall have the disposal of them, beyond dispute, will have by far the greatest share of active influence in the government; but appointments must be made, and who shall make them? what modes of appointments will be attended with the fewest inconveniencies? is the question. The senators and representatives are the law makers, create all offices, and whenever they see fit, they impeach and try officers for misconduct; they ought to be in session but part of the year, and as legislators, they must be too numerous to make appointments, perhaps, a few very important ones excepted. In contemplating the necessary officers of the union, there appear to be six different modes in which, in whole or in part, the appointments may be made. 1. By the legislature; 2. by the president and senate—3. by the president and

an executive council—4. by the president alone—5. by the heads of the departments—and 6. by the state governments—Among all these, in my opinion, there may be an advantageous distribution of the power of appointments. In considering the legislators, in relation to the subject before us, two interesting questions particularly arise—1. Whether they ought to be eligible to any offices whatever during the period for which they shall be elected to serve, and even for some time afterwards—and 2. How far they ought to participate in the power of appointments. As to the first, it is true that legislators in foreign countries, or in our state governments, are not generally made ineligible to office: there are good reasons for it; in many countries the people have gone on without ever examining the principles of government. There have been but few countries in which the legislators have been a particular set of men periodically chosen: but the principal reason is, that which operates in the several states, viz. the legislators are so frequently chosen, and so numerous, compared with the number of offices for which they can reasonably consider themselves as candidates, that the chance of any individual member's being chosen, is too small to raise his hopes or expectations, or to have any considerable influence upon his conduct. Among the state legislators, one man in twenty may be appointed in some committee business, &c. for a month or two; but on a fair computation, not one man in a hundred sent to the state legislatures is appointed to any permanent office of profit: directly the reverse of this will evidently be found true in the federal administration. Throughout the United States, about four federal senators, and thirty-three representatives, averaging the elections, will be chosen in a year; these few men may rationally consider themselves as the fairest candidates for a very great number of lucrative offices, which must become vacant in the year, and pretty clearly a majority of the federal legislators, if not excluded, will be mere expectants for public offices. I need not adduce further arguments to establish a position so clear, I need only call to your recollection my observations in a former letter, wherein I endeavoured to shew the fallacy of the argument, that the members must return home and mix with the people.[98] It is said, that men are governed by interested motives, and will not attend as legislators, unless they can, in common with others, be eligible to offices of honor and profit.[99] This will undoubtedly be the case with some men, but I presume only with such men as never ought to be chosen legislators in a free country; an opposite principle will influence good men; virtuous patriots, and generous minds, will esteem it a higher honor to be selected as the guardians of a free people; they will be satisfied with a reasonable compensation for their time and service; nor will they wish to be within the vortex of influence. The valuable effects of this principle of making legislators ineligible to offices for a given time, has never yet been sufficiently attended to or considered: I am assured, that it was established by the convention after long debate, and afterwards, on an unfortunate change of a few members, altered.[100] Could

the federal legislators be excluded in the manner proposed, I think it would be an important point gained; as to themselves, they would be left to act much more from motives consistent with the public good.

2.8.170 In considering the principle of rotation I had occasion to distinguish the condition of a legislator from that of mere official man[101]—We acquire certain habits, feelings, and opinions, as men and citizens—others, and very different ones, from a long continuance in office: It is, therefore, a valuable observation in many bills of rights, that rulers ought frequently to return and mix with the people. A legislature, in a free country, must be numerous; it is in some degree a periodical assemblage of the people, frequently formed—the principal officers in the executive and judicial departments, must have more permanency in office. Hence it may be inferred, that the legislature will remain longer uncorrupted and virtuous; longer congenial to the people, than the officers of those departments. If it is not, therefore, in our power to preserve republican principles, for a series of ages, in all the departments of government, we may a long while preserve them in a well formed legislature. To this end we ought to take every precaution to prevent legislators becoming mere office-men; chuse them frequently, make them recallable, establish rotation among them, make them ineligible to offices, and give them as small a share as possible in the disposal of them. Add to this, a legislature, in the nature of things, is not formed for the detail business of appointing officers; there is also generally an impropriety in the same men's making offices and filling them, and a still greater impropriety in their impeaching and trying the officers they appoint. For these, and other reasons, I conclude, the legislature is not a proper body for the appointment of officers in general. But having gone through with the different modes of appointment, I shall endeavour to shew what share in the distribution of the power of appointments the legislature must, from necessity, rather than from propriety, take. 2. Officers may be appointed by the president and senate—this mode, for general purposes, is clearly not defensible. All the reasoning touching the legislature will apply to the senate; the senate is a branch of the legislature, which ought to be kept pure and unbiassed; it has a part in trying officers for misconduct, and in creating offices, it is too numerous for a council of appointment, or to feel any degree of responsibility: if it has an advantage of the legislature, in being the least numerous, it has a disadvantage in being more unsafe: add to this, the senate is to have a share in the important branch of power respecting treaties. Further, this sexennial senate of 26 members, representing 13 sovereign states, will not, in practice, be found to be a body to advise, but to order and dictate in fact; and the president will be a mere *primus inter pares*. The consequence will be, that the senate, with these efficient means of influence, will not only dictate, probably, to the president, but manage the house, as the constitution now stands; and under appearances of a balanced system, in reality, govern alone. There may also, by this undue connection, be

particular periods when a very popular president may have a very improper influence upon the senate and upon the legislature. A council of appointment must very probably sit all, or near all, the year—the senate will be too important and too expensive a body for this. By giving the senate, directly or indirectly, an undue influence over the representatives, and the improper means of fettering, embarrassing, or controuling the president or executive, we give the government, in the very out set, a fatal and pernicious tendency to that middle undesirable point—aristocracy. When we, as a circumstance not well to be avoided, admit the senate to a share of power in making treaties, and in managing foreign concerns, we certainly progress full far enough towards this most undesirable point in government. For with this power, also, I believe, we must join that of appointing ambassadors, other foreign ministers, and consuls, being powers necessarily connected.—In every point of view, in which I can contemplate this subject, it appears extremely clear to me, that the senate ought not generally to be a council of appointment. The legislature, after the people, is the great fountain of power, and ought to be kept as pure and uncorrupt as possible, from the hankerings, biasses, and contagion of offices—then the streams issuing from it, will be less tainted with those evils. It is not merely the number of impeachments, that are to be expected to make public officers honest and attentive in their business. A general opinion must pervade the community, that the house, the body to impeach them for misconduct, is disinterested, and ever watchful for the public good; and that the judges who shall try impeachments, will not feel a shadow of biass. Under such circumstances, men will not dare transgress, who, not deterred by such accusers and judges, would repeatedly misbehave. We have already suffered many and extensive evils, owing to the defects of the confederation, in not providing against the misconduct of public officers. When we expect the law to be punctually executed, not one man in ten thousand will disobey it: it is the probable chance of escaping punishment that induces men to transgress. It is one important mean to make the government just and honest, rigidly and constantly to hold, before the eyes of those who execute it, punishment, and dismission from office, for misconduct. These are principles no candid man, who has just ideas of the essential features of a free government, will controvert. They are, to be sure, at this period, called visionary, speculative and anti-governmental—but in the true stile of courtiers, selfish politicians, and flatterers of despotism—discerning republican men of both parties see their value. They are said to be of no value, by empty boasting advocates for the constitution, who, by their weakness and conduct, in fact, injure its cause much more than most of its opponents. From their high sounding promises, men are led to expect a defence of it, and to have their doubts removed. When a number of long pieces appear, they, instead of the defence, &c. they expected, see nothing but a parade of names—volumes written without ever coming to the point—cases quoted between which and

ours there is not the least similitude—and partial extracts made from histories and governments, merely to serve a purpose. Some of them, like the true admirers of royal and senatorial robes, would fain prove, that nations who have thought like freemen and philosophers about government, and endeavoured to be free, have often been the most miserable: if a single riot, in the course of five hundred years happened in a free country, if a salary, or the interest of a public or private debt was not paid at the moment, they seem to lay more stress upon these triffles (for triffles they are in a free and happy country) than upon the oppressions of despotic government for ages together. As to the lengthy writer in New-York[102] you mention, I have attentively examined his pieces; he appears to be a candid good-hearted man, to have a good stile, and some plausible ideas; but when we carefully examine his pieces, to see where the strength of them lies; when the mind endeavours to fix on those material parts, which ought to be the essence of all volumnious productions, we do not find them: the writer appears constantly to move on a smooth surface, the part of his work, like the parts of a cob-house, are all equally strong and all equally weak, and all like those works of the boys, without an object; his pieces appear to have but little relation to the great question, whether the constitution is fitted to the condition and character of this people or not. But to return—3. Officers may be appointed by the president and an executive council—when we have assigned to the legislature the appointment of a few important officers—to the president and senate the appointment of those concerned in managing foreign affairs—to the state governments the appointment of militia officers, and authorise the legislature, by legislative acts, to assign to the president alone, to the heads of the departments, and courts of law respectively, the appointment of many inferior officers; we shall then want to lodge some where a residuum of power, a power to appoint all other necessary officers, as established by law. The fittest receptacle for this residuary power is clearly, in my opinion, the first executive magistrate, advised and directed by an executive council of seven or nine members, periodically chosen from such proportional districts as the union may for the purpose be divided into. The people may give their votes for twice the number of counsellers wanted, and the federal legislature take twice the number also from the highest candidates, and from among them chuse the seven or nine, or number wanted. Such a council may be rationally formed for the business of appointments; whereas the senate, created for other purposes, never can be—Such councils forms a feature in some of the best executives in the union—they appear to be essential to every first magistrate, who may frequently want advice.

2.8.171 To authorise the president to appoint his own council would be unsafe: to give the sole appointment of it to the legislature, would confer an undue and unnecessary influence upon that branch. Such a council for a year would be less expensive than the senate for four months. The president may nominate, and the counsellers always be made responsible for their advice and

opinions, by recording and signing whatever they advise to be done. They and the president, to many purposes, will properly form an independent executive branch; have an influence unmixed with the legislative, which the executive never can have while connected with a powerful branch of the legislature. And yet the influence arising from the power of appointments be less dangerous, because in less dangerous hands—hands properly adequate to possess it. Whereas the senate, from its character and situation, will add a dangerous weight to the power itself, and be far less capable of responsibility, than the council proposed. There is another advantage the residuum of power, as to appointments, which the president and council need possess, is less than that the president and senate must have. And as such a council would render the sessions of the senate unnecessary many months in the year, the expences of the government would not be increased, if they would not be lessened by the institution of such a council. I think I need not dwell upon this article, as the fitness of this mode of appointment will perhaps amply appear by the evident unfitness of the others.

4. Officers may be appointed by the president alone. It has been almost 2.8.172
universally found, when a man has been authorized to exercise power alone, he has never done it alone; but, generally, aided his determinations by, and rested on the advice and opinions of others. And it often happens when advice is wanted, the worst men, the most interested creatures, the worst advice is at hand, obtrude themselves, and misdirect the mind of him who would be informed and advised. It is very seldom we see a single executive depend on accidental advice and assistance; but each single executive has, almost always, formed to itself a regular council, to be assembled and consulted on important occasions; this proves that a select council, of some kind, is, by experience, generally found necessary and useful. But in a free country, the exercise of any considerable branch of power ought to be under some checks and controuls. As to this point, I think the constitution stands well, the legislature may, when it shall deem it expedient, from time to time, authorise the president alone to appoint particular inferior officers, and when necessary to take back the power. His power, therefore, in this respect, may always be increased or decreased by the legislature, as experience, the best instructor, shall direct: always keeping him, by the constitution, within certain bounds.

The Federal Farmer.

XIV

January 17, 1788.

Dear Sir,

To continue the subject of appointments:—Officers, in the fifth place, 2.8.173
may be appointed by the heads of departments or courts of law. Art. 2. sect.

2. respecting appointments, goes on—"But congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments." The probability is, as the constitution now stands, that the senate, a branch of the legislature, will be tenacious of the power of appointment, and much too sparingly part with a share of it to the courts of law, and heads of departments. Here again the impropriety appears of the senate's having, generally, a share in the appointment of officers. We may fairly presume, that the judges, and principal officers in the departments, will be able well informed men in their respective branches of business; that they will, from experience, be best informed as to proper persons to fill inferior offices in them; that they will feel themselves responsible for the execution of their several branches of business, and for the conduct of the officers they may appoint therein.—From these, and other considerations, I think we may infer, that impartial and judicious appointments of subordinate officers will, generally, be made by the courts of law, and the heads of departments. This power of distributing appointments, as circumstances may require, into several hands, in a well formed disinterested legislature, might be of essential service, not only in promoting beneficial appointments, but, also, in preserving the balance in government: a feeble executive may be strengthened and supported by placing in its hands more numerous appointments; an executive too influential may be reduced within proper bounds, by placing many of the inferior appointments in the courts of law, and heads of departments; nor is there much danger that the executive will be wantonly weakened or strengthened by the legislature, by thus shifting the appointments of inferior officers, since all must be done by legislative acts, which cannot be passed without the consent of the executive, or the consent of two-thirds of both branches—a good legislature will use this power to preserve the balance and perpetuate the government. Here again we are brought to our ultimatum:—is the legislature so constructed as to deserve our confidence?

2.8.174 6. Officers may be appointed by the state governments. By art. 1. sect. 8. the respective states are authorised exclusively to appoint the militia-officers. This not only lodges the appointments in proper places, but it also tends to distribute and lodge in different executive hands the powers of appointing to offices, so dangerous when collected into the hands of one or a few men.

2.8.175 It is a good general rule, that the legislative, executive, and judicial powers, ought to be kept distinct; but this, like other general rules, has its exceptions; and without these exceptions we cannot form a good government, and properly balance its parts,[103] and we can determine only from reason, experience, and a critical inspection of the parts of the government, how far it is proper to intermix those powers. Appointment, I believe, in all mixed governments, have been assigned to different hands—some are made by the executive, some by the legislature, some by the judges and some by

the people. It has been thought adviseable by the wisest nations, that the legislature should so far exercise executive and judicial powers as to appoint some officers, judge of the elections of its members, and impeach and try officers for misconduct—that the executive should have a partial share in legislation—that judges should appoint some subordinate officers, and regulate so far as to establish rules for their own proceedings. Where the members of the government, as the house, the senate, the executive, and judiciary, are strong and complete, each in itself, the balance is naturally produced, each party may take the powers congenial to it, and we have less need to be anxious about checks, and the subdivision of powers.

If after making the deductions, already alluded to, from the general power 2.8.176
to appoint federal officers the residuum shall be thought to be too large and unsafe, and to place an undue influence in the hands of the president and council, a further deduction may be made, with many advantages, and, perhaps, with but a few inconveniencies; and that is, by giving the appointment of a few great officers to the legislature—as of the commissioners of the treasury—of the comptroller, treasurer, master coiner, and some of the principal officers in the money department—of the sheriffs or marshalls of the United States—of states attornies, secretary of the home department, and secretary at war, perhaps, of the judges of the supreme court—of major-generals and admirals.[104] The appointments of these officers, who may be at the heads of the great departments of business, in carrying into execution the national system, involve in them a variety of considerations; they will not often occur, and the power to make them ought to remain in safe hands. Officers of the above description are appointed by the legislatures in some of the states, and in some not. We may, I believe, presume that the federal legislature will possess sufficient knowledge and discernment to make judicious appointments: however, as these appointments by the legislature tend to increase a mixture of power, to lessen the advantages of impeachments and responsibility, I would by no means contend for them any further than it may be necessary for reducing the power of the executive within the bounds of safety. To determine with propriety how extensive power the executive ought to possess relative to appointments, we must also examine the forms of it, and its other powers; and these forms and other powers I shall now proceed briefly to examine.

By art. 2. sect. 1. the executive power shall be vested in a president 2.8.177
elected for four years, by electors to be appointed from time to time, in such manner as the state legislatures shall direct—the electors to be equal in numbers to the federal senators and representatives: but congress may determine the time of chusing senators, and the day on which they shall give their votes; and if no president be chosen by the electors, by a majority of votes, the states, as states in congress, shall elect one of the five highest on the list for president. It is to be observed, that in chusing the president, the principle of electing by a majority of votes is adopted; in chusing the vice-

president, that of electing by a plurality. Viewing the principles and checks established in the election of the president, and especially considering the several states may guard the appointment of the electors as they shall judge best, I confess there appears to be a judicious combination of principles and precautions.[105] Were the electors more numerous than they will be, in case the representation be not increased, I think, the system would be improved; not that I consider the democratic character so important in the choice of the electors as in the choice of representatives: be the electors more or less democratic, the president will be one of the very few of the most elevated characters. But there is danger, that a majority of a small number of electors may be corrupted and influenced, after appointed electors, and before they give their votes, especially if a considerable space of time elapse between the appointment and voting. I have already considered the advisory council in the executive branch: there are two things further in the organization of the executive, to which I would particularly draw your attention; the first, which, is a single executive, I confess, I approve; the second, by which any person from period to period may be re-elected president, I think very exceptionable.

2.8.178 Each state in the union has uniformly shewn its preference for a single executive, and generally directed the first executive magistrate to act in certain cases by the advice of an executive council. Reason, and the experience of enlightened nations, seem justly to assign the business of making laws to numerous assemblies; and the execution of them, principally, to the direction and care of one man. Independent of practice, a single man seems to be peculiarly well circumstanced to superintend the execution of laws with discernment and decision, with promptitude and uniformity: the people usually point out a first man—he is to be seen in civilized as well as uncivilized nations—in republics as well as in other governments. In every large collection of people there must be a visible point serving as a common centre in the government, towards which to draw their eyes and attachments. The constitution must fix a man, or a congress of men, superior in the opinion of the people to the most popular men in the different parts of the community, else the people will be apt to divide and follow their respective leaders.[106] Aspiring men, armies and navies, have not often been kept in tolerable order by the decrees of a senate or an executive council. The advocates for lodging the executive power in the hands of a number of equals, as an executive council, say, that much wisdom may be collected in such a council, and that it will be safe; but they agree, that it cannot be so prompt and responsible as a single man—they admit that such a council will generally consist of the aristocracy, and not stand so indifferent between it and the people as a first magistrate. But the principal objection made to a single man is, that when possessed of power he will be constantly struggling for more, disturbing the government, and encroaching on the rights of others. It must be admitted, that men, from the monarch down to the porter,

are constantly aiming at power and importance; and this propensity must be as constantly guarded against in the forms of the government. Adequate powers must be delegated to those who govern, and our security must be in limiting, defining, and guarding the exercise of them, so that those given shall not be abused, or made use of for openly or secretly seizing more. Why do we believe this abuse of power peculiar to a first magistrate? Is it because in the wars and contests of men, one man has often established his power over the rest? Or are men naturally fond of accumulating powers in the hands of one man? I do not see any similitude between the cases of those tyrants, who have sprung up in the midst of wars and tumults, and the cases of limited executives in established governments; nor shall we, on a careful examination, discover much likeness between the executives in Sweden, Denmark, Holland, &c. which have, from time to time, increased their powers, and become more absolute, and the executives, whose powers are well ascertained and defined, and which remain, by the constitution, only for a short and limited period in the hands of any one man or family. A single man, or family, can long and effectually direct its exertions to one point. There may be many favourable opportunities in the course of a man's life to seize on additional powers, and many more where powers are hereditary; and there are many circumstances favourable to usurpations, where the powers of the man or family are undefined, and such as often may be unduly extended before the people discover it. If we examine history attentively, we shall find that such exertions, such opportunities, and such circumstances as these have attended all the executives which have usurped upon the rights of the people, and which appear originally to have been, in some degree, limited. Admitting that moderate and even well defined powers, long in the hands of the same man or family, will, probably, be unreasonably increased, it will not follow that even extensive powers placed in the hands of a man only for a few years will be abused. The Roman consuls and Carthagenian suffetes possessed extensive powers while in office; but being annually appointed, they but seldom, if ever, abused them. The Roman dictators often possessed absolute power while in office; but usually being elected for short periods of time, no one of them for ages usurped upon the rights of the people. The kings of France, Spain, Sweden, Denmark, &c. have become absolute merely from the encroachments and abuse of power made by the nobles. As to kings, and limited monarchs, generally, history furnishes many more instances in which their powers have been abridged or annihilated by the nobles or people, or both, than in which they have been increased or made absolute; and in almost all the latter cases we find the people were inattentive and fickle, and evidently were not born to be free. I am the more particular respecting this subject, because I have heard many mistaken observations relative to it. Men of property, and even men who hold powers for themselves and posterity, have too much to lose, wantonly to hazard a shock of the political system; the game must be large, and the

chance of winning great, to induce them to risque what they have, for the uncertain prospect of gaining more. Our executive may be altogether elective, and possess no power, but as the substitute of the people, and that well limited, and only for a limited time. The great object is, in a republican government, to guard effectually against perpetuating any portion of power, great or small, in the same man or family; this perpetuation of power is totally uncongenial to the true spirit of republican governments: on the one hand the first executive magistrate ought to remain in office so long as to avoid instability in the execution of the laws; on the other, not so long as to enable him to take any measures to establish himself. The convention, it seems, first agreed that the president should be chosen for seven years, and never after to be eligible. Whether seven years is a period too long or not, is rather matter of opinion; but clear it is, that this mode is infinitely preferable to the one finally adopted. When a man shall get the chair, who may be re-elected, from time to time, for life, his greatest object will be to keep it; to gain friends and votes, at any rate; to associate some favourite son with himself, to take the office after him: whenever he shall have any prospect of continuing the office in himself and family, he will spare no artifice, no address, and no exertions, to increase the powers and importance of it; the servile supporters of his wishes will be placed in all offices, and tools constantly employed to aid his views and sound his praise. A man so situated will have no permanent interest in the government to lose, by contests and convulsions in the state, but always much to gain, and frequently the seducing and flattering hope of succeeding. If we reason at all on the subject, we must irresistably conclude, that this will be the case with nine-tenths of the presidents; we may have, for the first president, and, perhaps, one in a century or two afterwards (if the government should withstand the attacks of others) a great and good man, governed by superior motives; but these are not events to be calculated upon in the present state of human nature.

2.8.179 A man chosen to this important office for a limited period, and always afterwards rendered, by the constitution, ineligible, will be governed by very different considerations: he can have no rational hopes or expectations of retaining his office after the expiration of a known limited time, or of continuing the office in his family, as by the constitution there must be a constant transfer of it from one man to another, and consequently from one family to another. No man will wish to be a mere cypher at the head of the government: the great object of each president then will be, to render his government a glorious period in the annals of his country. When a man constitutionally retires from office, he retires without pain; he is sensible he retires because the laws direct it, and not from the success of his rivals, nor with that public disapprobation which being left out, when eligible, implies. It is said, that a man knowing that at a given period he must quit his office, will unjustly attempt to take from the public, and lay in store the means of

support and splendour in his retirement;[107] there can, I think, be but very little in this observation. The same constitution that makes a man eligible for a given period only, ought to make no man eligible till he arrive to the age of forty or forty-five years: if he be a man of fortune, he will retire with dignity to his estate; if not, he may, like the Roman consuls, and other eminent characters in republics, find an honorable support and employment in some respectable office. A man who must, at all events, thus leave his office, will have but few or no temptations to fill its dependant offices with his tools, or any particular set of men; whereas the man constantly looking forward to his future elections, and, perhaps, to the aggrandizement of his family, will have every inducement before him to fill all places with his own props and dependants. As to public monies, the president need handle none of them, and he may always rigidly be made account for every shilling he shall receive.

On the whole, it would be, in my opinion, almost as well to create a limited monarchy at once, and give some family permanent power and interest in the community, and let it have something valuable to itself to lose in convulsions in the state, and in attempts of usurpation, as to make a first magistrate eligible for life, and to create hopes and expectations in him and his family, of obtaining what they have not. In the latter case, we actually tempt them to disturb the state, to foment struggles and contests, by laying before them the flattering prospect of gaining much in them without risking any thing. 2.8.180

The constitution provides only that the president shall hold his office during the term of four years; that, at most, only implies, that one shall be chosen every fourth year; it also provides, that in case of the removal, death, resignation, or inability, both of the president and vice-president, congress may declare what officer shall act as president; and that such officers shall act accordingly, until the disability be removed, *or a president shall be elected:* it also provides that congress may determine the time of chusing electors, and the day on which they shall give their votes. Considering these clauses together, I submit this question—whether in case of a vacancy in the office of president, by the removal, death, resignation, or inability of the president and vice-president, and congress should declare, that a certain officer, as secretary for foreign affairs, for instance, shall act as president, and suffer such officer to continue several years, or even for his life, to act as president, by omitting to appoint the time for chusing electors of another president, it would be any breach of the constitution? This appears to me to be an intended provision for supplying the office of president, not only for any remaining portion of the four years, but in cases of emergency, until another president shall be elected; and that at a period beyond the expiration of the four years: we do not know that it is impossible; we do not know that it is improbable, in case a popular officer should thus be declared the acting president, but that he might continue for 2.8.181

life, and without any violent act, but merely by neglects and delays on the part of congress.

2.8.182 I shall conclude my observations on the organization of the legislature and executive, with making some remarks, rather as a matter of amusement, on the branch, or partial negative, in the legislation:—The third branch in the legislature may answer three valuable purposes, to impede in their passage hasty and intemperate laws, occasionally to assist the senate or people, and to prevent the legislature from encroaching upon the executive or judiciary. In Great Britain the king has a complete negative upon all laws, but he very seldom exercises it. This may be well lodged in him, who possesses strength to support it, and whose family has independent and hereditary interests and powers, rights and prerogatives, in the government, to defend: but in a country where the first executive officer is elective, and has no rights, but in common with the people, a partial negative in legislation, as in Massachusetts and New-York, is, in my opinion, clearly best: in the former state, as before observed, it is lodged in the governor alone; in the latter, in the governor, chancellor, and judges of the supreme court—the new constitution lodges it in the president. This is simply a branch of legislative power, and has in itself no relation to executive or judicial powers. The question is, in what hands ought it to be lodged, to answer the three purposes mentioned the most advantageously? The prevailing opinion seems to be in favour of vesting it in the hands of the first executive magistrate. I will not say this opinion is ill founded. The negative, in one case, is intended to prevent hasty laws, not supported and revised by two-thirds of each of the two branches; in the second, it is to aid the weaker branch; and in the third, to defend the executive and judiciary. To answer these ends, there ought, therefore, to be collected in the hands which hold this negative, firmness, wisdom, and strength; the very object of the negative is occasional opposition to the two branches. By lodging it in the executive magistrate, we give him a share in making the laws, which he must execute; by associating the judges with him, as in New York, we give them a share in making the laws, upon which they must decide as judicial magistrates; this may be a reason for excluding the judges: however, the negative in New-York is certainly well calculated to answer its great purposes: the governor and judges united must possess more firmness and strength, more wisdom and information, than either alone, and also more of the confidence of the people; and as to the balance among the departments, why should the executive alone hold the scales, and the judicial be left defenceless? I think the negative in New-York is found best in practice; we see it there frequently and wisely put upon the measures of the two branches; whereas in Massachusetts it is hardly ever exercised, and the governor, I believe, has often permitted laws to pass to which he had substantial objections, but did not make them; he, however, it is to be observed, is annually elected.

The Federal Farmer.

XV

January 18, 1788.

Dear Sir,

Before I proceed to examine particularly the powers vested, or which ought to be, vested in each branch of the proposed government, I shall briefly examine the organization of the remaining branch, the judicial, referring the particular examining of its powers to some future letters.[108] 2.8.183

In forming this branch, our objects are—a fair and open, a wise and impartial interpretation of the laws—a prompt and impartial administration of justice, between the public and individuals, and between man and man. I believe, there is no feature in a free government more difficult to be well formed than this, especially in an extensive country, where the courts must be numerous, or the citizens travel to obtain justice. 2.8.184

The confederation impowers congress to institute judicial courts in four cases. 1. For settling disputes between individual states. 2. For determining, finally, appeals in all cases of captures. 3. For the trial of piracies and felonies committed on the high seas: And, 4. For the administration of martial law in the army and navy. The state courts in all other cases possess the judicial powers, in all questions arising on the laws of nations, of the union, and the states individually—nor does congress appear to have any controul over state courts, judges or officers. The business of the judicial department is, properly speaking, judicial in part, in part executive, done by judges and juries, by certain recording and executive officers, as clerks, sheriffs, etc. they are all properly limbs, or parts, of the judicial courts, and have it in charge, faithfully to decide upon, and execute the laws, in judicial cases, between the public and individuals, between man and man. The recording and executive officers, in this department, may well enough be formed by legislative acts, from time to time: but the offices, the situation, the powers and duties of judges and juries, are too important, as they respect the political system, as well as the administration of justice, not to be fixed on general principles by the constitution. It is true, the laws are made by the legislature; but the judges and juries, in their interpretations, and in directing the execution of them, have a very extensive influence for preserving or destroying liberty, and for changing the nature of the government. It is an observation of an approved writer, that judicial power is of such a nature, that when we have ascertained and fixed its limits, with all the caution and precision we can, it will yet be formidable, somewhat arbitrary and despotic—that is, after all our cares, we must leave a vast deal to the discretion and interpretation—to the wisdom, integrity, and politics of the judges[109]—These men, such is the state even of the best laws, may do wrong, perhaps, in a thousand cases, sometimes with, and sometimes without design, yet it may be impracticable to convict them of misconduct. These considerations shew, how cautious a free people ought to be in form- 2.8.185

ing this, as well as the other branches of their government, especially when connected with other considerations equally deserving of notice and attention. When the legislature makes a bad law, or the first executive magistrates usurp upon the rights of the people, they discover the evil much sooner, than the abuses of power in the judicial department; the proceedings of which are far more intricate, complex, and out of their immediate view. A bad law immediately excites a general alarm; a bad judicial determination, though not less pernicious in its consequences, is immediately felt, probably, by a single individual only, and noticed only by his neighbours, and a few spectators in the court. In this country, we have been always jealous of the legislature, and especially the executive; but not always of the judiciary: but very few men attentively consider the essential parts of it, and its proceedings, as they tend to support or to destroy free government: only a few professional men are in a situation properly to do this; and it is often alledged, that instances have not frequently occurred, in which they have been found very alert watchmen in the cause of liberty, or in the cause of democratic republics. Add to these considerations, that particular circumstances exist at this time to increase our inattention to limiting properly the judicial powers, we may fairly conclude, we are more in danger of sowing the seeds of arbitrary government in this department than in any other.[110] In the unsettled state of things in this country, for several years past, it has been thought, that our popular legislatures have, sometimes, departed from the line of strict justice, while the law courts have shewn a disposition more punctually to keep to it. We are not sufficiently attentive to the circumstances, that the measures of popular legislatures naturally settle down in time, and gradually approach a mild and just medium; while the rigid systems of the law courts naturally become more severe and arbitrary, if not carefully tempered and guarded by the constitution, and by laws, from time to time. It is true, much has been written and said about some of these courts lately, in some of the states; but all has been about their fees, &c. and but very little to the purposes, as to their influence upon the freedom of the government.

2.8.186 By art. 3. sect. 1. the judicial power of the United States shall be vested in one supreme court, and in such inferior courts, as congress may, from time to time, ordain and establish—the judges of them to hold their offices during good behaviour, and to receive, at stated times, a compensation for their services, which shall not be diminished during their continuance in office; but which, I conceive, may be increased. By the same art. sect. 2. the supreme court shall have original jurisdiction, "in all cases affecting ambassadors, and other public ministers, and consuls, and those in which a state shall be a party, and appellate jurisdiction, *both as to law and fact*, in all other federal causes, with such exceptions, and under such regulations, as the congress shall make." By the same section, the judicial power shall extend in law and equity to all the federal cases therein enumerated. By the

same section the jury trial, in criminal causes, except in cases of impeachment, is established; but not in civil causes, and the whole state may be considered as the vicinage in cases of crimes. These clauses present to view the constitutional features of the federal judiciary: this has been called a monster by some of the opponents, and some, even of the able advocates, have confessed they do not comprehend it. For myself, I confess, I see some good things in it, and some very extraordinary ones. "There shall be one supreme court." There ought in every government to be one court, in which all great questions in law shall finally meet and be determined: in Great-Britain, this is the house of lords, aided by all the superior judges; in Massachusetts, it is, at present, the supreme judicial court, consisting of five judges; in New-York, by the constitution, it is a court consisting of the president of the senate, the senators, chancellor and judges of the supreme court; and in the United States the federal supreme court, or this court in the last report, may, by the legislature, be made to consist of three, five, fifty, or any other number of judges. The inferior federal courts are left by the constitution to be instituted and regulated altogether as the legislature shall judge best; and it is well provided, that the judges shall hold their offices during good behaviour. I shall not object to the line drawn between the original and appellate jurisdiction of the supreme court; though should we for safety, &c. be obliged to form a numerous supreme court, and place in it a considerable number of respectable characters, it will be found inconvenient for such a court, originally, to try all the causes affecting ambassadors, consuls, &c. Appeals may be carried up to the supreme court, under such regulations as congress shall make. Thus far the legislature does not appear to be limited to improper [proper?] rules or principles in instituting judicial courts: indeed the legislature will have full power to form and arrange judicial courts in the federal cases enumerated, at pleasure, with these eight exceptions only. 1. There can be but one supreme federal judicial court. 2. This must have jurisdiction as to law and fact in the appellate causes. 3. Original jurisdiction, when foreign ministers and the states are concerned. 4. The judges of the judicial courts must continue in office during good behaviour—and, 5. Their salaries cannot be diminished while in office. 6. There must be a jury trial in criminal causes. 7. The trial of crimes must be in the state where committed—and, 8. There must be two witnesses to convict of treason.

In all other respects Congress may organize the judicial department according to their discretion; the importance of this power, among others proposed by the legislature (perhaps necessarily) I shall consider hereafter. Though there must, by the constitution, be but one judicial court, in which all the rays of judicial powers as to law, equity, and fact, in the cases enumerated must meet; yet this may be made by the legislature, a special court, consisting of any number of respectable characters or officers, the federal legislators excepted, to superintend the judicial department, to try 2.8.187

the few causes in which foreign ministers and the states may be concerned, and to correct errors, as to law and fact, in certain important causes on appeals. Next below this judicial head, there may be several courts, such as are usually called superior courts, as a court of chancery, a court of criminal jurisdiction, a court of civil jurisdiction, a court of admiralty jurisdiction, a court of exchequer, &c. giving an appeal from these respectively to the supreme judicial court. These superior courts may be considered as so many points to which appeals may be brought up, from the various inferior courts, in the several branches of judicial causes. In all these superior and inferior courts, the trial by jury may be established in all cases, and the law and equity properly separated. In this organization, only a few very important causes, probably, would be carried up to the supreme court.—The superior courts would, finally, settle almost all causes. This organization, so far as it would respect questions of law, inferior, superior, and a special supreme court, would resemble that of New-York in a considerable degree, and those of several other states. This, I imagine, we must adopt, or else the Massachusetts plan; that is, a number of inferior courts, and one superior or supreme court, consisting of three, or five, or seven judges, in which one supreme court all the business shall be immediately collected from the inferior ones. The decision of the inferior courts, on either plan, probably will not much be relied on; and on the latter plan, there must be a prodigious accumulation of powers and business in all cases touching law, equity and facts, and all kinds of causes in a few hands, for whose errors of ignorance or design, there will be no possible remedy. As the legislature may adopt either of these, or any other plan, I shall not dwell longer on this subject.

2.8.188 In examining the federal judiciary, there appears to be some things very extraordinary and very peculiar. The judges or their friends may seize every opportunity to raise the judges salaries; but by the constitution they cannot be diminished. I am sensible how important it is that judges shall always have adequate and certain support; I am against their depending upon annual or periodical grants, because these may be withheld, or rendered too small by the dissent or narrowness of any one branch of the legislature; but there is a material distinction between periodical grants, and salaries held under permanent and standing laws: the former at stated periods cease, and must be renewed by the consent of all and every part of the legislature; the latter continue of course, and never will cease or be lowered, unless all parts of the legislature agree to do it. A man has as permanent an interest in his salary fixed by a standing law, so long as he may remain in office, as in any property he may possess; for the laws regulating the tenure of all property, are always liable to be altered by the legislature. The same judge may frequently be in office thirty or forty years; there may often be times, as in cases of war, or very high prices, when his salary may reasonably be increased one half or more; in a few years money may become scarce again,

and prices fall, and his salary, with equal reason and propriety be decreased and lowered: not to suffer this to be done by consent of all the branches of the legislature, is, I believe, quite a novelty in the affairs of government. It is true, by a very forced and unnatural construction, the constitution of Massachusetts, by the governor and minority in the legislature, was made to speak this kind of language. Another circumstance ought to be considered; the mines which have been discovered are gradually exhausted, and the precious metals are continually wasting: hence the probability is, that money, the nominal representative of property, will gradually grow scarcer hereafter, and afford just reasons for gradually lowering salaries. The value of money depends altogether upon the quantity of it in circulation, which may be also decreased, as well as encreased, from a great variety of causes.

The supreme court, in cases of appeals, shall have jurisdiction both as to law and fact: that is, in all civil causes carried up the supreme court by appeals, the court, or judges, shall try the fact and decide the law. Here an essential principle of the civil law is established, and the most noble and important principle of the common law exploded. To dwell a few minutes on this material point: the supreme court shall have jurisdiction both as to law and fact. What is meant by court? Is the jury included in the term, or is it not?[111] I conceive it is not included: and so the members of convention, I am very sure, understand it. Court, or curia, was a term well understood long before juries existed; the people, and the best writers, in countries where there are no juries, uniformly use the word court, and can only mean by it the judge or judges who determine causes: also, in countries where there are juries we express ourselves in the same manner; we speak of the court of probate, court of chancery, justices court, alderman's court, &c. in which there is no jury. In our supreme courts, common pleas, &c. in which there are jury trials, we uniformly speak of the court and jury, and consider them as distinct. Were it necessary I might site a multitude of cases from law books to confirm, beyond controversy, this position, that the jury is not included, or a part of the court. 2.8.189

But the supreme court is to have jurisdiction as to law and fact, under such regulations as congress shall make. I confess it is impossible to say how far congress may, with propriety, extend their regulations in this respect. I conceive, however, they cannot by any reasonable construction go so far as to admit the jury, on true common law principles, to try the fact, and give a general verdict. I have repeatedly examined this article: I think the meaning of it is, that the judges in all final questions, as to property and damages, shall have complete jurisdiction, to consider the whole cause, to examine the facts, and on a general view of them, and on principles of equity, as well as law, to give judgment.

As the trial by jury is provided for in criminal causes, I shall confine my observations to civil causes—and in these, I hold it is the established right of 2.8.190

the jury by the common law, and the fundamental laws of this country, to give a general verdict in all cases when they chuse to do it, to decide both as to law and fact, whenever blended together in the issue put to them. Their right to determine as to facts will not be disputed, and their right to give a general verdict has never been disputed, except by a few judges and lawyers, governed by despotic principles. Coke, Hale, Holt, Blackstone, De Lome, and almost every other legal or political writer, who has written on the subject, has uniformly asserted this essential and important right of the jury. Juries in Great-Britain and America have universally practised accordingly. Even Mansfield, with all his wishes about him, dare not directly avow the contrary. What fully confirms this point is, that there is no instance to be found, where a jury was ever punished for finding a general verdict, when a special one might, with propriety, have been found. The jury trial, especially politically considered, is by far the most important feature in the judicial department in a free country, and the right in question is far the most valuable part, and the last that ought to be yielded, of this trial.[112] Juries are constantly and frequently drawn from the body of the people, and freemen of the country; and by holding the jury's right to return a general verdict in all cases sacred, we secure to the people at large, their just and rightful controul in the judicial department. If the conduct of judges shall be severe and arbitrary, and tend to subvert the laws, and change the forms of government, the jury may check them, by deciding against their opinions and determinations, in similar cases. It is true, the freemen of a country are not always minutely skilled in the laws, but they have common sense in its purity, which seldom or never errs in making and applying laws to the condition of the people, or in determining judicial causes, when stated to them by the parties. The body of the people, principally, bear the burdens of the community; they of right ought to have a controul in its important concerns, both in making and executing the laws, otherwise they may, in a short time, be ruined. Nor is it merely this controul alone we are to attend to: the jury trial brings with it an open and public discussion of all causes, and excludes secret and arbitrary proceedings. This, and the democratic branch in the legislature, as was formerly observed, are the means by which the people are let into the knowledge of public affairs—are enabled to stand as the guardians of each others rights, and to restrain, by regular and legal measures, those who otherwise might infringe upon them. I am not unsupported in my opinion of the value of the trial by jury; not only British and American writers, but De Lome, and the most approved foreign writers, hold it to be the most valuable part of the British constitution, and indisputably the best mode of trial ever invented.

2.8.191 It was merely by the intrigues of the popish clergy, and of the Norman lawyers, that this mode of trial was not used in maritime, ecclesiastical, and military courts, and the civil law proceedings were introduced; and, I believe, it is more from custom and prejudice, than for any substantial rea-

sons, that we do not in all the states establish the jury in our maritime as well as other courts.

In the civil law process the trial by jury is unknown; the consequence is, 2.8.192
that a few judges and dependant officers, possess all the power in the judicial department. Instead of the open fair proceedings of the common law, where witnesses are examined in open court, and may be cross examined by the parties concerned—where council is allowed, &c. we see in the civil law process judges alone, who always, long previous to the trial, are known and often corrupted by ministerial influence, or by parties. Judges once influenced, soon become inclined to yield to temptations, and to decree for him who will pay the most for their partiality. It is, therefore, we find in the Roman, and almost all governments, where judges alone possess the judicial powers and try all cases, that bribery has prevailed. This, as well as the forms of the courts, naturally lead to secret and arbitrary proceedings—to taking evidence secretly—exparte, &c. to perplexing the cause—and to hasty decisions:—but, as to jurors, it is quite impracticable to bribe or influence them by any corrupt means; not only because they are untaught in such affairs, and possess the honest characters of the common freemen of a country; but because it is not, generally, known till the hour the cause comes on for trial, what persons are to form the jury.

But it is said, that no words could be found by which the states could 2.8.193
agree to establish the jury-trial in civil causes.[113] I can hardly believe men to be serious, who make observations to this effect. The states have all derived judicial proceedings principally from one source, the British system; from the same common source the American lawyers have almost universally drawn their legal information. All the states have agreed to establish the trial by jury, in civil as well as in criminal causes. The several states, in congress, found no difficulty in establishing it in the Western Territory, in the ordinance passed in July 1787. We find, that the several states in congress, in establishing government in that territory, agreed, that the inhabitants of it, should always be entitled to the benefit of the trial by jury. Thus, in a few words, the jury trial is established in its full extent; and the convention with as much ease, have established the jury trial in criminal cases. In making a constitution, we are substantially to fix principles.—If in one state, damages on default are assessed by a jury, and in another by the judges—if in one state jurors are drawn out of a box, and in another not—if there be other trifling variations, they can be of no importance in the great question. Further, when we examine the particular practices of the states, in little matters in judicial proceedings, I believe we shall find they differ near as much in criminal processes as in civil ones. Another thing worthy of notice in this place—the convention have used the word equity, and agreed to establish a chancery jurisdiction; about the meaning and extent of which, we all know, the several states disagree much more than about jury trials—in adopting the latter, they have very generally pursued the British plan; but as

to the former, we see the states have varied, as their fears and opinions dictated.

2.8.194 By the common law, in Great Britain and America, there is no appeal from the verdict of the jury, as to facts, to any judges whatever—the jurisdiction of the jury is complete and final in this; and only errors in law are carried up to the house of lords, the special supreme court in Great Britain; or to the special supreme courts in Connecticut, New-York, New-Jersey, &c. Thus the juries are left masters as to facts: but, by the proposed constitution, directly the opposite principle is established. An appeal will lay in all appellate causes from the verdict of the jury, even as to mere facts, to the judges of the supreme court. Thus, in effect, we establish the civil law in this point; for if the jurisdiction of the jury be not final, as to facts, it is of little or no importance.

2.8.195 By art. 3. sect. 2. "the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States," &c. What is here meant by equity? what is equity in a case arising under the constitution?[114] possibly the clause might have the same meaning, were the words "in law and equity," omitted. Cases in law must differ widely from cases in law and equity. At first view, by thus joining the word equity with the word law, if we mean any thing, we seem to mean to give the judge a discretionary power. The word equity, in Great Britain, has in time acquired a precise meaning—chancery proceedings there are now reduced to system—but this is not the case in the United States. In New-England, the judicial courts have no powers in cases in equity, except those dealt out to them by the legislature, in certain limited portions, by legislative acts. In New-York, Maryland, Virginia, and South-Carolina, powers to decide, in cases of equity, are vested in judges distinct from those who decide in matters of law: and the states generally seem to have carefully avoided giving unlimitedly, to the same judges, powers to decide in cases in law and equity. Perhaps, the clause would have the same meaning were the words, "this constitution," omitted: there is in it either a careless complex misuse of words, in themselves of extensive signification, or there is some meaning not easy to be comprehended. Suppose a case arising under the constitution—suppose the question judicially moved, whether, by the constitution, congress can suppress a state tax laid on polls, lands, or as an excise duty, which may be supposed to interfere with a federal tax. By the letter of the constitution, congress will appear to have no power to do it: but then the judges may decide the question on principles of equity as well as law. Now, omitting the words, "in law and equity," they may decide according to the spirit and true meaning of the constitution, as collected from what must appear to have been the intentions of the people when they made it. Therefore, it would seem, that if these words mean any thing, they must have a further meaning: yet I will not suppose it intended to lodge an arbitrary power or discretion in the judges, to decide as their conscience, their opin-

ions, their caprice, or their politics might dictate. Without dwelling on this obscure clause, I will leave it to the examination of others.

The Federal Farmer.

XVI

January 20, 1788.

Dear Sir,

Having gone through with the organization of the government, I shall now proceed to examine more particularly those clauses which respect its powers. I shall begin with those articles and stipulations which are necessary for accurately ascertaining the extent of powers, and what is given, and for guarding, limiting, and restraining them in their exercise.[115] We often find, these articles and stipulations placed in bills of rights; but they may as well be incorporated in the body of the constitution, as selected and placed by themselves. The constitution, or whole social compact, is but one instrument, no more or less, than a certain number of articles or stipulations agreed to by the people, whether it consists of articles, sections, chapters, bills of rights, or parts of any other denomination, cannot be material. Many needless observations, and idle distinctions, in my opinion, have been made respecting a bill of rights. On the one hand, it seems to be considered as a necessary distinct limb of the constitution, and as containing a certain number of very valuable articles, which are applicable to all societies: and, on the other, as useless, especially in a federal government, possessing only enumerated power—nay, dangerous, as individual rights are numerous, and not easy to be enumerated in a bill of rights, and from articles, or stipulations, securing some of them, it may be inferred, that others not mentioned are surrendered.[116] There appears to me to be general indefinite propositions without much meaning—and the man who first advanced those of the latter description, in the present case, signed the federal constitution, which directly contradicts him.[117] The supreme power is undoubtedly in the people, and it is a principle well established in my mind, that they reserve all powers not expressly delegated by them to those who govern; this is as true in forming a state as in forming a federal government. There is no possible distinction but this founded merely in the different modes of proceeding which take place in some cases. In forming a state constitution, under which to manage not only the great but the little concerns of a community: the powers to be possessed by the government are often too numerous to be enumerated; the people to adopt the shortest way often give general powers, indeed all powers, to the government, in some general words, and then, by a

2.8.196

particular enumeration, take back, or rather say they however reserve certain rights as sacred, and which no laws shall be made to violate: hence the idea that all powers are given which are not reserved: but in forming a federal constitution, which *ex vi termine*, supposes state governments existing, and which is only to manage a few great national concerns, we often find it easier to enumerate particularly the powers to be delegated to the federal head, than to enumerate particularly the individual rights to be reserved; and the principle will operate in its full force, when we carefully adhere to it. When we particularly enumerate the powers given, we ought either carefully to enumerate the rights reserved, or be totally silent about them; we must either particularly enumerate both, or else suppose the particular enumeration of the powers given adequately draws the line between them and the rights reserved, particularly to enumerate the former and not the latter, I think most advisable: however, as men appear generally to have their doubts about these silent reservations, we might advantageously enumerate the powers given, and then in general words, according to the mode adopted in the 2d art. of the confederation, declare all powers, rights and privileges, are reserved, which are not explicitly and expressly given up. People, and very wisely too, like to be express and explicit about their essential rights, and not to be forced to claim them on the precarious and unascertained tenure of inferences and general principles, knowing that in any controversy between them and their rulers, concerning those rights, disputes may be endless, and nothing certain:—But admitting, on the general principle, that all rights are reserved of course, which are not expressly surrendered, the people could with sufficient certainty assert their rights on all occasions, and establish them with ease, still there are infinite advantages in particularly enumerating many of the most essential rights reserved in all cases; and as to the less important ones, we may declare in general terms, that all not expressly surrendered are reserved. We do not by declarations change the nature of things, or create new truths, but we give existence, or at least establish in the minds of the people truths and principles which they might never otherwise have thought of, or soon forgot. If a nation means its systems, religious or political, shall have duration, it ought to recognize the leading principles of them in the front page of every family book. What is the usefulness of a truth in theory, unless it exists constantly in the minds of the people, and has their assent:—we discern certain rights, as the freedom of the press, and the trial by jury, &c. which the people of England and of America of course believe to be sacred, and essential to their political happiness, and this belief in them is the result of ideas at first suggested to them by a few able men, and of subsequent experience; while the people of some other countries hear these rights mentioned with the utmost indifference; they think the privilege of existing at the will of a despot much preferable to them. Why this difference amongst beings every way formed alike. The reason of the difference is obvious—it is the effect of education, a series of

notions impressed upon the minds of the people by examples, precepts and declarations. When the people of England got together, at the time they formed Magna Charta, they did not consider it sufficient, that they were indisputably entitled to certain natural and unalienable rights, not depending on silent titles, they, by a declaratory act, expressly recognized them, and explicitly declared to all the world, that they were entitled to enjoy those rights; they made an instrument in writing, and enumerated those they then thought essential, or in danger, and this wise men saw was not sufficient; and therefore, that the people might not forget these rights, and gradually become prepared for arbitrary government, their discerning and honest leaders caused this instrument to be confirmed near forty times, and to be read twice a year in public places, not that it would lose its validity without such confirmations, but to fix the contents of it in the minds of the people, as they successively come upon the stage.—Men, in some countries do not remain free, merely because they are entitled to natural and unalienable rights; men in all countries are entitled to them, not because their ancestors once got together and enumerated them on paper, but because, by repeated negociations and declarations, all parties are brought to realize them, and of course to believe them to be sacred. Were it necessary, I might shew the wisdom of our past conduct, as a people in not merely comforting ourselves that we were entitled to freedom, but in constantly keeping in view, in addresses, bills of rights, in news-papers, &c. the particular principles on which our freedom must always depend.[118]

It is not merely in this point of view, that I urge the engrafting in the 2.8.197
constitution additional declaratory articles. The distinction, in itself just, that all powers not given are reserved, is in effect destroyed by this very constitution, as I shall particularly demonstrate—and even independent of this, the people, by adopting the constitution, give many general undefined powers to congress, in the constitutional exercise of which, the rights in question may be effected. Gentlemen who oppose a federal bill of rights, or further declaratory articles, seem to view the subject in a very narrow imperfect manner. These have for their objects, not only the enumeration of the rights reserved, but principally to explain the general powers delegated in certain material points, and to restrain those who exercise them by fixed known boundaries. Many explanations and restrictions necessary and useful, would be much less so, were the people at large all well and fully acquainted with the principles and affairs of government. There appears to be in the constitution, a studied brevity, and it may also be probable, that several explanatory articles were omitted from a circumstance very common. What we have long and early understood ourselves in the common concerns of the community, we are apt to suppose is understood by others, and need not be expressed; and it is not unnatural or uncommon for the ablest men most frequently to make this mistake. To make declaratory articles unnecessary in an instrument of government, two circumstances

must exist; the rights reserved must be indisputably so, and in their nature defined; the powers delegated to the government, must be precisely defined by the words that convey them, and clearly be of such extent and nature as that, by no reasonable construction, they can be made to invade the rights and prerogatives intended to be left in the people.

2.8.198 The first point urged, is, that all power is reserved not expressly given, that particular enumerated powers only are given, that all others are not given, but reserved, and that it is needless to attempt to restrian congress in the exercise of powers they possess not. This reasoning is logical, but of very little importance in the common affairs of men; but the constitution does not appear to respect it even in any view. To prove this, I might cite several clauses in it. I shall only remark on two or three. By article 1, section 9, "No title of nobility shall be granted by congress" Was this clause omitted, what power would congress have to make titles of nobility? in what part of the constitution would they find it? The answer must be, that congress would have no such power—that the people, by adopting the constitution, will not part with it. Why then by a negative clause, restrain congress from doing what it would have no power to do? This clause, then, must have no meaning, or imply, that were it omitted, congress would have the power in question, either upon the principle that some general words in the constitution may be so construed as to give it, or on the principle that congress possess the powers not expressly reserved. But this clause was in the confederation, and is said to be introduced into the constitution from very great caution. Even a cautionary provision implies a doubt, at least, that it is necessary; and if so in this case, clearly it is also alike necessary in all similar ones. The fact appears to be, that the people in forming the confederation, and the convention, in this instance, acted, naturally, they did not leave the point to be settled by general principles and logical inferences; but they settle the point in a few words, and all who read them at once understand them.

2.8.199 The trial by jury in criminal as well as in civil causes, has long been considered as one of our fundamental rights, and has been repeatedly recognized and confirmed by most of the state conventions.[119] But the constitution expressly establishes this trial in criminal, and wholly omits it in civil causes. The jury trial in criminal causes, and the benefit of the writ of habeas corpus, are already as effectually established as any of the fundamental or essential rights of the people in the United States. This being the case, why in adopting a federal constitution do we now establish these, and omit all others, or all others, at least with a few exceptions, such as again agreeing there shall be no ex post facto laws, no titles of nobility, &c. We must consider this constitution, when adopted, as the supreme act of the people, and in construing it hereafter, we and our posterity must strictly adhere to the letter and spirit of it, and in no instance depart from them: in construing the federal constitution, it will be not only impracticable, but

improper to refer to the state constitutions. They are entirely distinct instruments and inferior acts: besides, by the people's now establishing certain fundamental rights, it is strongly implied, that they are of opinion, that they would not otherwise be secured as a part of the federal system, or be regarded in the federal administration as fundamental. Further, these same rights, being established by the state constitutions, and secured to the people, our recognizing them now, implies, that the people thought them insecure by the state establishments, and extinguished or put afloat by the new arrangement of the social system, unless re-established.—Further, the people, thus establishing some few rights, and remaining totally silent about others similarly circumstanced, the implication indubitably is, that they mean to relinquish the latter, or at least feel indifferent about them. Rights, therefore, inferred from general principles of reason, being precarious and hardly ascertainable in the common affairs of society, and the people, in forming a federal constitution, explicitly shewing they conceive these rights to be thus circumstanced, and accordingly proceed to enumerate and establish some of them, the conclusion will be, that they have established all which they esteem valuable and sacred. On every principle, then, the people especially having began, ought to go through enumerating, and establish particularly all the rights of individuals, which can by any possibility come in question in making and executing federal laws. I have already observed upon the excellency and importance of the jury trial in civil as well as in criminal causes, instead of establishing it in criminal causes only; we ought to establish it generally;—instead of the clause of forty or fifty words relative to this subject, why not use the language that has always been used in this country, and say, "the people of the United States shall always be entitled to the trial by jury." This would shew the people still hold the right sacred, and enjoin it upon congress substantially to preserve the jury trial in all cases, according to the usage and custom of the country. I have observed before, that it is *the jury trial* we want; the little different appendages and modifications tacked to it in the different states, are no more than a drop in the ocean: the jury trial is a solid uniform feature in a free government; it is the substance we would save, not the little articles of form.

Security against expost facto laws, the trial by jury, and the benefits of the writ of habeas corpus, are but a part of those inestimable rights the people of the United States are entitled to, even in judicial proceedings, by the course of the common law. These may be secured in general words, as in New-York, the Western Territory, &c. by declaring the people of the United States shall always be entitled to judicial proceedings according to the course of the common law, as used and established in the said states. Perhaps it would be better to enumerate the particular essential rights the people are entitled to in these proceedings, as has been done in many of the states, and as has been done in England. In this case, the people may proceed to declare, that no man shall be held to answer to any offence, till

2.8.200

the same be fully described to him; nor to furnish evidence against himself: that, except in the government of the army and navy, no person shall be tried for any offence, whereby he may incur loss of life, or an infamous punishment, until he be first indicted by a grand jury: that every person shall have a right to produce all proofs that may be favourable to him, and to meet the witnesses against him face to face: that every person shall be entitled to obtain right and justice freely and without delay; that all persons shall have a right to be secure from all unreasonable searches and seizures of their persons, houses, papers, or possessions; and that all warrants shall be deemed contrary to this right, if the foundation of them be not previously supported by oath, and there be not in them a special designation of persons or objects of search, arrest, or seizure: and that no person shall be exiled or molested in his person or effects, otherwise than by the judgment of his peers, or according to the law of the land. A celebrated writer observes upon this last article, that in itself it may be said to comprehend the whole end of political society.[120] These rights are not necessarily reserved, they are established, or enjoyed but in few countries: they are stipulated rights, almost peculiar to British and American laws. In the execution of those laws, individuals, by long custom, by magna charta, bills of rights &c. have become entitled to them. A man, at first, by act of parliament, became entitled to the benefits of the writ of habeas corpus—men are entitled to these rights and benefits in the judicial proceedings of our state courts generally: but it will by no means follow, that they will be entitled to them in the federal courts, and have a right to assert them, unless secured and established by the constitution or federal laws. We certainly, in federal processes, might as well claim the benefits of the writ of habeas corpus, as to claim trial by a jury—the right to have council—to have witnesses face to face—to be secure against unreasonable search warrants, &c. was the constitution silent as to the whole of them:—but the establishment of the former, will evince that we could not claim them without it; and the omission of the latter, implies they are relinquished, or deemed of no importance. These are rights and benefits individuals acquire by compact; they must claim them under compacts, or immemorial usage—it is doubtful, at least, whether they can be claimed under immemorial usage in this country; and it is, therefore, we generally claim them under compacts, as charters and constitutions.

2.8.201 The people by adopting the federal constitution, give congress general powers to institute a distinct and new judiciary, new courts, and to regulate all proceedings in them, under the eight limitations mentioned in a former letter; and the further one, that the benefits of the habeas corpus act shall be enjoyed by individuals. Thus general powers being given to institute courts, and regulate their proceedings, with no provision for securing the rights principally in question, may not congress so exercise those powers, and constitutionally too, as to destroy those rights? clearly, in my opinion, they

are not in any degree secured. But, admitting the case is only doubtful, would it not be prudent and wise to secure them and remove all doubts, since all agree the people ought to enjoy these valuable rights, a very few men excepted, who seem to be rather of opinion that there is little or nothing in them? Were it necessary I might add many observations to shew their value and political importance.

The constitution will give congress general powers to raise and support armies. General powers carry with them incidental ones, and the means necessary to the end. In the exercise of these powers, is there any provision in the constitution to prevent the quartering of soldiers on the inhabitants? you will answer, there is not. This may sometimes be deemed a necessary measure in the support of armies; on what principle can the people claim the right to be exempt from this burden? they will urge, perhaps, the practice of the country, and the provisions made in some of the state constitutions—they will be answered, that their claim thus to be exempt is not founded in nature, but only in custom and opinion, or at best, in stipulations in some of the state constitutions, which are local, and inferior in their operation, and can have no controul over the general government—that they had adopted a federal constitution—had noticed several rights, but had been totally silent about this exemption—that they had given general powers relative to the subject, which, in their operation, regularly destroyed the claim. Though it is not to be presumed, that we are in any immediate danger from this quarter, yet it is fit and proper to establish, beyond dispute, those rights which are particularly valuable to individuals, and essential to the permanency and duration of free government. An excellent writer observes, that the English, always in possession of their freedom, are frequently unmindful of the value of it:[121] we, at this period, do not seem to be so well off, having, in some instances abused ours; many of us are quite disposed to barter it away for what we call energy, coercion, and some other terms we use as vaguely as that of liberty—There is often as great a rage for change and novelty in politics, as in amusements and fashions. 2.8.202

All parties apparently agree, that the freedom of the press is a fundamental right, and ought not to be restrained by any taxes, duties, or in any manner whatever. Why should not the people, in adopting a federal constitution, declare this, even if there are only doubts about it. But, say the advocates, all powers not given are reserved:—true; but the great question is, are not powers given, in the excercise of which this right may be destroyed? The people's or the printers claim to a free press, is founded on the fundamental laws, that is, compacts, and state constitutions, made by the people. The people, who can annihilate or alter those constitutions, can annihilate or limit this right. This may be done by giving general powers, as well as by using particular words. No right claimed under a state constitution, will avail against a law of the union, made in pursuance of the federal constitution: therefore the question is, what laws will congress have a right 2.8.203

to make by the constitution of the union, and particularly touching the press? By art. 1. sect. 8. congress will have power to lay and collect taxes, duties, imposts and excise. By this congress will clearly have power to lay and collect all kind of taxes whatever—taxes on houses, lands, polls, industry, merchandize, &c.—taxes on deeds, bonds, and all written instruments—on writs, pleas, and all judicial proceedings, on licences, naval officers papers, &c. on newspapers, advertisements, &c. and to require bonds of the naval officers, clerks, printers, &c. to account for the taxes that may become due on papers that go through their hands. Printing, like all other business, must cease when taxed beyond its profits; and it appears to me, that a power to tax the press at discretion, is a power to destroy or restrain the freedom of it. There may be other powers given, in the exercise of which this freedom may be effected; and certainly it is of too much importance to be left thus liable to be taxed, and constantly to constructions and inferences. A free press is the channel of communication as to mercantile and public affairs; by means of it the people in large countries ascertain each others sentiments; are enabled to unite, and become formidable to those rulers who adopt improper measures. Newspapers may sometimes be the vehicles of abuse, and of many things not true; but these are but small inconveniencies, in my mind, among many advantages. A celebrated writer, I have several times quoted, speaking in high terms of the English liberties, says, "lastly the key stone was put to the arch, by the final establishment of the freedom of the press."[122] I shall not dwell longer upon the fundamental rights, to some of which I have attended in this letter, for the same reasons that these I have mentioned, ought to be expressly secured, lest in the exercise of general powers given they may be invaded: it is pretty clear, that some other of less importance, or less in danger, might with propriety also be secured.

I shall now proceed to examine briefly the powers proposed to be vested in the several branches of the government, and especially the mode of laying and collecting internal taxes.

The Federal Farmer.

XVII

January 23, 1788.

Dear Sir,

2.8.204 I believe the people of the United States are full in the opinion, that a free and mild government can be preserved in their extensive territories, only under the substantial forms of a federal republic. As several of the ablest advocates for the system proposed, have acknowledged this (and I hope the

confessions they have published will be preserved and remembered) I shall not take up time to establish this point.[123] A question then arises, how far that system partakes of a federal republic.—I observed in a former letter, that it appears to be the first important step to a consolidation of the states; that its strong tendency is to that point.[124]

But what do we mean by a federal republic? and what by a consolidated government? To erect a federal republic, we must first make a number of states on republican principles; each state with a government organized for the internal management of its affairs: The states, as such, must unite under a federal head, and delegate to it powers to make and execute laws in certain enumerated cases, under certain restrictions; this head may be a single assembly, like the present congress, or the Amphictionic council; or it may consist of a legislature, with one or more branches; of an executive, and of a judiciary. To form a consolidated, or one entire government, there must be no state, or local governments, but all things, persons and property, must be subject to the laws of one legislature alone; to one executive, and one judiciary. Each state government, as the government of New Jersey, &c. is a consolidated, or one entire government, as it respects the counties, towns, citizens and property within the limits of the state.—The state governments are the basis, the pillar on which the federal head is placed, and the whole together, when formed on elective principles, constitute a federal republic. A federal republic in itself supposes state or local governments to exist, as the body or props, on which the federal head rests, and that it cannot remain a moment after they cease. In erecting the federal government, and always in its councils, each state must be known as a sovereign body; but in erecting this government, I conceive, the legislature of the state, by the expressed or implied assent of the people, or the people of the state, under the direction of the government of it, may accede to the federal compact: Nor do I conceive it to be necessarily a part of a confederacy of states, that each have an equal voice in the general councils. A confederated republic being organized, each state must retain powers for managing its internal police, and all delegate to the union power to manage general concerns: The quantity of power the union must possess is one thing, the mode of exercising the powers given, is quite a different consideration; and it is the mode of exercising them, that makes one of the essential distinctions between one entire or consolidated government, and a federal republic; that is, however the government may be organized, if the laws of the union, in most important concerns, as in levying and collecting taxes, raising troops, &c. operate immediately upon the persons and property of individuals, and not on states, extend to organizing the militia, &c. the government, as to its administration, as to making and executing laws, is not federal, but consolidated. To illustrate my idea—the union makes a requisition, and assigns to each state its quota of men or monies wanted; each state, by its own laws and officers, in its own way, furnishes its quota: here the state governments

2.8.205

stand between the union and individuals; the laws of the union operate only on states, as such, and federally: Here nothing can be done without the meetings of the state legislatures—but in the other case the union, though the state legislatures should not meet for years together, proceeds immediately, by its own laws and officers, to levy and collect monies of individuals, to inlist men, form armies, &c. [H]ere the laws of the union operate immediately on the body of the people, on persons and property; in the same manner the laws of one entire consolidated government operate.—These two modes are very distinct, and in their operation and consequences have directly opposite tendencies: The first makes the existence of the state governments indispensable, and throws all the detail business of levying and collecting the taxes, &c. into the hands of those governments, and into the hands, of course, of many thousand officers solely created by, and dependent on the state. The last entirely excludes the agency of the respective states, and throws the whole business of levying and collecting taxes, &c. into the hands of many thousand officers solely created by, and dependent upon the union, and makes the existence of the state government of no consequence in the case. It is true, congress in raising any given sum in direct taxes, must by the constitution, raise so much of it in one state, and so much in another, by a fixed rule, which most of the states some time since agreed to: But this does not effect the principle in question, it only secures each state against any arbitrary proportions. The federal mode is perfectly safe and eligible, founded in the true spirit of a confederated republic; there could be no possible exception to it, did we not find by experience, that the states will sometimes neglect to comply with the reasonable requisitions of the union. It being according to the fundamental principles of federal republics, to raise men and monies by requisitions, and for the states individually to organize and train the militia, I conceive, there can be no reason whatever for departing from them, except this, that the states sometimes neglect to comply with reasonable requisitions, and that it is dangerous to attempt to compel a delinquent state by force, as it may often produce a war. We ought, therefore, to enquire attentively, how extensive the evils to be guarded against are, and cautiously limit the remedies to the extent of the evils. I am not about to defend the confederation, or to charge the proposed constitution with imperfections not in it; but we ought to examine facts, and strip them of the false colourings often given them by incautious observations, by unthinking or designing men. We ought to premise, that laws for raising men and monies, even in consolidated governments, are not often punctually complied with. Historians, except in extraordinary cases, but very seldom take notice of the detail collection of taxes; but these facts we have fully proved, and well attested; that the most energetic governments have relinquished taxes frequently, which were of many years standing. These facts amply prove, that taxes assessed, have remained many years uncollected. I agree there have been instances in the republics of Greece,

Holland &c. in the course of several centuries, of states neglecting to pay their quotas of requisitions; but it is a circumstance certainly deserving of attention, whether these nations which have depended on requisitions principally for their defence, have not raised men and monies nearly as punctually as entire governments, which have taxed directly; whether we have not found the latter as often distressed for the want of troops and monies as the former. It has been said that the Amphictionic council, and the Germanic head, have not possessed sufficient powers to controul the members of the republic in a proper manner. Is this, if true, to be imputed to requisitions? Is it not principally to be imputed to the unequal powers of those members, connected with this important circumstance, that each member possessed power to league itself with foreign powers, and powerful neighbours, without the consent of the head. After all, has not the Germanic body a government as good as its neighbours in general? and did not the Grecian republic remain united several centuries, and form the theatre of human greatness? No government in Europe has commanded monies more plentifully than the government of Holland. As to the United States, the separate states lay taxes directly, and the union calls for taxes by way of requisitions; and is it a fact, that more monies are due in proportion on requisitions in the United States, than on the state taxes directly laid?—It is but about ten years since congress begun to make requisitions, and in that time, the monies, &c. required, and the bounties given for men required of the states, have amounted, specie value, to about 36 millions dollars, about 24 millions of dollars of which have been actually paid; and a very considerable part of the 12 millions not paid, remains so not so much from the neglect of the states, as from the sudden changes in paper money, &c. which in a great measure rendered payments of no service, and which often induced the union indirectly to relinquish one demand, by making another in a different form. Before we totally condemn requisitions, we ought to consider what immense bounties the states gave, and what prodigious exertions they made in the war, in order to comply with the requisitions of congress; and if since the peace they have been delinquent, ought we not carefully to enquire, whether that delinquency is to be imputed solely to the nature of requisitions? ought it not in part to be imputed to two other causes? I mean first, an opinion, that has extensively prevailed, that the requisitions for domestic interest have not been founded on just principles; and secondly, the circumstance, that the government itself, by proposing imposts, &c. has departed virtually from the constitutional system; which proposed changes, like all changes proposed in government, produce an inattention and negligence in the execution of the government in being.

I am not for depending wholly on requisitions; but I mention these few facts to shew they are not so totally futile as many pretend. For the truth of many of these facts I appeal to the public records; and for the truth of the others, I appeal to many republican characters, who are best informed in the 2.8.206

affairs of the United States. Since the peace, and till the convention reported, the wisest men in the United States generally supposed, that certain limited funds would answer the purposes of the union: and though the states are by no means in so good a condition as I wish they were, yet, I think, I may very safely affirm, they are in a better condition than they would be had congress always possessed the powers of taxation now contended for. The fact is admitted, that our federal government does not possess sufficient powers to give life and vigor to the political system; and that we experience disappointments, and several inconveniencies; but we ought carefully to distinguish those which are merely the consequences of a severe and tedious war, from those which arise from defects in the federal system. There has been an entire revolution in the United States within thirteen years, and the least we can compute the waste of labour and property at, during that period, by the war, is three hundred million of dollars. Our people are like a man just recovering from a severe fit of sickness. It was the war that disturbed the course of commerce, introduced floods of paper money, the stagnation of credit, and threw many valuable men out of steady business. From these sources our greatest evils arise; men of knowledge and reflection must perceive it;—but then, have we not done more in three or four years past, in repairing the injuries of the war, by repairing houses and estates, restoring industry, frugality, the fisheries, manufactures, &c. and thereby laying the foundation of good government, and of indiviudal and political happiness, than any people ever did in a like time; we must judge from a view of the country and facts, and not from foreign newspapers, or our own, which are printed chiefly in the commercial towns, where imprudent living, imprudent importations, and many unexpected disappointments, have produced a despondency, and a disposition to view every thing on the dark side. Some of the evils we feel, all will agree, ought to be imputed to the defective administration of the governments. From these and various considerations, I am very clearly of opinion, that the evils we sustain, merely on account of the defects of the confederation, are but as a feather in the balance against a mountain, compared with those which would, infallibly, be the result of the loss of general liberty, and that happiness men enjoy under a frugal, free, and mild government.

2.8.207 Heretofore we do not seem to have seen danger any where, but in giving power to congress, and now no where but in congress wanting powers; and, without examining the extent of the evils to be remedied, by one step, we are for giving up to congress almost all powers of any importance without limitation. The defects of the confederation are extravagantly magnified, and every species of pain we feel imputed to them: and hence it is inferred, there must be a total change of the principles, as well as forms of government: and in the main point, touching the federal powers, we rest all on a logical inference, totally inconsistent with experience and sound political reasoning.[125]

It is said, that as the federal head must make peace and war, and provide for the common defence, it ought to possess all powers necessary to that end: that powers unlimited, as to the purse and sword, to raise men and monies, and form the militia, are necessary to that end; and, therefore, the federal head ought to possess them. This reasoning is far more specious than solid: it is necessary that these powers so exist in the body politic, as to be called into exercise whenever necessary for the public safety; but it is by no means true, that the man, or congress of men, whose duty it more immediately is to provide for the common defence, ought to possess them without limitation. But clear it is, that if such men, or congress, be not in a situation to hold them without danger to liberty, he or they ought not to possess them. It has long been thought to be a well founded position, that the purse and sword ought not to be placed in the same hands in a free government. Our wise ancestors have carefully separated them—placed the sword in the hands of their king, even under considerable limitations, and the purse in the hands of the commons alone: yet the king makes peace and war, and it is his duty to provide for the common defence of the nation. This authority at least goes thus far—that a nation, well versed in the science of government, does not conceive it to be necessary or expedient for the man entrusted with the common defence and general tranquility, to possess unlimitedly the powers in question, or even in any considerable degree. Could he, whose duty it is to defend the public, possess in himself independently, all the means of doing it consistent with the public good, it might be convenient: but the people of England know that their liberties and happiness would be in infinitely greater danger from the king's unlimited possession of these powers, than from all external enemies and internal commotions to which they might be exposed: therefore, though they have made it his duty to guard the empire, yet they have wisely placed in other hands, the hands of their representatives, the power to deal out and controul the means. In Holland their high mightinesses must provide for the common defence, but for the means they depend, in a considerable degree, upon requisitions made on the state or local assemblies. Reason and facts evince, that however convenient it might be for an executive magistrate, or federal head, more immediately charged with the national defence and safety, solely, directly, and independently to possess all the means; yet such magistrate, or head, never ought to possess them, if thereby the public liberties shall be endangered. The powers in question never have been, by nations wise and free, deposited, nor can they ever be, with safety, any where, but in the principal members of the national system;—where these form one entire government, as in Great-Britain, they are separated and lodged in the principal members of it. But in a federal republic, there is quite a different organization; the people form this kind of government, generally, because their territories are too extensive to admit of their assembling in one legislature, or of executing the laws on free principles under one entire govern- 2.8.208

ment. They convene in their local assemblies, for local purposes, and for managing their internal concerns, and unite their states under a federal head for general purposes. It is the essential characteristic of a confederated republic, that this head be dependant on, and kept within limited bounds by, the local governments; and it is because, in these alone, in fact, the people can be substantially assembled or represented. It is, therefore, we very universally see, in this kind of government, the congressional powers placed in a few hands, and accordingly limited, and specifically enumerated: and the local assemblies strong and well guarded, and composed of numerous members. Wise men will always place the controuling power where the people are substantially collected by their representatives. By the proposed system, the federal head will possess, without limitation, almost every species of power that can, in its exercise, tend to change the government, or to endanger liberty; while in it, I think it has been fully shewn, the people will have but the shadow of representation, and but the shadow of security for their rights and liberties. In a confederated republic, the division of representation, &c. in its nature, requires a correspondent division and deposit of powers relative to taxes and military concerns: and I think the plan offered stands quite alone, in confounding the principles of governments in themselves totally distinct. I wish not to exculpate the states for their improper neglects in not paying their quotas of requisitions; but, in applying the remedy, we must be governed by reason and facts. It will not be denied, that the people have a right to change the government when the majority chuse it, if not restrained by some existing compact—that they have a right to displace their rulers, and consequently to determine when their measures are reasonable or not—and that they have a right, at any time, to put a stop to those measures they may deem prejudicial to them, by such forms and negatives as they may see fit to provide. From all these, and many other well founded considerations, I need not mention, a question arises, what powers shall there be delegated to the federal head, to insure safety, as well as energy, in the government? I think there is a safe and proper medium pointed out by experience, by reason, and facts. When we have organized the government, we ought to give power to the union, so far only as experience and present circumstances shall direct, with a reasonable regard to time to come. Should future circumstances, contrary to our expectations, require that further powers be transferred to the union, we can do it far more easily, than get back those we may now imprudently give. The system proposed is untried: candid advocates and opposers admit, that it is, in a degree, a mere experiment, and that its organization is weak and imperfect; surely then, the safe ground is cautiously to vest power in it, and when we are sure we have given enough for ordinary exigencies, to be extremely careful how we delegate powers, which, in common cases, must necessarily be useless or abused, and of very uncertain effect in uncommon ones.

By giving the union power to regulate commerce, and to levy and collect taxes by imposts, we give it an extensive authority, and permanent productive funds, I believe quite as adequate to the present demands of the union, as exises and direct taxes can be made to the present demands of the separate states. The state governments are now about four times as expensive as that of the union; and their several state debts added together, are nearly as large as that of the union—Our impost duties since the peace have been almost as productive as the other sources of taxation, and when under one general system of regulations, the probability is, that those duties will be very considerably increased: Indeed the representation proposed will hardly justify giving to congress unlimited powers to raise taxes by imposts, in addition to the other powers the union must necessarily have. It is said, that if congress possess only authority to raise taxes by imposts, trade probably will be overburdened with taxes, and the taxes of the union be found inadequate to any uncommon exigencies: To this we may observe, that trade generally finds its own level, and will naturally and necessarily leave off any undue burdens laid upon it: further, if congress alone possess the impost, and also unlimited power to raise monies by excises and direct taxes, there must be much more danger that two taxing powers, the union and states, will carry excises and direct taxes to an unreasonable extent, especially as these have not the natural boundaries taxes on trade have. However, it is not my object to propose to exclude congress from raising monies by internal taxes, as by duties, excises, and direct taxes, but my opinion is, that congress, especially in its proposed organization, ought not to raise monies by internal taxes, except in strict conformity to the federal plan; that is, by the agency of the state governments in all cases, except where a state shall neglect, for an unreasonable time, to pay its quota of a requisition; and never where so many of the state legislatures as represent a majority of the people, shall formally determine an excise law or requisition is improper, in their next session after the same be laid before them. We ought always to recollect that the evil to be guarded against is found by our own experience, and the experience of others, to be mere neglect in the states to pay their quotas; and power in the union to levy and collect the neglecting states' quotas with interest, is fully adequate to the evil. By this federal plan, with this exception mentioned, we secure the means of collecting the taxes by the usual process of law, and avoid the evil of attempting to compel or coerce a state; and we avoid also a circumstance, which never yet could be, and I am fully confident never can be, admitted in a free federal republic; I mean a permanent and continued system of tax laws of the union, executed in the bowels of the states by many thousand officers, dependent as to the assessing and collecting federal taxes, solely upon the union. On every principle then, we ought to provide, that the union render an exact account of all monies raised by imposts and other taxes; and that whenever monies shall be wanted for the purposes of the union, beyond the

2.8.209

proceeds of the impost duties, requisitions shall be made on the states for the monies so wanted; and that the power of laying and collecting shall never be exercised, except in cases where a state shall neglect, a given time, to pay its quota. This mode seems to be strongly pointed out by the reason of the case, and spirit of the government; and I believe, there is no instance to be found in a federal republic, where the congressional powers ever extended generally to collecting monies by direct taxes or excises. Creating all these restrictions, still the powers of the union in matters of taxation, will be too unlimited; further checks, in my mind, are indispensably necessary. Nor do I conceive, that as full a representation as is practicable in the federal government, will afford sufficient security: the strength of the government, and the confidence of the people, must be collected principally in the local assemblies; every part or branch of the federal head must be feeble, and unsafely trusted with large powers. A government possessed of more power than its constituent parts will justify, will not only probably abuse it, but be unequal to bear its own burden; it may as soon be destroyed by the pressure of power, as languish and perish for want of it.

2.8.210 There are two ways further of raising checks, and guarding against undue combinations and influence in a federal system. The first is, in levying taxes, raising and keeping up armies, in building navies, in forming plans for the militia, and in appropriating monies for the support of the military, to require the attendance of a large proportion of the federal representatives, as two-thirds or three-fourths of them; and in passing laws, in these important cases, to require the consent of two-thirds or three-fourths of the members present. The second is, by requiring that certain important laws of the federal head, as a requisition or a law for raising monies by excise shall be laid before the state legislatures, and if disapproved of by a given number of them, say by as many of them as represent a majority of the people, the law shall have no effect. Whether it would be adviseable to adopt both, or either of these checks, I will not undertake to determine. We have seen them both exist in confederated republics. The first exists substantially in the confederation, and will exist in some measure in the plan proposed, as in chusing a president by the house, in expelling members; in the senate, in making treaties, and in deciding on impeachments, and in the whole in altering the constitution. The last exists in the United Netherlands, but in a much greater extent. The first is founded on this principle, that these important measures may, sometimes, be adopted by a bare quorum of members, perhaps, from a few states, and that a bare majority of the federal representatives may frequently be of the aristocracy, or some particular interests, connections, or parties in the community, and governed by motives, views, and inclinations not compatible with the general interest.—The last is founded on this principle, that the people will be substantially represented, only in their state or local assemblies; that their principal security must be found in them; and that, therefore, they ought to have ultimately a constitutional controul over such interesting measures.

I have often heard it observed, that our people are well informed, and will not submit to oppressive governments; that the state governments will be their ready advocates, and possess their confidence, mix with them, and enter into all their wants and feelings.[126] This is all true; but of what avail will these circumstances be, if the state governments, thus allowed to be the guardians of the people, possess no kind of power by the forms of the social compact, to stop in their passage, the laws of congress injurious to the people. State governments must stand and see the law take place; they may complain and petition—so may individuals; the members of them, in extreme cases, may resist, on the principles of self-defence—so may the people and individuals. 2.8.211

It has been observed, that the people, in extensive territories, have more power, compared with that of their rulers, than in small states.[127] Is not directly the opposite true? The people in a small state can unite and act in concert, and with vigour; but in large territories, the men who govern find it more easy to unite, while people cannot; while they cannot collect the opinions of each part, while they move to different points, and one part is often played off against the other. 2.8.212

It has been asserted, that the confederate head of a republic at best, is in general weak and dependent;—that the people will attach themselves to, and support their local governments, in all disputes with the union.[128] Admit the fact: is it any way to remove the inconvenience by accumulating powers upon a weak organization? The fact is, that the detail administration of affairs, in this mixed republics, depends principally on the local governments; and the people would be wretched without them: and a great proportion of social happiness depends on the internal administration of justice, and on internal police. The splendor of the monarch, and the power of the government are one thing. The happiness of the subject depends on very different causes: but it is to the latter, that the best men, the greatest ornaments of human nature, have most carefully attended: it is to the former tyrants and oppressors have always aimed, 2.8.213

The Federal Farmer.

XVIII

January 25, 1788.

Dear Sir,

I am persuaded, a federal head never was formed, that possessed half the powers which it could carry into full effect, altogether independently of the state or local governments, as the one, the convention has proposed, will possess. Should the state legislatures never meet, except merely for chusing federal senators and appointing electors, once in four and six years, the 2.8.214

federal head may go on for ages to make all laws relative to the following subjects, and by its own courts, officers, and provisions, carry them into full effect, and to any extent it may deem for the general welfare, that is, for *raising taxes*, borrowing and coining monies, and for applying them—for forming and governing *armies* and *navies* and for directing their operations—for regulating commerce with foreign nations, and among the several states, and with the Indian tribes—for regulating *bankruptcies*, weights and measures, post-offices and post-roads, and captures on land and water—for establishing a uniform rule of naturalization, and for promoting the progress of science and useful arts—for defining and punishing piracies and felonies committed on the high seas, the offences of counterfeiting the securities and current coin of the United States, and offences against the law of nations, and for regulating all maritime concerns—for *organizing, arming* and *disciplining* the militia (the respective states training them, and appointing the officers)—for *calling them forth* when wanted, and for governing them when in the service of the union—for the *sole and exclusive government* of a federal city or town, not exceeding ten miles square, and of places ceded for forts, magazines arsenals, dock-yards, and other needful buildings—for granting letters of marque and reprisal, and making war—for regulating the *times, places,* and *manner of holding elections* for senators and representatives—for making and concluding all treaties, and carrying them into execution—for judicially deciding all questions arising on the constitution laws, and treaties of the union, in law and equity, and questions arising on state laws also, where ambassadors, other public ministers, and consuls, where the United States, individual states, or a state, where *citizens of different states*, and where foreign states, or a *foreign subject*, are parties or party—for impeaching and trying federal officers—for deciding on elections, and for expelling members, &c. All these enumerated powers we must examine and contemplate in all their extent and various branches, and then reflect, that the federal head will have full power to make all laws whatever respecting them; and for carrying into full effect all powers vested in the union, in any department, or officers of it, by the constitution, in order to see the full extent of the federal powers, which will be supreme, and exercised by that head at pleasure, conforming to the few limitations mentioned in the constitution. Indeed, I conceive, it is impossible to see them in their full extent at present: we see vast undefined powers lodged in a weak organization, but cannot, by the enquiries of months and years, clearly discern them in all their numerous branches. These powers in feeble hands, must be tempting objects for ambition and a love of power and fame.

2.8.215 But, say the advocates, they are all necessary for forming an energetic federal government; all necessary in the hands of the union, for the common defence and general welfare. In these great points they appear to me to go from the end to the means, and from the means to the end, perpetually begging the question.[129] I think in the course of these letters, I shall

sufficiently prove, that some of these powers need not be lodged in the hands of the union—that others ought to be exercised under better checks, and in part, by the agency of the states—some I have already considered, some in my mind, are not liable to objections, and the others, I shall briefly notice in this closing letter.

The power to controul the military forces of the country, as well as the revenues of it, requires serious attention. Here again I must premise, that a federal republic is a compound system, made up of constituent parts, each essential to the whole: we must then expect the real friends of such a system will always be very anxious for the security and preservation of each part, and to this end, that each constitutionally possess its natural portion of power and influence—and that it will constantly be an object of concern to them, to see one part armed at all points by the constitution, and in manner destructive in the end, even of its own existence, and the others left constitutionally defenceless. 2.8.216

The military forces of a free country may be considered under three general descriptions—1. The militia. 2. the navy—and 3. the regular troops—and the whole ought ever to be, and understood to be, in strict subordination to the civil authority; and that regular troops, and select corps, ought not to be kept up without evident necessity. Stipulations in the constitution to this effect, are perhaps, too general to be of much service, except merely to impress on the minds of the people and soldiery, that the military ought ever to be subject to the civil authority, &c. But particular attention, and many more definite stipulations, are highly necessary to render the military safe, and yet useful in a free government; and in a federal republic, where the people meet in distinct assemblies, many stipulations are necessary to keep a part from transgressing, which would be unnecessary checks against the whole met in one legislature, in one entire government.—A militia, when properly formed, are in fact the people themselves, and render regular troops in a great measure unnecessary. The powers to form and arm the militia, to appoint their officers, and to command their services, are very important; nor ought they in a confederated republic to be lodged, solely, in any one member of the government. First, the constitution ought to secure a genuine and guard against a select militia, by providing that the militia shall always be kept well organized, armed, and disciplined, and include, according to the past and general usage of the states, all men capable of bearing arms; and that all regulations tending to render this general militia useless and defenceless, by establishing select corps of militia, or distinct bodies of military men, not having permanent interests and attachments in the community to be avoided. I am persuaded, I need not multiply words to convince you of the value and solidity of this principle, as it respects general liberty, and the duration of a free and mild government: having this principle well fixed by the constitution, then the federal head may prescribe a general uniform plan, on which the respective 2.8.217

states shall form and train the militia, appoint their officers and solely manage them, except when called into the service of the union, and when called into that service, they may be commanded and governed by the union. This arrangement combines energy and safety in it; it places the sword in the hands of the solid interest of the community, and not in the hands of men destitute of property, of principle, or of attachment to the society and government, who often form the select corps of peace or ordinary establishments: by it, the militia are the people, immediately under the management of the state governments, but on a uniform federal plan, and called into the service, command, and government of the union, when necessary for the common defence and general tranquility. But, say gentlemen, the general militia are for the most part employed at home in their private concerns, cannot well be called out, or be depended upon; that we must have a select militia; that is, as I understand it, particular corps or bodies of young men, and of men who have but little to do at home, particularly armed and disciplined in some measure, at the public expence, and always ready to take the field. These corps, not much unlike regular troops, will ever produce an inattention to the general militia; and the consequence has ever been, and always must be, that the substantial men, having families and property, will generally be without arms, without knowing the use of them, and defenceless; whereas, to preserve liberty, it is essential that the whole body of the people always possess arms, and be taught alike, especially when young, how to use them; nor does it follow from this, that all promiscuously must go into actual service on every occasion. The mind that aims at a select militia, must be influenced by a truly anti-republican principle; and when we see many men disposed to practice upon it, whenever they can prevail, no wonder true republicans are for carefully guarding against it. As a farther check, it may be proper to add, that the militia of any state shall not remain in the service of the union, beyond a given period, without the express consent of the state legislature.

2.8.218 As to the navy, I do not see that it can have any connection with the local governments. The want of employment for it, and the want of monies in the hands of the union, must be its proper limitation. The laws for building or increasing it, as all the important laws mentioned in a former letter, touching military and money matters, may be checked by requiring the attendance of a large proportion of the representatives, and the consent of a large proportion of those present, to pass them as before mentioned.

2.8.219 By art. 1. sect. 8. "Congress shall have *power to provide for* organizing, arming, and discipling the militia": *power to provide for*—does this imply any more than power to prescribe a general uniform plan? And must not the respective states pass laws (but in conformity to the plan) for forming and training the militia.

2.8.220 In the present state of mankind, and of conducting war, the government of every nation must have power to raise and keep up regular troops: the

question is, how shall this power be lodged? In an entire government, as in Great-Britain, where the people assemble by their representatives in one legislature, there is no difficulty, it is of course properly lodged in that legislature: But in a confederated republic, where the organization consists of a federal head, and local governments, there is no one part in which it can be solely, and safely lodged. By art. 1. sect. 8. "congress shall have power to raise and support armies," &c. By art. 1 sect. 10. "no state, without the consent of congress, shall keep troops, or ships of war, in time of peace." It seems fit the union should direct the raising of troops, and the union may do it in two ways; by requisitions on the states, or by direct taxes—the first is most conformable to the federal plan, and safest; and it may be improved, by giving the union power, by its own laws and officers, to raise the states quota that may neglect, and to charge it with the expence; and by giving a fixed quorum of the state legislatures power to disapprove the requisition. There would be less danger in this power to raise troops, could the state governments keep a proper controul over the purse and over the militia; but after all the precautions we can take, without evidently fettering the union too much, we must give a large accumulation of powers to it, in these and other respects. There is one check, which, I think, may be added with great propriety—that is, no land forces shall be kept up, but by legislative acts annually passed by congress, and no appropriation of monies for their support shall be for a longer term than one year. This is the constitutional practice in Great-Britain, and the reasons for such checks in the United States appear to be much stronger. We may also require that these acts be passed by a special majority, as before mentioned. There is another mode still more guarded, and which seems to be founded in the true spirit of a federal system: it seems proper to divide those powers we can with safety, lodge them in no one member of the government alone; yet substantially to preserve their use, and to ensure duration to the government, by modifying the exercise of them—it is to empower congress to raise troops by direct levies, not exceeding a given number, say 2000 in time of peace, and 12,000 in a time of war, and for such further troops as may be wanted, to raise them by requisitions qualified as before mentioned. By the above recited clause no state shall keep troops, &c. in time of peace—this clearly implies, it may do it in time of war: this must be on the principle, that the union cannot defend all parts of the republic, and suggests an idea very repugnant to the general tendency of the system proposed, which is to disarm the state governments: a state in a long war may collect forces sufficient to take the field against the neighbouring states. This clause was copied from the confederation, in which it was of more importance than in the plan proposed, because under this the separate states, probably, will have but small revenues.

By article 1. section 8. congress shall have power to establish uniform laws on the subject of bankruptcies, throughout the United States. It is to be observed, that the separate states have ever been in possession of the 2.8.221

power, and in the use of it, of making bankrupt laws, militia laws, and laws in some other cases, respecting which, the new constitution, when adopted, will give the union power to legislate, &c.—but no words are used by the constitution to exclude the jurisdiction of the several states, and whether they will be excluded or not, or whether they and the union will have concurrent jurisdiction or not, must be determined by inference; and from the nature of the subject; if the power, for instance, to make uniform laws on the subject of bankruptcies, is in its nature indivisible, or incapable of being exercised by two legislatures independently, or by one in aid of the other, then the states are excluded, and cannot legislate at all on the subject, even though the union should neglect or find it impracticable to establish uniform bankrupt laws. How far the union will find it practicable to do this, time only can fully determine. When we consider the extent of the country, and the very different ideas of the different parts in it, respecting credit, and the mode of making men's property liable for paying their debts, we may, I think, with some degree of certainty, conclude that the union never will be able to establish such laws; but if practicable, it does not appear to me, on further reflection, that the union ought to have the power;[130] it does not appear to me to be a power properly incidental to a federal head, and, I believe, no one ever possessed it; it is a power that will immediately and extensively interfere with the internal police of the separate states, especially with their administering justice among their own citizens. By giving this power to the union, we greatly extend the jurisdiction of the federal judiciary, as all questions arising on bankrupt laws, being laws of the union, even between citizens of the same state, may be tried in the federal courts; and I think it may be shewn, that by the help of these laws, actions between citizens of different states, and the laws of the federal city, aided by no overstrained judicial fictions, almost all civil causes may be drawn into those courts. We must be sensible how cautious we ought to be in extending unnecessarily the jurisdiction of those courts, for reasons I need not repeat. This article of power too, will considerably increase, in the hands of the union, an accumulation of powers, some of a federal and some of a unfederal nature, too large without it.

2.8.222 The constitution provides, that congress shall have the sole and exclusive government of what is called the federal city, a place not exceeding ten miles square, and of all places ceded for forts, dock-yards, &c. I believe this is a novel kind of provision in a federal republic; it is repugnant to the spirit of such a government, and must be founded in an apprehension of a hostile disposition between the federal head and the state governments; and it is not improbable, that the sudden retreat of congress from Philadelphia, first gave rise to it.—With this apprehension, we provide, the government of the union shall have secluded places, cities, and castles of defence, which no state laws whatever shall invade. When we attentively examine this provision in all its consequences, it opens to view scenes almost without bounds. A

federal, or rather a national city, ten miles square, containing a hundred square miles, is about four times as large as London; and for forts, magazines, arsenals, dock-yards, and other needful buildings, congress may possess a number of places or towns in each state. It is true, congress cannot have them unless the state legislatures cede them; but when once ceded, they never can be recovered, and though the general temper of the legislatures may be averse to such cessions, yet many opportunities and advantages may be taken of particular times and circumstances of complying assemblies, and of particular parties, to obtain them. It is not improbable, that some considerable towns or places, in some intemperate moments, or influenced by anti-republican principles, will petition to be ceded for the purposes mentioned in the provision. There are men, and even towns, in the best republics, which are often fond of withdrawing from the government of them, whenever occasion shall present. The case is still stronger; if the provision in question holds out allurements to attempt to withdraw, the people of a state must ever be subject to state as well as federal taxes; but the federal city and places will be subject only to the latter, and to them by no fixed proportion, nor of the taxes raised in them, can the separate states demand any account of congress.—These doors opened for withdrawing from the state governments entirely, may, on other accounts, be very alluring and pleasing to those anti-republican men who prefer a place under the wings of courts.

If a federal town be necessary for the residence of congress and the public officers, it ought to be a small one, and the government of it fixed on republican and common law principles, carefully enumerated and established by the constitution. It is true, the states, when they shall cede places, may stipulate, that the laws and government of congress in them, shall always be formed on such principles; but it is easy to discern, that the stipulations of a state, or of the inhabitants of the place ceded, can be of but little avail against the power and gradual encroachments of the union. The principles ought to be established by the federal constitution, to which all the states are parties; but in no event can there be any need of so large a city and places for forts, &c. totally exempted from the laws and jurisdictions of the state governments. If I understand the constitution, the laws of congress, constitutionally made, will have complete and supreme jurisdiction to all federal purposes, on every inch of ground in the United States, and exclusive jurisdiction on the high seas, and this by the highest authority, the consent of the people. Suppose ten acres at West-Point shall be used as a fort of the union, or a sea port town as a dock-yard, the laws of the union in those places respecting the navy, forces of the union, and all federal objects, must prevail, be noticed by all judges and officers, and executed accordingly: and I can discern no one reason for excluding from these places, the operation of state laws, as to mere state purposes; for instance, for the collection of state taxes in them, recovering debts, deciding questions of

2.8.223

property arising within them on state laws, punishing, by state laws, theft, trespasses, and offences committed in them by mere citizens against the state laws.

2.8.224 The city, and all the places in which the union shall have this exclusive jurisdiction, will be immediately under one entire government, that of the federal head; and be no part of any state, and consequently no part of the United States. The inhabitants of the federal city and places, will be as much exempt from the laws and controul of the state governments, as the people of Canada or Nova Scotia will be. Neither the laws of the states respecting taxes, the militia, crimes or property, will extend to them; nor is there a single stipulation in the constitution, that the inhabitants of this city, and these places, shall be governed by laws founded on principles of freedom. All questions, civil and criminal, arising on the laws of these places, which must be the laws of congress, must be decided in the federal courts; and also, all questions that may, by such judicial fictions as these courts may consider reasonable, be supposed to arise within this city, or any of these places, may be brought into these courts; and by a very common legal fiction, any personal contract may be supposed to have been made in any place. A contract made in Georgia may be supposed to have been made in the federal city, in Pennsylvania; the courts will admit the fiction, and not in these cases, make it a serious question, where it was in fact made. Every suit in which an inhabitant of a federal district may be a party, of course may be instituted in the federal courts—also, every suit in which it may be alledged, and not denied, that a party in it is an inhabitant of such a district—also, every suit to which a foreign state or subject, the union, a state, citizens of different states, in fact, or by reasonable legal fictions, may be a party or parties: And thus, by means of bankrupt laws, federal districts, &c. almost all judicial business, I apprehend may be carried into the federal courts, without essentially departing from the usual course of judicial proceedings.[131] The courts in Great Britain have acquired their powers, and extended, very greatly, their jurisdictions by such fictions and suppositions as I have mentioned. The constitution, in these points, certainly involves in it principles, and almost hidden cases, which may unfold, and in time exhibit consequences we hardly think of. The power of naturalization, when viewed in connection with the judicial powers and cases, is, in my mind, of very doubtful extent. By the constitution itself, the citizens of each state will be naturalized citizens of every state, to the general purposes of instituting suits, claiming the benefits of the laws, &c. And in order to give the federal courts jurisdiction of an action, between citizens of the same state, in common acceptation, may not a court allow the plaintiff to say, he is a citizen of one state, and the defendant a citizen of another, without carrying legal fictions so far, by any means, as they have been carried by the courts of King's Bench and Exchequer, in order to bring causes within their cognizance—Further, the federal city and districts, will be totally distinct

from any state, and a citizen of a state will not of course be a subject of any of them; and to avail himself of the privileges and immunities of them, must he not be naturalized by congress in them? and may not congress make any proportion of the citizens of the states naturalized subjects of the federal city and districts, and thereby entitle them to sue or defend, in all cases, in the federal courts? I have my doubts, and many sensible men, I find, have their doubts, on these points; and we ought to observe, they must be settled in the courts of law, by their rules, distinctions, and fictions. To avoid many of these intricacies and difficulties, and to avoid the undue and unnecessary extension of the federal judicial powers, it appears to me, that no federal districts ought to be allowed, and no federal city or town, except perhaps a small town, in which the government shall be republican, but in which congress shall have no jurisdiction over the inhabitants, but in common with the other inhabitants of the states. Can the union want, in such a town, any thing more than a right to the soil on which it may set its buildings, and extensive jurisdiction over the federal buildings, and property, its own members, officers, and servants in it? As to all federal objects, the union will have complete jurisdiction over them, of course any where, and every where. I still think, that no actions ought to be allowed to be brought in the federal courts, between citizens of different states, at least, unless the cause be of very considerable importance: that no action against a state government, by any citizen or foreigner, ought to be allowed; and no action, in which a foreign subject is party, at least, unless it be of very considerable importance, ought to be instituted in the federal courts—I confess, I can see no reason whatever, for a foreigner, or for citizens of different states, carrying sixpenny causes into the federal courts; I think the state courts will be found by experience, to be bottomed on better principles, and to administer justice better than the federal courts.

The difficulties and dangers I have supposed, will result from so large a federal city, and federal districts, from the extension of the federal judicial powers, &c. are not, I conceive, merely possible, but probable. I think, pernicious political consequences will follow from them, and from the federal city especially, for very obvious reasons, a few of which I will mention. 2.8.225

We must observe, that the citizens of a state will be subject to state as well as federal taxes, and the inhabitants of the federal city and districts, only to such taxes as congress may lay—We are not to suppose all our people are attached to free government, and the principles of the common law, but that many thousands of them will prefer a city governed, not on republican principles—This city, and the government of it, must indubitably take their tone from the characters of the men, who from the nature of its situation and institution, must collect there. This city will not be established for productive labour, for mercantile, or mechanic industry; but for the residence of government, its officers and attendants. If hereafter it should ever become a place of trade and industry, in the early periods of its exis- 2.8.226

tence, when its laws and government must receive their fixed tone, it must be a mere court, with its appendages, the executive, congress, the law courts, gentlemen of fortune and pleasure, with all the officers, attendants, suitors, expectants and dependants on the whole, however brilliant and honourable this collection may be, if we expect it will have any sincere attachments to simple and frugal republicanism, to that liberty and mild government, which is dear to the laborious part of a free people, we most assuredly deceive ourselves. This early collection will draw to it men from all parts of the country, of a like political description: we see them looking towards the place already.

2.8.227 Such a city, or town, containing a hundred square miles, must soon be the great, the visible, and dazzling centre, the mistress of fashions, and the fountain of politics. There may be a free or shackled press in this city, and the streams which may issue from it may overflow the country, and they will be poisonous or pure, as the fountain may be corrupt or not. But not to dwell on a subject that must give pain to the virtuous friends of freedom, I will only add, can a free and enlightened people create a common head so extensive, so prone to corruption and slavery, as this city probably will be, when they have it in their power to form one pure and chaste, frugal and republican.

2.8.228 Under the confederation congress has no power whereby to govern its own officers and servant[s]; a federal town, in which congress might have special jurisdiction, might be expedient; but under the new constitution, without a federal town, congress will have all necessary powers of course over its officers and servants; indeed it will have a complete system of powers to all the federal purposes mentioned in the constitution; so that the reason for a federal town under the confederation, will by no means exist under the constitution.—Even if a trial by jury should be admitted in the federal city, what man, with any state attachments or republican virtue about him, will submit to be tried by a jury of it.

2.8.229 I might observe more particularly upon several other parts of the constitution proposed; but it has been uniformly my object in examining a subject so extensive, and difficult in many parts to be illustrated, to avoid unimportant things, and not to dwell upon points not very material. The rule for apportioning requisitions on the states, having some time since been agreed to by eleven states, I have viewed as settled. The stipulation that congress, after twenty one years may prohibit the importation of slaves, is a point gained, if not so favourable as could be wished for. As monopolies in trade perhaps, can in no case be useful, it might not be amiss to provide expressly against them. I wish the power to reprieve and pardon was more cautiously lodged, and under some limitations. I do not see why congress should be allowed to consent that a person may accept a present, office, or title of a foreign prince, &c. As the state governments, as well as the federal, are essential parts of the system, why should not the oath taken by the officers be expressly to support the whole? As to debts due to and from the

union, I think the constitution intends, on examining art. 4. sect. 8. and art. 6. that they shall stand on the same ground under the constitution as under the confederation. In the article respecting amendments, it is stipulated, that no state shall ever be deprived of its equal vote in the senate without its consent; and that alterations may be made by the consent of three-fourths of the states. Stipulations to bind the majority of the people may serve one purpose, to prevent frequent motions for change; but these attempts to bind the majority, generally give occasion for breach of contract. The states all agreed about seven years ago, that the confederation should remain unaltered, unless every state should agree to alterations: but we now see it agreed by the convention, and four states, that the old confederacy shall be destroyed, and a new one, of nine states, be erected, if nine only shall come in. Had we agreed, that a majority should alter the confederation, a majority's agreeing would have bound the rest: but now we must break the old league, unless all the states agree to alter, or not proceed with adopting the constitution. Whether the adoption by nine states will not produce a nearly equal and dangerous division of the people for and against the constitution—whether the circumstances of the country were such as to justify the hazarding a probability of such a situation, I shall not undertake to determine. I shall leave it to be determined hereafter, whether nine states, under a new federal compact, can claim the benefits of any treaties made with a confederation of thirteen, under a distinct compact and form of existence—whether the new confederacy can recover debts due to the old confederacy, or the arrears of taxes due from the states excluded.

It has been well observed, that our country is extensive, and has no 2.8.230
external enemies to press the parts together: that, therefore, their union must depend on strong internal ties.[132] I differ with the gentlemen who make these observations only in this, they hold the ties ought to be strengthened by a considerable degree of internal consolidation, and my object is to form them and strengthen them, on pure federal principles. Whatever may be the fate of many valuable and necessary amendments in the constitution proposed, the ample discussion and respectable opposition it will receive, will have a good effect—they will operate to produce a mild and prudent administration, and to put the wheels of the whole system in motion on proper principles—they will evince, that true republican principles and attachments are still alive and formidable in this country. These, in view, I believe, even men quite disposed to make a bad use of the system, will long hesitate before they will resolve to do it. A majority, from a view of our situation, and influenced by many considerations, may acquiese in the adoption of this constitution; but, it is evident that a very great majority of the people of the United States think it, in many parts, an unnecessary and unadviseable departure from true republican and federal principles.

The Federal Farmer.

To the Republican.

1. It is intriguing to speculate why the letters begin in this way, especially since the "letters" of "last winter" could throw definitive light on the authorship; but my own speculations and search have been fruitless. There seems to be no record of any such letters or of the possible identity of the addressee, the Republican.

2. For an elaboration of the extreme parties, see I, 2.8.6–7; V, 2.8.62; VI, 2.8.68–73; VII, 2.8.97–98.

3. Alexander Pope, *Essay on Man*, epistle 3, lines 303–4. Pope's couplet was frequently discussed in the ratification literature, the classic case being the treatment in *The Federalist* no. 68, 461. See also Penn 3.12.4; [Maryland] Farmer II, 5.1.36. Generally the Anti-Federalist writers were more critical of the maxim than The Federal Farmer is here (but see III, 2.8.24–25; IX, 2.8.111; and he is specifically criticized on this point by a fellow Anti-Federalist writer, A Countryman (6.6.39). For Federalist discussions of the importance of good administration, see Poplicola 4.11.1 n.1.

4. The "critical" character of this period was not simply an invention of the Federalists or of Federalist historians. See VI, 2.8.70; Brutus I, 2.9.2; Old Whig IV, 3.3.18; Philadelphiensis I, 3.9.2.; Centinel IV, 2.7.91 n. 45.

5. The author is thinking of such men as Abraham Clark of New Jersey; Richard Caswell and Willie Jones of North Carolina; Patrick Henry, Thomas Nelson, and Richard Henry Lee of Virginia; all of whom were critics of the Constitution who had been elected to the Constitutional Convention but had declined to serve or failed to attend. See Farrand III, 557–59. Cf. Federal Farmer V, 2.8.62, and Lee's letter to Randolph, on 26 March 1787, expressing his confidence in the gentlemen appointed to the Convention (Lee, *Letters* II, 415). The discussion of the parties favoring and opposing the Constitution is continued in V, 2.8.62; VI, 2.8.68–73.

6. Pickering replied, "In the proposed Constitution there is no foundation for an aristocracy; for its officers (including in this term as well the legislative as the executive branches) do not hold their places by *hereditary* right, nor *for life*, nor by electing *one another;* neither is any portion of wealth or property a necessary qualification." Pickering and Upham, *The Life of Timothy Pickering* II, 353. However, it is not a conventional but the natural aristocracy that The Federal Farmer is concerned with. See III, 2.8.25; VII, 2.8.97.

7. Note that all of these, including the first, are described as forms under which the United States may exist *as one nation*. As Merrill Jensen says, the issue was not whether there was a "nation" before 1787. "There was a new nation, as the men of the time agreed: they disagreed as to whether the new nation should have a federal or a national government." Jensen, *New Nation* xiv. They also disagreed, however, about whether a nation *could* exist as a nation without a national government. Cf. James Wilson's similar statement of alternatives in his 24 November speech before the Pennsylvania ratifying convention. McMaster and Stone 225 ff; Elliot II, 427 ff.

8. See III, 2.8.35, where The Federal Farmer adds to the legitimate powers of the general government the regulation of trade between the states, but omits to mention the militia and bankruptcies. On bankruptcy laws, see XVIII, 2.8.221, where he concludes that the power to pass bankruptcy laws should not be given to the federal government.

9. The Federal Farmer displays a significant shift in terminology in this connection. Here he makes the then standard distinction between a federal plan, on the one side, a plan of consolidation, on the other side, and what he calls a "partial consolidation" in the middle, consisting of a combination of federal and consolidated or national principles. The distinctions are fundamentally identical to those drawn by Publius in *The Federalist* no. 39, 253–57. In his sixth essay, however, the advocates of the earlier and merely advisory "federal plan" become one kind of "pretended federalists" (the others being the advocates of the earlier "consolidation"), while the proponents of the earlier "partial consolidation" become the "true" or "honest federalists." See VI, 2.8.72. See Martin Diamond's essays, "What the Framers Meant by Federalism," *A Nation of States*, ed. Robert Goldwin, 2d ed. (Chicago 1974) 25–42; and "*The Federalists*' View of Federalism," *Essays on Federalism* (Claremont, Cal., 1961). On the characteristics of the "federal republic," see XVII, 2.8.204–5. For other important Anti-Federal discussions of the meaning of a federal system or fed-

eral republic, see Brutus I, 2.9.4–21; [Pennsylvania] Farmer 3.14.6–10; Henry 5.16.1–2; Clinton 6.13.2, 27.

10. Cf. Monroe's discussion of the desirability of consolidation if it were practicable, 5.21.12 n. 3.

11. On the question of a free and equal representation, see *The Federalist* nos. 35–36. Representation is one of The Federal Farmer's major themes. See III, 2.8.25–26, 39; V, 2.8.59–60; VI, 2.8.76–77; VII–XII, 2.8.93–165; XV, 2.8.190. The other major Anti-Federal discussions of representation will be found in Brutus I, 2.9.14–16; DeWitt 4.3.14; Cornelius 4.10.9; [Maryland] Farmer II, 5.1.22–32; V, 5.1.71–73; Chase 5.3.20; Republicus 5.13.3; Impartial Examiner 5.14.28–32.

12. On jury trials see IV, 2.8.44, 53–55; VI, 2.8.80; XV, 2.8.190–94.

13. A semicolon has been omitted here.

14. However, as Publius shrewdly argues, if the remote states share least in the circulation of the ordinary benefits of union, their exposed position gives them an unusually great dependence on the aid of the Union. The remote states get less out of the Union, but they need what they do get more, and thus the "proper equilibrium" is maintained. *The Federalist* no. 14, 87.

15. See below, n. 19.

16. See McMaster and Stone 144–45 (Wilson); Ford, *Pamphlets* 148–49 (An American Citizen), 361 (Iredell); Ford, *Essays* 165 (A Landholder), 397–98 (Hugh Williamson); Ford, *Pamphlets* 241 (Aristides). This point is made frequently by Federalists during the state ratification debates.

17. On the need for and functions of a Bill of Rights, see IV, 2.8.46–56; XVI, 2.8.196–203. On kinds of rights, see VI, 2.8.80–86.

18. Publius answers this argument (and its continuation in the next paper) in *The Federalist* no. 27. In no. 8, Publius describes in some detail an effect similar to that alluded to here by The Federal Farmer; but he derives it from a different cause, namely dissension among the states under an inadequate general government.

19. On the connection between free laws and the character of the people, see II, 2.8.18; V, 2.8.59; VII, 2.8.93–96; X, 2.8.127, 139; XVIII, 2.8.227. See also Cato III, 2.6.15–20; Centinel I, 2.7.9; Brutus I, 2.9.16; Federal Republican 3.6.21; Philadelphiensis II, 3.9.9; Turner 4.18; Columbian Patriot 4.28.2. This question is, of course, immediately connected with the question of representation; see above, n. 11.

20. An Anti-Federalist essayist, A Countryman from Dutchess County (6.6.42–64), points out that there is a substantial difficulty in the contention that good citizens should acquiesce even if essential alterations are not made.

21. On the natural aristocracy, see VI, 2.8.97.

22. A Countryman from Dutchess County makes the point, nearly always passed over even by the Anti-Federalists, that the Senate is not entirely on the federal plan, for each senator has one vote: whereas "by the present confederation, which is a union of the states, not a consolidation, *all the delegates*, from a state, have but one vote, and in the state senate, which is on the plan of consolidation, *each* senator has a vote" (6.6.45). Cf. [Pennsylvania] Farmer 3.14.14–15; Republicus 5.13.12. In the Additional Letters (XI, 2.8.143 ff) The Federal Farmer records a more favorable opinion of the "federal" basis of the senate. It should be noted that many Federalists defend the "federal" basis of the Senate as sound in principle and even assume that senators will be subject to instructions from their states. See especially Elliot II, 26 (Cabot), 47 (King); Ford, *Pamphlets* 40 (A Citizen of America), 206–7 (Fabius), 223 ff. (Aristides); Ford, *Essays* 29 (Cassius); *Pennsylvania Gazette* 30 January 1788 (A Freeman); *Virginia Independent Chronicle Extraordinary* 9 April 1788 (A Freeholder); *Maryland Journal* 1 August 1788 (Speech Intended to Have Been Delivered in Maryland Convention).

23. Publius presumably refers to The Federal Farmer when, in no. 68, 457–58, he writes that "the most plausible of [the opponents], who has appeared in print, has even deigned to admit that the election of the President is pretty well guarded." See Federal Farmer XIV, 2.8.177. James Wilson also noted that the scheme for selecting the President "is not objected to." McMaster and Stone 398. For criticism, however, see Republicus 5.13.13.

24. See Brutus IV, 2.9.48 n. 34.

25. Cf. *The Federalist* no. 35, 216–18.

26. Publius replies that if the government were interested in a system of influence, "the most certain road to the accomplishment of its aim would be to employ the State officers as much as possible, and to attach them to the Union by an accumulation of their emoluments." *The Federalist* no. 36, 228. The question of executive influence is discussed more fully and in broader terms in XIII, 2.8.166–72. Cf. Brutus III, 2.9.42 n. 29.

27. See Centinel II, 2.7.52 n. 30.

28. See Citizen of America, An Examination . . . , Ford, *Pamphlets* 49; and statement by Roger Sherman and Oliver Ellsworth, quoted by Old Whig VI, 3.3.37 and n. 35.

29. On the concurrent taxing powers of the national and state governments, see *The Federalist* nos. 32–34; no. 36, 227–29. Publius' basic argument is that a concurrent jurisdiction in this case was the only admissible substitute for an entire subordination of the states. For other Federal and Anti-Federal discussions of concurrent power to tax see McMaster and Stone 260 (Whitehill), 268–69 (Smilie); Ford, *Pamphlets* 50–51 (Webster); Ford, *Essays* 235–36 (Sherman); Elliot II, 333, 337, 372 (Smith); 339 (Williams), 346 (R. R. Livingston), 361–64 (Hamilton), 372 (Lansing); Elliot III, 306, 332 (Madison); Elliot IV, 75 (Spenser); Brutus I, 2.9.5; Old Whig VI, 3.3.33–39; Mason 5.17.1.

30. See above, n. 11.

31. The arguments here about the select militia and the *posse commitatus* versus military execution are answered directly, though not by name, in *The Federalist* no. 29, 182ff. Regarding the former, Publius professes himself perplexed how to treat the objections, but his raillery touches a sensitive point: "Where in the name of common sense are our fears to end if we may not trust our sons, our brothers, our neighbours, our fellow-citizens?" Ibid. 185.

32. On further reflection, The Federal Farmer concluded that the power to pass bankruptcy laws should not be given to the federal government. See XVIII, 2.8.221.

33. The judiciary is discussed fully in XV, 2.8.183–95. See Pickering's well-argued replies to The Federal Farmer's contentions on this head; Pickering and Upham, *The Life of Timothy Pickering* II, 359–60, 366–67.

34. See Democratic Federalist 3.5.6 n. 6.

35. See above, n. 28.

36. See above, n. 17.

37. Cf. Chief Justice Marshall's argument in *McCulloch* v. *Maryland*, 4 Wheat. 316, 403 (1819); and Publius in *The Federalist* no. 39, 253–54.

38. See Ford, *Essays* 163 (A Landholder); Ford, *Pamphlets* 77 (A Citizen of New York); *The Federalist* no. 84; Edmund Pendleton, letter to Lee, 14 June 1788, David John Mays, ed., *The Letters and Papers of Edmund Pendleton* (Charlottesville 1967) II, 532; *A Native of Virginia, Observations upon the Proposed Plan of Federal Government* (Petersburg 1787), reprinted in *The Writings of James Monroe* ed. S. M. Hamilton (1898–1903) I, 352 ff. (but not written by Monroe). For Anti-Federal rebuttals, see One of the Common People 4.8.1 n. 1; [New Hampshire] Farmer 4.17.2.

39. This argument is not entirely consistent with the preceding one, but Federalists, notably James Wilson, made them both. See [New Hampshire] Farmer 4.17.14 n. 9. See McMaster and Stone 143–44 (Wilson), 189 (Plain Truth), 377 (McKean); Ford, *Essays* 45–46 (Cassius); Ford, *Pamphlets* 242 (Aristides), 356 ff. (Iredell); Elliot IV, 259 (Pinckney). For Anti-Federal replies see Martin 2.4.38 n. 9; Brutus II, 2.9.26; Cincinnatus I, 6.1.4; DeWitt 4.3.7.

40. See Impartial Examiner 5.4.5; Henry 5.16.24. On this whole question, see Federal Farmer XVI, 2.8.196 ff.

41. See Brutus II, 2.9.30 n. 22.

42. See above, nn. 12, 16.

43. John Adams, *Defence* I, preface (*Works* IV, 290–91).

44. See VI, 2.8.71. For other Anti-Federal discussions of the ever-alert aristocracy, see [Maryland] Farmer IV, 5.1.26–32; Henry 5.16.7–8; Plebeian 6.11.2.

45. Dickinson, *Letters from a Farmer in Pennsylvania* XI.

46. See above, n. 19, and III, 2.8.39; see VI, 2.8.97; see below, n. 91. Cf. the arguments of A Citizen of America (Noah Webster) and A Landholder (Oliver Ellsworth), Ford, *Pamphlets* 57–61; Ford, *Essays* 166.

47. See above, n. 11.

48. See Pennsylvania Convention Minority 3.11.6–12; Centinel III, 2.7.70.

49. See below, Philadelphiensis I, 3.9.2–6.

50. Delaware, Pennsylvania, New Jersey.

51. On the parties, see above, n. 2; on the forms of "federalism" see above, nn. 7, 9. On Anti-Federal attacks on the framers, see Centinel III, 2.7.70.

52. The author probably refers here principally to the vigorous replies to and attacks on Mason, Gerry, and Lee made by A Landholder (Oliver Ellsworth) in a series of essays published in late 1787. See Ford, *Essays* 150–66, 173–77. A Landholder described Lee as possessing a "factious spirit" and an "implacable hatred to General Washington," and suggested that he was "the author of most of the scurrility poured out in the New York papers against the new constitution." Ford, *Essays* 161. Other Federalist writers referred to Lee, and especially to Mason and Gerry by name (all of them having published criticisms of the Constitution over their own names); but on the whole the Anti-Federalists at least equaled their opponents in personal attacks.

53. *The Letters of Junius* [Woodfall's Junius]; see VIII, 2.8.107 and n. 69.

54. "It is a pity that the expectations which actuated the authors of the existing confederation, neither have nor can be realized:—accustomed to see and admire the glorious spirit which moved all ranks of people in the most gloomy moments of the war, observing their steadfast attachment to Union, and the wisdom they so often manifested both in choosing and confiding in their rulers, those gentlemen were led to flatter themselves that the people of America only required to know what ought to be done, to do it. The amiable mistake induced them to institute a national government in such a manner, as though very fit to give advice, was yet destitute of power, and so constructed as to be very unfit to be trusted with it. They seem not to have been sensible that mere advice is a sad substitute for laws; nor to have recollected that the advice even of the allwise and best of Beings, has been always disregarded by a great majority of all the men that ever lived." A Citizen of New York [John Jay], "An Address to the People of the State of New-York," 1787, Ford, *Pamphlets* 71.

The Articles of Confederation, A Citizen of Philadelphia wrote, "was an honest and solemn covenant among our infant States, and virtue and common danger supplied its defects." McMaster and Stone 106.

55. Note that in the sequel the distinction made here is not maintained, and the list given is of "unalienable or fundamental rights in the United States" VI, 2.8.86. See II, 2.8.19, where The Federal Farmer also writes of "unalienable and fundamental rights."

56. See above, n. 19.

57. See above, n. 11.

58. The second point is not reached until letter XII, 2.8.148, at which time the numbering is abandoned.

59. See above, V, 2.8.59.

60. See above, II, 2.8.15. Publius contends that "the idea of an actual representation of all classes of the people by persons of each class is altogether visionary." *The Federalist* no. 35, 219. The Federal Farmer is not referring specifically to *The Federalist*, however, since the essay of Publius was first published on 5 January 1788, while this essay of The Federal Farmer is dated 31 December 1787.

61. Cesare Bonesana Beccaria, *An Essay on Crimes and Punishments* (London 1767), Introduction; quoted in "Address to Inhabitants of Quebec, October 26, 1774" (written by R. H. Lee), *Journals of the Continental Congress* 1, 106. This edition of Beccaria's book, like the other early English translations, followed Beccaria's original (1764) organization of chapters. Beccaria himself later accepted an improved organization made in the 1766 translation into French by André Morellet. This is the preferable text, and it is the one used in the modern collection of Beccaria's works and in a recent Library of Liberal Arts paperback edition of *On Crimes and Punishments*. Unfortunately, the specific passage here, which was quoted by the Con-

tinental Congress and by several Anti-Federalists and which was the first sentence in the original introduction, was considerably altered in the revision, making the modern editions different in this crucial respect from those available to the American founding generation. See Cesare Beccaria, *Opere*, ed. Sergie Romagnoli (Florence 1958) I, 39; II, 862–63; Cesare Beccaria, *On Crimes and Punishments*, trans. Henry Paolucci (Indianapolis 1963).

62. *The Spirit of Laws* XI, ch. 6.

63. See Ibid. II, ch. 2.

64. John Adams gave good and influential expression to the stock of ideas on the natural aristocracy upon which the Anti-Federalists drew. See his *Defence*, letter 25 (*Works* IV, 396–98). For other Anti-Federalist discussions of the natural aristocracy, see above, III, 2.8.25; Cato VI, 2.6.43; Brutus III, 2.9.42; [Maryland] Farmer II, 5.1.26–32; Smith 6.12.22 n. 24. For Federalist replies, see McMaster and Stone 335–36 (Wilson); Elliot II, 256 (Hamilton); *Carlisle Gazette* 24 October 1787 (A Citizen).

65. While the thought is a common one, I have not been able to find the specific source of the observation about merchants. Regarding the schools, John Adams wrote: "Monarchies and aristocracies are in possession of the voice and influence of every university and academy in Europe. Democracy, simple democracy, never had a patron among men of letters. Democratical mixtures in government have lost almost all the advocates they ever had out of England and America." John Adams, *Defence*, preface (*Works* IV, 289).

66. This consideration takes place in letters VIII–X, 2.8.102–42.

67. J. L. DeLolme, *The Constitution of England*, 3d. ed. (London 1781). DeLolme's ideas of balanced government are different in important respects from The Federal Farmer's. See IX, 2.8.125.

68. DeLolme, *The Constitution of England* II, ch. 6. DeLolme's emphasis is considerably different from The Federal Farmer's. Indeed, the reference here is to a footnote at the conclusion of a chapter in which DeLolme has argued the advantages of having a small, select body to represent the people.

69. *The Letters of Junius* I, letter 18.

70. Cf. *The Federalist* no. 10; Cato II, 2.6.8 n. 6.

71. DeLolme, *The Constitution of England* II, ch. 5.

72. The Federalists do not make quite such a broad argument. But see below, n. 73, and Ford, *Pamphlets* 86 (A Citizen of New York), 123–25, 131 (A Citizen of Philadelphia); McMaster and Stone 274–75, 280 (McKean); Elliot II, 44 (Brooks), 87 (Bowdoin); Elliot III, 536–37 (Madison); *Gazette of the State of Georgia* 15 November 1787 (Demosthenes Minor); *Virginia Independent Chronicle* 2 April 1788 (Cassius). Cf. Martin 2.4.39 ff; Pennsylvania Convention Minority 3.11.31–37; Symmes 4.5 passim; Agrippa X, 4.6.43; XII, 4.6.58; Turner 4.18.1; Republican Federalist 4.13.21; Henry 5.16.7; Elliot III, 489 (Monroe), 494 (Mason).

73. ". . . it is a most illiberal reflection thrown out by this antifederal demagogue [Centinel] against the freemen of America, who, I trust, will always elect to this important trust men of integrity and abilities." A Federalist, McMaster and Stone 172. See *The Federalist* 35, 219; McMaster and Stone 172 (A Federalist), 193 (Plain Truth), 275 (McKean); 304, 337, 395 (Wilson); 439 (Candid); Elliot II, 257 (Hamilton); Elliot III, 372 (Madison). See Smith 6.12.34 n. 32.

74. See above, VIII, 2.8.99.

75. Cf. above, n. 11.

76. See McMaster and Stone 287–88 (Wilson), 171 (A Federalist); Ford, *Pamphlets* 169 (Fabius), 337 (Marcus); Elliot II, 38 (Dana), 273–74 (Hamilton).

77. McMaster and Stone 351–53 (Wilson), 274 (McKean), 439 (Candid); Ford, *Pamphlets* 124 (A Citizen of Philadelphia), 225 (Aristides), 360 (Marcus); Ford, *Essays* 219–20, 222–23 (A Countryman); cf. Cornelius 4.10.8–9.

78. See X, 2.8.128–29.

79. See *The Federalist* nos. 23, 26, 28, 31; Ford, *Essays* 149, 156–57 (A Landholder); McMaster and Stone 147–48, 410–11 (Wilson).

80. "While Americans remain in their present enlightened condition, and warmly attached to the cause of liberty, they cannot be enslaved. Should the general government become so lost to all sense of honor and the freedom of the people, as to attempt to enslave them, they who are the descendents of a race of men who have dethroned kings, would make an American Congress tremble, strip them of their public honors and reduce them to the lowest state of degradation." Elliot II, 169–70 (Stillman). See Ford, *Pamphlets* 55–56 (A Citizen of America). Also McMaster and Stone 136 (A Mechanic); Ford, *Essays* 166 (A Landholder); Ford, *Pamphlets* 127 (A Citizen of Philadelphia); 174, 202 (Fabius), 233, 256 (Aristides); Elliot III, 10 (Nicholas); Elliot IV, 95 (Iredell); *The Federalist* nos. 26, 28, 46, 60. See below, n. 91.

81. The Federalists seldom make quite this argument. See Ford, *Pamphlets* 152–53 (An American Citizen); cf. the views of Publius, *The Federalist* no. 28; Wilson, McMaster and Stone 147, 264; and Aristides, Ford, *Pamphlets* 255. For arguments that the states will not be destroyed because they are an indispensable part of the new government, see Centinel II, 2.7.36 n. 16.

82. See XVII, 2.8.210; *The Federalist* no. 16, 103. For other discussions of this important question see Brutus X, 2.9.128 n. 84.

83. See *The Federalist* no. 55; Ford, *Essays* 240 (A Citizen of New Haven), 152 (A Landholder); McMaster and Stone 288, 394 (Wilson).

84. See XVII, 2.8.204–5, 209–10; above, X, 2.8.128. On the insignificance of the states' functions as "boards of election" see Federal Republican 3.6.37; Pennsylvania Convention Minority 3.11.24.

85. See McMaster and Stone 192 (Plain Truth), 336 (Wilson); Ford, *Essays* 240 (A Citizen of New Haven).

86. XVII, 2.8.204–13.

87. See Ford, *Essays* 151–52 (A Landholder); McMaster and Stone 288 (Wilson); *The Federalist* no. 55, 374.

88. See *The Federalist* no. 58, 391–95. Also Ford, *Essays* 152 (A Landholder), 236 (A Citizen of New Haven); Ford, *Pamphlets* 169, 170 (Fabius); McMaster and Stone 288 (Wilson), 370 (McKean); Elliot II, 238, 253 (Hamilton).

89. Ford, *Essays* 164 (A Landholder).

90. McMaster and Stone 292 (Hartley), 305 (Wilson); Ford, *Pamphlets* 127 (A Citizen of Philadelphia); Elliot IV, 185 (Iredell); see below, n. 91.

91. See above, nn. 46, 80. See Ford, *Pamphlets* 86 (A Citizen of New York); 180, 186, 188 (Fabius); Ford, *Essays* 166 (A Landholder); Elliot II, 200 (Huntingdon); Elliot III, 14 (Nicholas), 536–37 (Madison); *Virginia Independent Chronicle* 30 January 1788 (Civis Rusticus); *State Gazette of South Carolina* 6 December 1787 (Maecenas).

92. See above, III, 2.8.28.

93. Cf. Madison's discussion of the Senate in the Constitutional Convention, Farrand I, 151–52 (7 June).

94. *The Spirit of Laws* II, ch. 2.

95. See II, 2.8.15.

96. See VI, 2.8.89.

97. On the subject of appointments, the specific subject of this and the following letters, see *The Federalist* no. 76. The broader questions treated here—especially the relations between the legislature and the executive—need to be considered in the light of Publius' full treatment of the executive in nos. 67–77.

98. See above, IX, 2.8.119–23.

99. See Ford, *Pamphlets* 140, 144 (An American Citizen), 228 (Aristides); McMaster and Stone 337 (Wilson). See also *The Federalist* no. 57, 386; no. 60, 403; and Farrand II, 283–84 (14 August; Charles Pinckney).

100. In its early deliberations the Convention accepted the provision of the Virginia resolution for ineligibility. The decisive shift toward the milder prohibition that found its way into the Constitution came on 3 September. See Farrand II, 489–92. See above, Martin 2.4.46–48.

101. See above, XI, 2.8.147.

102. Presumably Publius. Thirty-eight numbers of *The Federalist* had appeared by the date of this letter (14 January). Publius' papers on the executive did not come until the middle of March, and he was thus able to take up the contentions of The Federal Farmer.

103. See *The Federalist* no. 48; Centinel II, 2.7.50 n. 29; Lee's letter to Randolph, 5.6.

104. A certain irony here is matched by Publius in his almost opposite observation on executive power. See *The Federalist* no. 72, 456–87.

105. See above, III, 2.8.29.

106. The argument here should be compared with Publius' defense of unity in the executive. *The Federalist* nos. 71–72. The Federal Farmer's argument is the more traditional one, the immediate source of which may have been Blackstone's defense of monarchy, though The Federal Farmer of course rejects the hereditary principle. See particularly Blackstone's discussion of the royal dignity in *Commentaries on the Laws of England* I, 241.

107. Although Publius had not yet made the argument to this effect that appears in *The Federalist* no. 72, 488–89, it should be compared with The Federal Farmer's argument here. The argument was of course a very common one among the Federalists. Cf. Ford, *Essays* 234, 237 (A Citizen of New Haven); Farrand II, 53 (19 July; Gouverneur Morris); Elliot II, 320–21 (Hamilton), 293 (R. R. Livingston); Elliot III, 485–86 (Randolph); Elliot IV, 103–4 (Davie), 315 (Gen. C. C. Pinckney). The Anti-Federalist argument is well presented by Cato [South Carolina] 5.10.2.

108. Some objects of the power of the judiciary are in fact treated later in this essay, others are taken up in XVIII, 2.8.214–30, although the subject is not given separate treatment.

109. See DeLolme, *The Constitution of England* I, ch. 12, end.

110. Cf. *The Federalist* no. 78, 522–23: "Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. . . . [T]he judiciary is beyond comparison the weakest of the three departments of power. . . .[T]hough individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the executive."

111. Some Federalists argued that review of facts would be by a second jury. See A Citizen of America, Examination . . . , Ford, *Pamphlets* 53; *The Federalist* no. 81, 550. On the general issue of review of law and fact, see *A Democratic Federalist* 3.5.6 n. 6.

112. See above, n. 12.

113. See above, n. 16.

114. See *The Federalist* no. 80, 539–40.

115. On bills of rights see above, II, 2.8.19–20.

116. See above, nn. 38, 39, 40. For Federalist arguments that a bill of rights would be dangerous, see *The Federalist* no. 84, 579; McMaster and Stone 143–44, 253–54 (Wilson), 189 (Plain Truth), 296 (Yeates); Ford, *Pamphlets* 242 (Aristides), 360 (Marcus); Elliot III, 191 (Randolph), 620 (Madison); Elliot IV, 141 (Maclaine), 142 (Johnston), 149, 167 (Iredell), 316 (General Pinckney).

117. James Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone, 143–44. See Brutus II, 2.9.30 n. 22.

118. For other expressions of this important theme, see Old Whig IV, 3.3.21–24; Impartial Examiner 5.14.5, 10; Henry 5.16.35–38; Delegate Who Has Catched Cold 5.19.13–17; Sentiments of Many, passim. A good statement of this view of a bill of rights is provided by Edmund Randolph in commenting on the Virginia Declaration of Rights. See Bernard Schwartz, *The Bill of Rights* (New York 1971) I, 249.

119. See II, 2.8.16 n. 12.

120. Blackstone, *Commentaries on the Laws of England* III, 379.

121. [While the precise reference has not been located, the context suggests De-

Lolme, *The Constitution of England*, perhaps II, ch. 21. See text at n. 122 below (XVI, 2.8.203), which was located in DeLolme; see also text at n. 67 (VIII, 2.8.102), where The Federal Farmer identifies DeLolme and praises him.—M.D.]

122. DeLolme, *The Constitution of England* I, ch. 3.

123. See McMaster and Stone 264, 390 (Wilson); Ford, *Pamphlets* 39 (A Citizen of America), 121 (A Citizen of Philadelphia), 207 (Fabius), 247–48 (Aristides); Ford, *Essays* 238 (A Citizen of New Haven); Elliot II, 46 (Ames); Elliot IV, 58 (Davies). Publius, it should be noted, does not acknowledge this proposition. See *The Federalist* nos. 9, 15, 39. See Centinel V, 2.7.94.

124. I, 2.8.1.

125. Cf. *The Federalist*, esp. no. 23, 147–51; no. 31, 193–96.

126. See above, n. 80.

127. See *The Federalist* no. 28, 179; cf. the argument here with *The Federalist* no. 10.

128. See *The Federalist* no. 17, 107; no. 27, 172–73; McMaster and Stone 302, 325 (Wilson), Elliot II, 46 (Ames); 239, 267, 304, 354 (Hamilton); Elliot III, 18 (Nicholas), 257–59 (Madison). Cf. below, Brutus XI, 2.9.130 n. 87.

129. See Brutus V, 2.9.58–59; VI, 2.9.77–78.

130. See above, I, 2.8.10.

131. See Brutus XII, 2.9.155–57.

132. James Wilson, Philadelphia ratifying convention, McMaster and Stone 324.

Essays of Brutus

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The essays of Brutus are among the most important Anti-Federalist writings. In clear and forceful argument Brutus takes up in a highly competent way the major Anti-Federalist themes, such as consolidation,[1] the small republic, a bill of rights, and representation.[2] He provides the best Anti-Federalist rebuttal of the powerful Federalist argument, well known in the form given it by Publius, that the federal government must be given unlimited powers to meet the unlimited contingencies implicit in its vast responsibility. He provides an extended and excellent discussion—the best in the Anti-Federalist literature—of the judiciary to be established under the Constitution and its far-reaching implications.[3] In these latter respects and in general, the *Brutus* essays are the most direct Anti-Federal confrontation of the arguments of *The Federalist*.

The essays appeared in the *New York Journal* between October 1787 and April 1788, during which time the first seventy-seven papers of *The Federalist* also appeared. They were widely reprinted and referred to; but despite their importance and high quality, they had never been reprinted in their entirety until 1971.[4]

The essays have generally been attributed to Robert Yates on the authority of Paul Leicester Ford. The attribution is somewhat questionable, Ford himself having first attributed the essays to Thomas Treadwell (as did Samuel B. Harding), then changing his mind.[5] Ford does not give the evidence for concluding that Yates was the author. As Morton Borden correctly observes, the Brutus essays are clearly superior to the essays of Sydney, which have also been attributed to Yates;[6] if, however, the latter were written by Abraham Yates, as DePauw contends,[7] that would leave the field clear for Robert as Brutus. Ford does not give the evidence on which he formed his judgment, and no evidence one way or the other has been unearthed by the present editor.[8] (This Brutus is in any case not to be confused with Brutus [Virginia] 5.15.)

There follows an extended outline of the argument of Brutus.

Introduction—Importance of decision, need for care (I, 2.9.1–3).

I. Basic question: Is confederated government best for U.S.? (I, 2.9.1–21).

A. Government proposed is, though not perfect consolidation, so close as to terminate in it (I, 2.9.4–9).
   1. It is supreme within its sphere (necessary and proper clause); so far as its powers reach, it is a complete government, not a confederation (2.9.5).
   2. Powers are ostensibly limited but extend to everything of importance (2.9.5–9).
      a. Taxing power is complete and implies or draws with it all other powers (2.9.5).
      b. Judicial power is extensive and will eclipse state courts (2.9.7).
      c. Necessary and proper clause might be interpreted to give Congress complete control over states (2.9.8–9).

(Back then to question, 2.9.10).

B. Can free government be exercised over the whole U.S. reduced to one state? No.
   1. Authority denies it (2.9.11).
   2. History denies it (2.9.12).
   3. Reason denies it (2.9.13–20).
      a. Distinction between despotic government, pure democracy, free (representative) republic, the last being at issue here (2.9.13).
      b. Impossibility of a representation, in a country so large and populous as the U.S., that will speak the sentiments of the people without becoming too numerous for business (2.9.14–15).
      c. Free republic requires a similarity of manners, sentiments, interests in contrast to U.S. variety (2.9.16).
      d. Execution of laws in free republic depends on confidence of people, which must be lacking in so extensive a country (2.9.17–18).
      e. Legislature cannot have necessary knowledge of and time to deal with concerns and wants of different parts (2.9.19).
      f. In such an extensive republic officers of government would soon rise above control of people and abuse their power (2.9.20).

Above argument at least shows necessity, in forming government for this country, of (1) limiting and defining powers, (discussed in V–XV); (2) adjusting parts, (discussed in III, IV, XVI); (3) guarding against abuse of authority (discussed in II, 2.9.22–23).

II. Bill of Rights (II, 2.9.22–33).
   A. The origins of civil government—kinds of individual rights. Foundation should be laid in express reservations by people of such of their essential national rights as are not necessary to be parted with (2.9.24; see IX, 2.9.102).

B. Bill of Rights as necessary for federal government as for states (2.9.26–33).
   1. It is necessary, for example, in protection of individual in criminal prosecution (2.9.27–28).
   2. It is necessary, for example, as certain provisions in proposed constitution themselves show (2.9.29–30; see IX, 2.9.103–4).
   3. This is an original compact, doing away with all provisions of state constitutions that are inconsistent (2.9.31–32).
   4. A Bill of Rights is all the more necessary in view of unrestrained power to make treaties, which become part of supreme law of land (2.9.33).

III. Organization of government—representation (III, IV, 2.9.34–54). (III and IV deal with the question of representation, particularly in the House of Representatives; the discussion is important but [especially IV] somewhat disorderly. The discussion may be grouped among the major headings, as follows.)
   A. Representation of slaves unreasonable and unjust (III, 2.9.38–39).
   B. Equal representation of states in Senate unreasonable and unjust (III, 2.9.40).
   C. The representation is merely nominal—not sufficiently numerous to enable it to resemble the people, to contain representatives of several orders of people, to resist tendency of natural aristocracy to rule, to enable people to have knowledge of representatives (III, 2.9.41–42; IV, 2.9.45, 48–49).
   D. There will be no security in so small a body as House of Representatives against influence and corruption (III, 2.9.42–44; IV, 2.9.47).
   E. Feeble representation will not command confidence of people, which is necessary to the execution of the law in free government; thus execution by military force will be necessary (IV, 2.9.48–50).
   F. Danger of "time/place/manner" provision (IV, 2.9.51–53).
   G. Not sufficient to say good men will rule—constitutions are to regulate conduct of bad men (IV, 2.9.54).

IV. Legislative powers are broad and indefinite (V–X, 2.9.55–129). (Instead of proceeding with enquiry into the organization of the system, Brutus turns next to powers granted to legislature, V, 2.9.55. The discussion of organization is resumed in XVI, 2.9.197 ff.)
   A. Preamble and necessary and proper clause, taken together, confer what amounts to a power to make laws at discretion. Rule of broad construction stated (V, 2.9.57).
   B. Taxing power (V, VI, VIII, 2.9.55–92).
      1. General welfare clause broadly construed. (V, 2.9.58; VI, 2.9.77–78).
      2. The power to tax is unlimited (V, 2.9.59–60; VI, 2.9.71–78).
      3. The power to tax will annihilate power of individual states (V, 2.9.61–63; VI, 2.9.64–70, 75–76).

4. The argument that the power given to the general government must be unlimited because the exigencies of the federal government are unlimited is insufficient:
   a. National safety is not the only end; the states are responsible for managing internal concerns, which are in fact first objects of government and which also require revenue (V, 2.9.63; VI, 2.9.79–81).
   b. A distinction could have been drawn between external and internal taxes (V, 2.9.63; VII, 2.9.92).
   c. The aim of American governments is, or ought to be, not glory but domestic peace and justice (VII, 2.9.86–87).
   d. Granting the need for additional federal powers and granting that remote contingencies cannot be foreseen, yet the powers need not be unlimited, for rational judgments of need can be made (VII, 2.9.88–90).

C. Authority to borrow money is general and unlimited (VIII, 2.9.93–95).

D. Power to raise armies (VIII, IX, X, 2.9.93–129).
   1. This power is indefinite and unlimited (VIII, 2.9.96–97).
   2. Standing armies are dangerous to liberty (VIII, 2.9.99–101; IX, 2.9.105, 110; X, 2.9.115–20).
   3. Explicit prohibition of standing army is needed; a general reliance on sentiments of people and resistance of states not sufficient (IX, 2.9.106–9; X, 2.9.129).
   4. Answers to Federalist arguments of necessity of standing army and impracticality of restriction (IX, 2.9.111–14; X, 2.9.121–27).

V. Nature and extent of judicial power (XI–XV, 2.9.130–196). (This subject is little discussed in other writings, yet the real effects of the new system of government will be brought home to the people through the judiciary, which occupies a position totally independent. X, 2.9.130).

A. Judicial power of constitutional interpretation (X–XII, 2.9.115–158). (Without trying to give perfect explanation, will show that federal judiciary will subvert state judiciary, if not legislatures. XI, 2.9.133).
   1. Federal courts are vested with power to resolve, according to spirit as well as letter, all questions of construction of Constitution (XI, 2.9.134–38).
   2. Judicial power will subvert state governments and favor general government (XI, 2.9.139–44).
      a. Wide and general terms of the Constitution countenance such a construction. If necessary and proper clause does not grant additional powers, it does sanction broad construction (XI, 2.9.139–41).
      b. Court will be interested in broad interpretation (XI, 2.9.142).
      c. British precedent will favor it (XI, 2.9.143–44).

3. How judicial power will operate to extend legislative and judicial authority of federal government and finally destroy such authority of states (XII, 2.9.145–58; see XV, 2.9.194–96).

B. Other matters of which federal judiciary has cognizance (XIII–XIV, 2.9.159–85).
   1. Authority in all cases arising under laws of U.S., which is proper (XIII, 2.9.159).
   2. Power to decide all cases in law and equity under treaties is unintelligible—what is equity under treaty (XIII, 2.9.160)?
   3. Jurisdiction over cases affecting ambassadors, where U.S. is a party, and between states is proper; but doubt if Supreme Court should have original jurisdiction (XIII, 2.9.160; XIV, 2.9.168).
   4. Jurisdiction over controversies between state and citizen of another state not proper (extended discussion) (XIII, 2.9.161–67).
   5. Appellate jurisdiction of Supreme Court is one of most objectionable parts of Constitution (XIV, 2.9.169).
      a. Appeals in criminal matters is new and harmful (XIV, 2.9.170–72).
      b. Appellate jurisdiction, as granted, in civil cases eliminates final jury trial of facts, despite confused denials of advocates, and will lead to great expense and delay (XIV, 173–78, 184–85).
      c. These extraordinary powers all the more objectionable because not needed; state courts provide protection of individual rights (XIV, 2.9.179–83).

C. Supreme Court under Constitution will be exalted above all other power in government and subject to no control (XV, 2.9.186–97).
   1. Judges in England hold offices during good behavior but are more carefully circumscribed (2.9.187–88).
   2. Proposed judiciary is independent in fullest sense; yet British reason for independence of crown does not apply here (2.9.189–90).
      a. No superior to correct errors or control decisions (2.9.191).
      b. No removal or diminution of salary for error (2.9.192).
      c. Power of Court often superior to legislature—can declare acts of legislature void (2.9.193–96).

D. Judiciary should be subject to control of some supreme body that is responsible to the people (XVI, 2.9.197).

VI. Senate (XVI, 2.9.197–204). (A very sketchy discussion).

A. Organization (2.9.198–202).
   1. Election by state is proper for confederal system (2.9.198–99).
   2. Term too long, and rotation and recall should be provided (2.9.200–201).

B. Powers (2.9.202–4). The Senate will possess a strange mixture of legislative, executive, and judicial powers, which will clash with each other.

1. Centinel, in his third letter (III, 2.7.77), thought that his proposed discussion of the dangers of consolidation had been rendered superfluous by the appearance of the first number of Brutus.

2. Cato contents himself with a very brief discussion of representation (V, 2.6.38), referring his reader to the able and full discussion of Brutus, which had appeared by the time Cato reached this subject.

3. Edward S. Corwin, recognizing the importance of the essays dealing with the judiciary, reprinted essays XI, XII, XV in his *Court over Constitution* (Princeton, N.J., 1938) 231–62.

4. William Jeffrey, Jr., "The Letters of Brutus—A Neglected Element in the Ratification Campaign of 1787–88," *University of Cincinnati Law Review* 40, no. 4 (1971): 643–777.

5. Ford, *Pamphlets* 117, 424; Harding, *The Contest over Ratification of the Federal Constitution in Massachusetts* 17 n. 3; Ford, *Essays* 295.

6. See below Sydney 6.9. Morton Borden, *The Antifederalist Papers* (East Lansing, Mich., 1965) 42.

7. DePauw, *The Eleventh Pillar* 131.

8. At one point Brutus disclaims the legal knowledge necessary to discuss fully the judiciary (below, XI, 2.9.132), which might seem to argue against the authorship of Yates, who was a lawyer and judge. But the legal knowledge actually displayed is considerable and argues rather in favor of Yates' authorship. William Jeffrey, Jr., makes the appealing suggestion of Melancton Smith, but the circumstantial case is not a very persuasive one. See *University of Cincinnati Law Review* 40, no. 4 (1971): 644–46.

I[1]

18 October 1787

To the Citizens of the State of New-York.

When the public is called to investigate and decide upon a question in which 2.9.1
not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

Perhaps this country never saw so critical a period in their political con- 2.9.2
cerns. We have felt the feebleness of the ties by which these United-States are held together, and the want of sufficient energy in our present con-

federation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to your acceptance, be a wise one, calculated to preserve the invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this favoured land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realised. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty—if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining assylum for liberty will be shut up, and posterity will execrate your memory.

2.9.3 Momentous then is the question you have to determine, and you are called upon by every motive which should influence a noble and virtuous mind, to examine it well, and to make up a wise judgment. It is insisted, indeed, that this constitution must be received, be it ever so imperfect. If it has its defects, it is said, they can be best amended when they are experienced. But remember, when the people once part with power, they can seldom or never resume it again but by force. Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.

2.9.4 With these few introductory remarks, I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not?[2] Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and controul of a supreme federal head for certain defined national purposes only?

This enquiry is important, because, although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontroulable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared "that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof." And by the 6th article, it is declared "that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or law of any state to the contrary notwithstanding." It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States.—The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance—there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises;[3]—there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation: but this is no restriction of the power

2.9.5

at all, for by this clause they are to be applied to pay the debts and provide for the common defence and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defence, and they only are to determine what is for the general welfare; this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only [is] the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defence, in a good government, and the great engine of oppression and tyranny in a bad one.[4] This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late [state?] governments, on this article of raising money. No state can emit paper money—lay any duties, or imposts, on imports, or exports, but by consent of the Congress; and then the net produce shall be for the benefit of the United States: the only mean therefore left, for any state to support its government and discharge its debts, is by direct taxation; and the United States have also power to lay and collect taxes, in any way they please. Every one who has thought on the subject, must be convinced that but small sums of money can be collected in any country, by direct taxe[s], when the foederal government begins to exercise the right of taxation in all its parts, the legislatures of the several states will find it impossible to raise monies to support their governments. Without money they cannot be supported, and they must dwindle away, and, as before observed, their powers absorbed in that of the general government.

2.9.6 It might be here shewn, that the power in the federal legislative, to raise and support armies at pleasure, as well in peace as in war, and their controul over the militia, tend, not only to a consolidation of the government, but the destruction of liberty.[5]—I shall not, however, dwell upon these, as a few observations upon the judicial power of this government, in addition to the preceding, will fully evince the truth of the position.

2.9.7 The judicial power of the United States is to be vested in a supreme court, and in such inferior courts as Congress may from time to time ordain and establish.[6] The powers of these courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise between citizens of the same state; and it extends to all cases in law and equity arising under the constitution. One inferior court must be established, I presume, in each

state, at least, with the necessary executive officers appendant thereto. It is easy to see, that in the common course of things, these courts will eclipse the dignity, and take away from the respectability, of the state courts. These courts will be, in themselves, totally independent of the states, deriving their authority from the United States, and receiving from them fixed salaries; and in the course of human events it is to be expected, that they will swallow up all the powers of the courts in the respective states.

2.9.8 How far the clause in the 8th section of the 1st article may operate to do away all idea of confederated states, and to effect an entire consolidation of the whole into one general government, it is impossible to say. The powers given by this article are very general and comprehensive, and it may receive a construction to justify the passing almost any law. A power to make all laws, which shall be *necessary and proper*, for carrying into execution, all powers vested by the constitution in the government of the United States, or any department or officer thereof, is a power very comprehensive and definite [indefinite?], and may, for ought I know, be exercised in a such manner as entirely to abolish the state legislatures.[7] Suppose the legislature of a state should pass a law to raise money to support their government and pay the state debt, may the Congress repeal this law, because it may prevent the collection of a tax which they may think proper and necessary to lay, to provide for the general welfare of the United States? For all laws made, in pursuance of this constitution, are the supreme lay of the land, and the judges in every state shall be bound thereby, any thing in the constitution or laws of the different states to the contrary notwithstanding.—By such a law, the government of a particular state might be overturned at one stroke, and thereby be deprived of every means of its support.

2.9.9 It is not meant, by stating this case, to insinuate that the constitution would warrant a law of this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal legislature would be more likely to pass the limits assigned them by the constitution, than that of an individual state, further than they are less responsible to the people. But what is meant is, that the legislature of the United States are vested with the great and uncontroulable powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade, raising and supporting armies, organizing, arming, and disciplining the militia, instituting courts, and other general powers. And are by this clause invested with the power of making all laws, *proper and necessary*, for carrying all these into execution; and they may so exercise this power as entirely to annihilate all the state governments, and reduce this country to one single government. And if they may do it, it is pretty certain they will; for it will be found that the power retained by individual states, small as it is, will be a clog upon the wheels of the government of the United States; the latter therefore will be naturally inclined to remove it out of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man, and every body of men, invested with

power, are ever disposed to increase it, and to acquire a superiority over every thing that stands in their way. This disposition, which is implanted in human nature, will operate in the federal legislature to lessen and ultimately to subvert the state authority, and having such advantages, will most certainly succeed, if the federal government succeeds at all. It must be very evident then, that what this constitution wants of being a complete consolidation of the several parts of the union into one complete government, possessed of perfect legislative, judicial, and executive powers, to all intents and purposes, it will necessarily acquire in its exercise and operation.

2.9.10 Let us now proceed to enquire, as I at first proposed, whether it be best the thirteen United States should be reduced to one great republic, or not? It is here taken for granted, that all agree in this, that whatever government we adopt, it ought to be a free one; that it should be so framed as to secure the liberty of the citizens of America, and such an one as to admit of a full, fair, and equal representation of the people. The question then will be, whether a government thus constituted, and founded on such principles, is practicable, and can be exercised over the whole United States, reduced into one state?

2.9.11 If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or wrote on the science of government, we shall be constrained to conclude, that a free republic cannot succeed over a country of such immense extent, containing such a number of inhabitants, and these encreasing in such rapid progression as that of the whole United States. Among the many illustrious authorities which might be produced to this point, I shall content myself with quoting only two. The one is the baron de Montesquieu, spirit of laws, chap. xvi. vol. I [book VIII]. "It is natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large republic there are men of large fortunes, and consequently of less moderation; there are trusts too great to be placed in any single subject; he has interest of his own; he soon begins to think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he may raise himself to grandeur on the ruins of his country. In a large republic, the public good is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents. In a small one, the interest of the public is easier perceived, better understood, and more within the reach of every citizen; abuses are of less extent, and of course are less protected."[8] Of the same opinion is the marquis Beccarari.

2.9.12 History furnishes no example of a free republic, any thing like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

2.9.13 Not only the opinion of the greatest men, and the experience of mankind,

are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide. This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

2.9.14 In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.[9]

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldly, as to be subject in great measure to the inconveniency of a democratic government.

2.9.15 The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

2.9.16 In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other.[10] This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a

variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence, diverse. Their manners and habits differ as much as their climates and productions; and their sentiments are by no means coincident. The laws and customs of the several states are, in many respects, very diverse, and in some opposite; each would be in favor of its own interests and customs, and, of consequence, a legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogenous and discordant principles, as would constantly be contending with each other.

2.9.17 The laws cannot be executed in a republic, of an extent equal to that of the United States, with promptitude.

The magistrates in every government must be supported in the execution of the laws, either by an armed force, maintained at the public expence for that purpose; or by the people turning out to aid the magistrate upon his command, in case of resistance.

In despotic governments, as well as in all the monarchies of Europe, standing armies are kept up to execute the commands of the prince or the magistrate, and are employed for this purpose when occasion requires: But they have always proved the destruction of liberty, and [are] abhorrent to the spirit of a free republic. In England, where they depend upon the parliament for their annual support, they have always been complained of as oppressive and unconstitutional, and are seldom employed in executing of the laws; never except on extraordinary occasions, and then under the direction of a civil magistrate.

2.9.18 A free republic will never keep a standing army to execute its laws. It must depend upon the support of its citizens. But when a government is to receive its support from the aid of the citizens, it must be so constructed as to have the confidence, respect, and affection of the people.[11] Men who, upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it either by affection to the government, or from fear; where a standing army is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey: but, where this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws. The body of the people being attached, the government will always be sufficient to support and execute its laws, and to operate upon the fears of any faction which may be opposed to it, not only to prevent an opposition to the execution of the laws themselves, but also to compel the most of them to aid the magistrate; but the people will not be likely to have such confidence in their rulers, in a republic so extensive as the United States, as necessary for these purposes. The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them

when they misbehave: but in a republic of the extent of this continent, the people in general would be acquainted with very few of their rulers: the people at large would know little of their proceedings, and it would be extremely difficult to change them. The people in Georgia and New-Hampshire would not know one another's mind, and therefore could not act in concert to enable them to effect a general change of representatives. The different parts of so extensive a country could not possibly be made acquainted with the conduct of their representatives, nor be informed of the reasons upon which measures were founded. The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass.[12] Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet—a government of all others the most to be dreaded.

2.9.19 In a republic of such vast extent as the United-States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

2.9.20 In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United-States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.[13]

2.9.21 These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to

it, which are so material and fundamental, that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections—they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice—perfection is not to be expected in any thing that is the production of man—and if I did not in my conscience believe that this scheme was defective in the fundamental principles—in the foundation upon which a free and equal government must rest—I would hold my peace.

Brutus.

II

1 November 1787

To the Citizens of the State of New-York.

2.9.22 I flatter myself that my last address established this position, that to reduce the Thirteen States into one government, would prove the destruction of your liberties.

But lest this truth should be doubted by some, I will now proceed to consider its merits.

2.9.23 Though it should be admitted, that the argument[s] against reducing all the states into one consolidated government, are not sufficient fully to establish this point; yet they will, at least, justify this conclusion, that in forming a constitution for such a country, great care should be taken to limit and definite its powers, adjust its parts, and guard against an abuse of authority. How far attention has been paid to these objects, shall be the subject of future enquiry. When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance, is designed not for yourselves alone, but for generations yet unborn. The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made—But on this subject there is almost an entire silence.

2.9.24 If we may collect the sentiments of the people of America, from their own most solemn declarations, they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united

consent of those who associate. The mutual wants of men, at first dictated the propriety of forming societies; and when they were established, protection and defence pointed out the necessity of instituting government. In a state of nature every individual pursues his own interest; in this pursuit it frequently happened, that the possessions or enjoyments of one were sacrificed to the views and designs of another; thus the weak were a prey to the strong, the simple and unwary were subject to impositions from those who were more crafty and designing. In this state of things, every individual was insecure; common interest therefore directed, that government should be established, in which the force of the whole community should be collected, and under such directions, as to protect and defend every one who composed it. The common good, therefore, is the end of civil government, and common consent, the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order, that what remained should be preserved: how great a proportion of natural freedom is necessary to be yielded by individuals, when they submit to government, I shall not now enquire. So much, however, must be given up, as will be sufficient to enable those, to whom the administration of the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose, that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good.[14] From these observations it appears, that in forming a government on its true principles, the foundation should be laid in the manner I before stated, by expressly reserving to the people such of their essential natural rights, as are not necessary to be parted with.[15] The same reasons which at first induced mankind to associate and institute government, will operate to influence them to observe this precaution. If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression, and violence on the other, that men came together, and agreed that certain rules should be formed, to regulate the conduct of all, and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority, as that government should have at first been instituted to restrain private injuries.[16]

2.9.25 This principle, which seems so evidently founded in the reason and nature of things, is confirmed by universal experience. Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have derived our origin, is an eminent example of this. Their magna charta and bill of rights have long been the boast, as well as the security, of that nation. I need say no more, I presume, to an American, than, that this principle is a fundamental one, in all the constitutions of our own states; there is not one of them but what is either founded on a declaration or bill of rights, or has certain express reservation of rights interwoven in the body of them. From this it appears, that at a time when the pulse of liberty beat high and when an appeal was made to the people to form constitutions for the government of themselves, it was their universal sense, that such declarations should make a part of their frames of government. It is therefore the more astonishing, that this grand security, to the rights of the people, is not to be found in this constitution.

2.9.26 It has been said, in answer to this objection, that such declaration[s] of rights, however requisite they might be in the constitutions of the states, are not necessary in the general constitution, because, "in the former case, every thing which is not reserved is given, but in the latter the reverse of the proposition prevails, and every thing which is not given is reserved."[17] It requires but little attention to discover, that this mode of reasoning is rather specious than solid. The powers, rights, and authority, granted to the general government by this constitution, are as complete, with respect to every object to which they extend, as that of any state government—It reaches to every thing which concerns human happiness—Life, liberty, and property, are under its controul. There is the same reason, therefore, that the exercise of power, in this case, should be restrained within proper limits, as in that of the state governments. To set this matter in a clear light, permit me to instance some of the articles of the bills of rights of the individual states, and apply them to the case in question.[18]

2.9.27 For the security of life, in criminal prosecutions, the bills of rights of most of the states have declared, that no man shall be held to answer for a crime until he is made fully acquainted with the charge brought against him; he shall not be compelled to accuse, or furnish evidence against himself—The witnesses against him shall be brought face to face, and he shall be fully heard by himself or counsel. That it is essential to the security of life and liberty, that trial of facts be in the vicinity where they happen. Are not provisions of this kind as necessary in the general government, as in that of a particular state? The powers vested in the new Congress extend in many cases to life; they are authorised to provide for the punishment of a variety of capital crimes, and no restraint is laid upon them in its exercise, save

only, that "the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be in the state where the said crimes shall have been committed." No man is secure of a trial in the county where he is charged to have committed a crime; he may be brought from Niagara to New-York, or carried from Kentucky to Richmond for trial for an offence, supposed to be committed. What security is there, that a man shall be furnished with a full and plain description of the charges against him? That he shall be allowed to produce all proof he can in his favor? That he shall see the witnesses against him face to face, or that he shall be fully heard in his own defence by himself or counsel?

2.9.28 For the security of liberty it has been declared, "that excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted—That all warrants, without oath or affirmation, to search suspected places, or seize any person, his papers or property, are grievous and oppressive."[19]

These provisions are as necessary under the general government as under that of the individual states; for the power of the former is as complete to the purpose of requiring bail, imposing fines, inflicting punishments, granting search warrants, and seizing persons, papers, or property, in certain cases, as the other.

2.9.29 For the purpose of securing the property of the citizens, it is declared by all the states, "that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable."[20]

Does not the same necessity exist of reserving this right, under this national compact, as in that of these states? Yet nothing is said respecting it. In the bills of rights of the states it is declared, that a well regulated militia is the proper and natural defence of a free government—That as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controuled by the civil power.[21]

The same security is as necessary in this constitution, and much more so: for the general government will have the sole power to raise and to pay armies, and are under no controul in the exercise of it; yet nothing of this is to be found in this new system.

2.9.30 I might proceed to instance a number of other rights, which were as necessary to be reserved, such as, that elections should be free, that the liberty of the press should be held sacred; but the instances adduced, are sufficient to prove, that this argument is without foundation.—Besides, it is evident, that the reason here assigned was not the true one, why the framers of this constitution omitted a bill of rights; if it had been, they would not have made certain reservations, while they totally omitted others of more importance. We find they have, in the 9th section of the 1st article, declared, that the writ of habeas corpus shall not be suspended, unless in cases of

rebellion—that no bill of attainder, or expost facto law, shall be passed—that no title of nobility shall be granted by the United States, &c. If every thing which is not given is reserved, what propriety is there in these exceptions?[22] Does this constitution any where grant the power of suspending the habeas corpus, to make expost facto laws, pass bills of attainder, or grant titles of nobility? It certainly does not in express terms. The only answer that can be given is, that these are implied in the general powers granted. With equal truth it may be said, that all the powers, which the bills of right, guard against the abuse of, are contained or implied in the general ones granted by this constitution.

2.9.31 So far it is from being true, that a bill of rights is less necessary in the general constitution than in those of the states, the contrary is evidently the fact.—This system, if it is possible for the people of America to accede to it, will be an original compact; and being the last, will, in the nature of things, vacate every former agreement inconsistent with it. For it being a plan of government received and ratified by the whole people, all other forms, which are in existence at the time of its adoption, must yield to it. This is expressed in positive and unequivocal terms, in the 6th article, "That this constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the *constitution*, or laws of any state, *to the contrary* notwithstanding.

"The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound, by oath or affirmation, to support this constitution."

2.9.32 It is therefore not only necessarily implied thereby, but positively expressed, that the different state constitutions are repealed and entirely done away, so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States; of what avail will the constitutions of the respective states be to preserve the rights of its citizens? should they be plead, the answer would be, the constitution of the United States, and the laws made in pursuance thereof, is the supreme law, and all legislatures and judicial officers, whether of the general or state governments, are bound by oath to support it. No priviledge, reserved by the bills of rights, or secured by the state government, can limit the power granted by this, or restrain any laws made in pursuance of it. It stands therefore on its own bottom, and must receive a construction by itself without any reference to any other[23]—And hence it was of the highest importance, that the most precise and express declarations and reservations of rights should have been made.

2.9.33 This will appear the more necessary, when it is considered, that not only the constitution and laws made in pursuance thereof, but all treaties made,

or which shall be made, under the authority of the United States, are the supreme law of the land, and supersede the constitutions of all the states. The power to make treaties, is vested in the president, by and with the advice and consent of two thirds of the senate. I do not find any limitation, or restriction, to the exercise of this power. The most important article in any constitution may therefore be repealed, even without a legislative act. Ought not a government, vested with such extensive and indefinite authority, to have been restricted by a declaration of rights? It certainly ought.

So clear a point is this, that I cannot help suspecting, that persons who attempt to persuade people, that such reservations were less necessary under this constitution than under those of the states, are wilfully endeavouring to deceive, and to lead you into an absolute state of vassalage.

Brutus.

III

15 November 1787

To the Citizens of the State of New-York.

In the investigation of the constitution, under your consideration, great care should be taken, that you do not form your opinions respecting it, from unimportant provisions, or fallacious appearances. 2.9.34

On a careful examination, you will find, that many of its parts, of little moment, are well formed; in these it has a specious resemblance of a free government—but this is not sufficient to justify the adoption of it—the gilded pill, is often found to contain the most deadly poison.

You are not however to expect, a perfect form of government, any more than to meet with perfection in man; your views therefore, ought to be directed to the main pillars upon which a free government is to rest; if these are well placed, on a foundation that will support the superstructure, you should be satisfied, although the building may want a number of ornaments, which, if your particular tastes were gratified, you would have added to it: on the other hand, if the foundation is insecurely laid, and the main supports are wanting, or not properly fixed, however the fabric may be decorated and adorned, you ought to reject it. 2.9.35

Under these impressions, it has been my object to turn your attention to the principal defects in this system. 2.9.36

I have attempted to shew, that a consolidation of this extensive continent, under one government, for internal, as well as external purposes, which is evidently the tendency of this constitution, cannot succeed, without a sacrifice of your liberties; and therefore that the attempt is not only pre-

posterous, but extremely dangerous; and I have shewn, independent of this, that the plan is radically defective in a fundamental principle, which ought to be found in every free government; to wit, a declaration of rights.

2.9.37 I shall now proceed to take a nearer view of this system, to examine its parts more minutely, and shew that the powers are not properly deposited, for the security of public liberty.

The first important object that presents itself in the organization of this government, is the legislature. This is to be composed of two branches; the first to be called the general assembly, and is to be chosen by the people of the respective states, in proportion to the number of their inhabitants, and is to consist of sixty five members, with powers in the legislature to encrease the number, not to exceed one for every thirty thousand inhabitants. The second branch is to be called the senate, and is to consist of twenty-six members, two of which are to be chosen by the legislatures of each of the states.

2.9.38 In the former of these there is an appearance of justice, in the appointment of its members—but if the clause, which provides for this branch, be stripped of its ambiguity, it will be found that there is really no equality of representation, even in this house.

The words are "representatives and direct taxes, shall be apportioned among the several states, which may be included in this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."—What a strange and unnecessary accumulation of words are here used to conceal from the public eye, what might have been expressed in the following concise manner. Representatives are to be proportioned among the states respectively, according to the number of freemen and slaves inhabiting them, counting five slaves for three free men.

2.9.39 "In a free state," says the celebrated Montesquieu, "every man, who is supposed to be a free agent, ought to be concerned in his own government, therefore the legislature should reside in the whole body of the people, or their representatives."[24] But it has never been alledged that those who are not free agents, can, upon any rational principle, have any thing to do in government, either by themselves or others. If they have no share in government, why is the number of members in the assembly, to be increased on their account? Is it because in some of the states, a considerable part of the property of the inhabitants consists in a number of their fellow men, who are held in bondage, in defiance of every idea of benevolence, justice, and religion, and contrary to all the principles of liberty, which have been publickly avowed in the late glorious revolution? If this be a just ground for representation, the horses in some of the states, and the oxen in others, ought to be represented—for a great share of property in some of them, consists in these animals; and they have as much controul over their own

actions, as these poor unhappy creatures, who are intended to be described in the above recited clause, by the words, "all other persons." By this mode of apportionment, the representatives of the different parts of the union, will be extremely unequal; in some of the southern states, the slaves are nearly equal in number to the free men; and for all these slaves, they will be entitled to a proportionate share in the legislature—this will give them an unreasonable weight in the government, which can derive no additional strength, protection, nor defence from the slaves, but the contrary. Why then should they be represented? What adds to the evil is, that these states are to be permitted to continue the inhuman traffic of importing slaves, until the year 1808—and for every cargo of these unhappy people, which unfeeling, unprincipled, barbarous, and avaricious wretches, may tear from their country, friends and tender connections, and bring into those states, they are to be rewarded by having an increase of members in the general assembly.

There[25] appears at the first view a manifest inconsistency, in the apportionment of representatives in the senate, uponnthe plan of a consolidated government.[26] On every principle of equity, and propriety, representation in a government should be in exact proportion to the numbers, or the aids afforded by the persons represented. How unreasonable, and unjust then is it, that Delaware should have a representation in the senate, equal to Massachusetts, or Virginia? The latter of which contains ten times her numbers, and is to contribute to the aid of the general government in that proportion? This article of the constitution will appear the more objectionable, if it is considered, that the powers vested in this branch of the legislature are very extensive, and greatly surpass those lodged in the assembly, not only for general purposes, but, in many instances, for the internal police of the states. The other branch of the legislature, in which, if in either, a f[a]int spark of democracy is to be found, should have been properly organized and established—but upon examination you will find, that this branch does not possess the qualities of a just representation, and that there is no kind of security, imperfect as it is, for its remaining in the hands of the people. 2.9.40

It has been observed, that the happiness of society is the end of government—that every free government is founded in compact; and that, because it is impracticable for the whole community to assemble, or when assembled, to deliberate with wisdom, and decide with dispatch, the mode of legislating by representation was devised.[27] 2.9.41

The very term, representative, implies, that the person or body chosen for this purpose, should resemble those who appoint them—a representation of the people of America, if it be a true one, must be like the people. It ought to be so constituted, that a person, who is a stranger to the country, might be able to form a just idea of their character, by knowing that of their representatives. They are the sign—the people are the thing signified. It is absurd to speak of one thing being the representative of another, upon any other 2.9.42

principle. The ground and reason of representation, in a free government, implies the same thing. Society instituted government to promote the happiness of the whole, and this is the great end always in view in the delegation of powers. It must then have been intended, that those who are placed instead of the people, should possess their sentiments and feelings, and be governed by their interests, or, in other words, should bear the strongest resemblance of those in whose room they are substituted. It is obvious, that for an assembly to be a true likeness of the people of any country, they must be considerably numerous.—One man, or a few men, cannot possibly represent the feelings, opinions, and characters of a great multitude. In this respect, the new constitution is radically defective.—The house of assembly, which is intended as a representation of the people of America, will not, nor cannot, in the nature of things, be a proper one—sixty-five men cannot be found in the United States, who hold the sentiments, possess the feelings, or are acqainted with the wants and interests of this vast country. This extensive continent is made up of a number of different classes of people; and to have a proper representation of them, each class ought to have an opportunity of choosing their best informed men for the purpose; but this cannot possibly be the case in so small a number. The state of New-York, on the present apportionment, will send six members to the assembly: I will venture to affirm, that number cannot be found in the state, who will bear a just resemblance to the several classes of people who compose it. In this assembly, the farmer, merchant, mecanick, and other various orders of people, ought to be represented according to their respective weight and numbers; and the representatives ought to be intimately acquainted with the wants, understand the interests of the several orders in the society, and feel a proper sense and becoming zeal to promote their prosperity. I cannot conceive that any six men in this state can be found properly qualified in these respects to discharge such important duties: but supposing it possible to find them, is there the least degree of probability that the choice of the people will fall upon such men? According to the common course of human affairs, the natural aristocracy of the country will be elected.[28] Wealth always creates influence, and this is generally much increased by large family connections: this class in society will for ever have a great number of dependents; besides, they will always favour each other—it is their interest to combine—they will therefore constantly unite their efforts to procure men of their own rank to be elected—they will concenter all their force in every part of the state into one point, and by acting together, will most generally carry their election. It is probable, that but few of the merchants, and those the most opulent and ambitious, will have a representation from their body—few of them are characters sufficiently conspicuous to attract the notice of the electors of the state in so limited a representation. The great body of the yeomen of the country cannot expect any of their order in this assembly—the station will be too elevated for them to aspire to—the

distance between the people and their representatives, will be so very great, that there is no probability that a farmer, however respectable, will be chosen—the mechanicks of every branch, must expect to be excluded from a seat in this Body—It will and must be esteemed a station too high and exalted to be filled by any but the first men in the state, in point of fortune; so that in reality there will be no part of the people represented, but the rich, even in that branch of the legislature, which is called the democratic.—The well born, and highest orders in life, as they term themselves, will be ignorant of the sentiments of the midling class of citizens, strangers to their ability, wants, and difficulties, and void of sympathy, and fellow feeling. This branch of the legislature will not only be an imperfect representation, but there will be no security in so small a body, against bribery, and corruption—It will consist at first, of sixty-five, and can never exceed one for every thirty thousand inhabitants; a majority of these, that is, thirty-three, are a quorum, and a majority of which, or seventeen, may pass any law—so that twenty-five men, will have the power to give away all the property of the citizens of these states—what security therefore can there be for the people, where their liberties and property are at the disposal of so few men? It will literally be a government in the hands of the few to oppress and plunder the many. You may conclude with a great degree of certainty, that it, like all others of a similar nature, will be managed by influence and corruption, and that the period is not far distant, when this will be the case, if it should be adopted; for even now there are some among us, whose characters stand high in the public estimation, and who have had a principal agency in framing this constitution, who do not scruple to say, that this is the only practicable mode of governing a people, who think with that degree of freedom which the Americans do[29]—this government will have in their gift a vast number of offices of great honor and emolument. The members of the legislature are not excluded from appointments; and twenty-five of them, as the case may be, being secured, any measure may be carried.

The rulers of this country must be composed of very different materials 2.9.43
from those of any other, of which history gives us any account, if the majority of the legislature are not, before many years, entirely at the devotion of the executive—and these states will soon be under the absolute domination of one, or a few, with the fallacious appearance of being governed by men of their own election.

The more I reflect on this subject, the more firmly am I persuaded, that 2.9.44
the representation is merely nominal—a mere burlesque; and that no security is provided against corruption and undue influence. No free people on earth, who have elected persons to legislate for them, ever reposed that confidence in so small a number. The British house of commons consists of five hundred and fifty-eight members; the number of inhabitants in Great-Britain, is computed at eight millions—this gives one member for a little more than fourteen thousand, which exceeds double the proportion this

country can ever have: and yet we require a larger representation in proportion to our numbers, than Great-Britain, because this country is much more extensive, and differs more in its productions, interests, manners, and habits. The democratic branch of the legislatures of the several states in the union consists, I believe at present, of near two thousand; and this number was not thought too large for the security of liberty by the framers of our state constitutions: some of the states may have erred in this respect, but the difference between two thousand, and sixty-five, is so very great, that it will bear no comparison.

Other objections offer themselves against this part of the constitution—I shall reserve them for a future paper,[30] when I shall shew, defective as this representation is, no security is provided, that even this shadow of the right, will remain with the people.

Brutus.

IV

29 November 1787

To the People of the State of New-York.

2.9.45 There can be no free government where the people are not possessed of the power of making the laws by which they are governed, either in their own persons, or by others substituted in their stead.

Experience has taught mankind, that legislation by representatives is the most eligible, and the only practicable mode in which the people of any country can exercise this right, either prudently or beneficially. But then, it is a matter of the highest importance, in forming this representation, that it be so constituted as to be capable of understanding the true interests of the society for which it acts, and so disposed as to pursue the good and happiness of the people as its ultimate end. The object of every free government is the public good, and all lesser interests yield to it. That of every tyrannical government, is the happiness and aggrandisement of one, or a few, and to this the public felicity, and every other interest must submit.[31]—The reason of this difference in these governments is obvious. The first is so constituted as to collect the views and wishes of the whole people in that of their rulers, while the latter is so framed as to separate the interests of the governors from that of the governed. The principle of self love, therefore, that will influence the one to promote the good of the whole, will prompt the other to follow its own private advantage. The great art, therefore, in forming a good constitution, appears to be this, so to frame it, as that those to whom the

power is committed shall be subject to the same feelings, and aim at the same objects as the people do, who transfer to them their authority. There is no possible way to effect this but by an equal, full and fair representation; this, therefore, is the great desideratum in politics. However fair an appearance any government may make, though it may possess a thousand plausible articles and be decorated with ever so many ornaments, yet if it is deficient in this essential principle of a full and just representation of the people, it will be only like a painted sepulcher—For, without this it cannot be a free government; let the administration of it be good or ill, it still will be a government, not according to the will of the people, but according to the will of a few.

2.9.46 To test this new constitution then, by this principle, is of the last importance—It is to bring it to the touch-stone of national liberty, and I hope I shall be excused, if, in this paper, I pursue the subject commenced in my last number, to wit, the necessity of an equal and full representation in the legislature.—In that, I showed that it was not equal, because the smallest states are to send the same number of members to the senate as the largest, and, because the slaves, who afford neither aid or defence to the government, are to encrease the proportion of members. To prove that it was not a just or adequate representation, it was urged, that so small a number could not resemble the people, or possess their sentiments and dispositions. That the choice of members would commonly fall upon the rich and great, while the middling class of the community would be excluded. That in so small a representation there was no security against bribery and corruption.

2.9.47 The small number which is to compose this legislature, will not only expose it to the danger of that kind of corruption, and undue influence, which will arise from the gift of places of honor and emolument, or the more direct one of bribery, but it will also subject it to another kind of influence no less fatal to the liberties of the people, though it be not so flagrantly repugnant to the principles of rectitude. It is not to be expected that a legislature will be found in any country that will not have some of its members, who will pursue their private ends, and for which they will sacrifice the public good. Men of this character are, generally, artful and designing, and frequently possess brilliant talents and abilities; they commonly act in concert, and agree to share the spoils of their country among them; they will keep their object ever in view, and follow it with constancy. To effect their purpose, they will assume any shape, and, Proteus like, mould themselves into any form—where they find members proof against direct bribery or gifts of offices, they will endeavor to mislead their minds by specious and false reasoning, to impose upon their unsuspecting honesty by an affectation of zeal for the public good; they will form juntos, and hold out-door meetings; they will operate upon the good nature of their opponents, by a thousand little attentions, and teize them into compliance by the earnestness of so-

licitation. Those who are acquainted with the manner of conducting business in public assemblies, know how prevalent art and address are in carrying a measure, even over men of the best intentions, and of good understanding. The firmest security against this kind of improper and dangerous influence, as well as all other, is a strong and numerous representation: in such a house of assembly, so great a number must be gained over, before the private views of individuals could be gratified that there could be scarce a hope of success. But in the foederal assembly, seventeen men are all that is necessary to pass a law. It is probable, it will seldom happen that more than twenty-five will be requisite to form a majority, when it is considered what a number of places of honor and emolument will be in the gift of the executive, the powerful influence that great and designing men have over the honest and unsuspecting, by their art and address, their soothing manners and civilities, and their cringing flattery, joined with their affected patriotism; when these different species of influence are combined, it is scarcely to be hoped that a legislature, composed of so small a number, as the one proposed by the new constitution, will long resist their force.

2.9.48 A[32] farther objection against the feebleness of the representation is, that it will not possess the confidence of the people. The execution of the laws in a free government must rest on this confidence, and this must be founded on the good opinion they entertain of the framers of the laws. Every government must be supported, either by the people having such an attachment to it, as to be ready, when called upon, to support it, or by a force at the command of the government, to compel obedience. The latter mode destroys every idea of a free government; for the same force that may be employed to compel obedience to good laws, might, and probably would be used to wrest from the people their constitutional liberties.—Whether it is practicable to have a representation for the whole union sufficiently numerous to obtain that confidence which is necessary for the purpose of internal taxation, and other powers to which this proposed government extends, is an important question. I am clearly of opinion, it is not, and therefore I have stated this in my first number, as one of the reasons against going into an entire consolidation[33] of the states—one of the most capital errors in the system, is that of extending the powers of the foederal government to objects to which it is not adequate, which it cannot exercise without endangering public liberty, and which it is not necessary they should possess, in order to preserve the union and manage our national concerns; of this, however, I shall treat more fully in some future paper[34]—But, however this may be, certain it is, that the representation in the legislature is not so formed as to give reasonable ground for public trust.

2.9.49 In order for the people safely to repose themselves on their rulers, they should not only be of their own choice. But it is requisite they should be acquainted with their abilities to manage the public concerns with wisdom. They should be satisfied that those who represent them are men of integrity,

who will pursue the good of the community with fidelity; and will not be turned aside from their duty by private interest, or corrupted by undue influence; and that they will have such a zeal for the good of those whom they represent, as to excite them to be diligent in their service; but it is impossible the people of the United States should have sufficient knowledge of their representatives, when the numbers are so few, to acquire any rational satisfaction on either of these points. The people of this state will have very little acquaintance with those who may be chosen to represent them; a great part of them will, probably, not know the characters of their own members, much less that of a majority of those who will compose the foederal assembly; they will consist of men, whose names they have never heard, and whose talents and regard for the public good, they are total strangers to;[35] and they will have no persons so immediately of their choice so near them, of their neighbours and of their own rank in life, that they can feel themselves secure in trusting their interests in their hands. The representatives of the people cannot, as they now do, after they have passed laws, mix with the people, and explain to them the motives which induced the adoption of any measure, point out its utility, and remove objections or silence unreasonable clamours against it.—The number will be so small that but a very few of the most sensible and respectable yeomanry of the country can ever have any knowledge of them: being so far removed from the people, their station will be elevated and important, and they will be considered as ambitious and designing. They will not be viewed by the people as part of themselves, but as a body distinct from them, and having separate interests to pursue; the consequence will be, that a perpetual jealousy will exist in the minds of the people against them; their conduct will be narrowly watched; their measures scrutinized; and their laws opposed, evaded, or reluctantly obeyed. This is natural, and exactly corresponds with the conduct of individuals towards those in whose hands they intrust important concerns. If the person confided in, be a neighbour with whom his employer is intimately acquainted, whose talents, he knows, are sufficient to manage the business with which he is charged, his honesty and fidelity unsuspected, and his friendship and zeal for the service of this principal unquestionable, he will commit his affairs into his hands with unreserved confidence, and feel himself secure; all the transactions of the agent will meet with the most favorable construction, and the measures he takes will give satisfaction. But, if the person employed be a stranger, whom he has never seen, and whose character for ability or fidelity he cannot fully learn—If he is constrained to choose him, because it was not in his power to procure one more agreeable to his wishes, he will trust him with caution, and be suspicious of all his conduct.

If then this government should not derive support from the good will of 2.9.50
the people, it must be executed by force, or not executed at all; either case would lead to the total destruction of liberty.—The convention seemed

aware of this, and have therefore provided for calling out the militia to execute the laws of the union. If this system was so framed as to command that respect from the people, which every good free government will obtain, this provision was unnecessary—the people would support the civil magistrate.[36] This power is a novel one, in free governments—these have depended for the execution of the laws on the Posse Comitatus, and never raised an idea, that the people would refuse to aid the civil magistrate in executing those laws they themselves had made. I shall now dismiss the subject of the incompetency of the representation, and proceed, as I promised, to shew, that, impotent as it is, the people have no security that they will enjoy the exercise of the right of electing this assembly, which, at best, can be considered but as the shadow of representation.

2.9.51 By section 4, article I, the Congress are authorized, at any time, by law, to make, or alter, regulations respecting the time, place, and manner of holding elections for senators and representatives, except as to the places of choosing senators. By this clause the right of election itself, is, in a great measure, transferred from the people to their rulers.—One would think, that if any thing was necessary to be made a fundamental article of the original compact, it would be, that of fixing the branches of the legislature, so as to put it out of its power to alter itself by modifying the election of its own members at will and pleasure. When a people once resign the privilege of a fair election, they clearly have none left worth contending for.

2.9.52 It is clear that, under this article, the foederal legislature may institute such rules respecting elections as to lead to the choice of one description of men. The weakness of the representation, tends but too certainly to confer on the rich and *well-born*, all honours; but the power granted in this article, may be so exercised, as to secure it almost beyond a possibility of controul. The proposed Congress may make the whole state one district, and direct, that the capital (the city of New-York, for instance) shall be the place for holding the election; the consequence would be, that none but men of the most elevated rank in society would attend, and they would as certainly choose men of their own class; as it is true what the *Apostle Paul* saith, that "no man ever yet hated his own flesh, but nourisheth and cherisheth it."[37]—They may declare that those members who have the greatest number of votes, shall be considered as duly elected; the consequence would be that the people, who are dispersed in the interior parts of the state, would give their votes for a variety of candidates, while any order, or profession, residing in populous places, by uniting their interests, might procure whom they pleased to be chosen—and by this means the representatives of the state may be elected by one tenth part of the people who actually vote. This may be effected constitutionally, and by one of those silent operations which frequently takes place without being noticed, but which often produces such changes as entirely to alter a government, subvert a free constitution, and rivet the chains on a free people before they

perceive they are forged. Had the power of regulating elections been left under the direction of the state legislatures, where the people are not only nominally but substantially represented, it would have been secure; but if it was taken out of their hands, it surely ought to have been fixed on such a basis as to have put it out of the power of the foederal legislature to deprive the people of it by law. Provision should have been made for marking out the states into districts, and for choosing, by a majority of votes, a person out of each of them of permanent property and residence in the district which he was to represent.

2.9.53 If the people of America will submit to a constitution that will vest in the hands of any body of men a right to deprive them by law of the privilege of a fair election, they will submit to almost any thing. Reasoning with them will be in vain, they must be left until they are brought to reflection by feeling oppression—they will then have to wrest from their oppressors, by a strong hand, that which they now possess, and which they may retain if they will exercise but a moderate share of prudence and firmness.

2.9.54 I know it is said that the dangers apprehended from this clause are merely imaginary, that the proposed general legislature will be disposed to regulate elections upon proper principles, and to use their power with discretion, and to promote the public good. On this, I would observe, that constitutions are not so necessary to regulate the conduct of good rulers as to restrain that of bad ones.—Wise and good men will exercise power so as to promote the public happiness under any form of government. If we are to take it for granted, that those who administer the government under this system, will always pay proper attention to the rights and interests of the people, nothing more was necessary than to say who should be invested with the powers of government, and leave them to exercise it at will and pleasure. Men are apt to be deceived both with respect to their own dispositions and those of others. Though this truth is proved by almost every page of the history of nations, to wit, that power, lodged in the hands of rulers to be used at discretion, is almost always exercised to the oppression of the people, and the aggrandizement of themselves; yet most men think if it was lodged in their hands they would not employ it in this manner.—Thus when the prophet *Elisha* told *Hazael*, "I know the evil that thou wilt do unto the children of Israel; their strong holds wilt thou set on fire, and their young men, wilt thou slay with the sword, and wilt dash their children, and rip up their women with child." Hazael had no idea that he ever should be guilty of such horrid cruelty, and said to the prophet, "Is thy servant a dog that he should do this great thing." Elisha answered, "The Lord hath shewed me that thou shalt be king of Syria."[38] The event proved, that Hazael only wanted an opportunity to perpetrate these enormities without restraint, and he had a disposition to do them, though he himself knew it not.

Brutus.

V
13 December 1787

To the People of the State of New-York.

2.9.55 It was intended in this Number to have prosecuted the enquiry into the organization of this new system; particularly to have considered the dangerous and premature union of the President and Senate, and the mixture of legislative, executive, and judicial powers in the Senate.

But there is such an intimate connection between the several branches in whom the different species of authority is lodged, and the powers with which they are invested, that on reflection it seems necessary first to proceed to examine the nature and extent of the powers granted to the legislature.

2.9.56 This enquiry will assist us the better to determine, whether the legislature is so constituted, as to provide proper checks and restrictions for the security of our rights, and to guard against the abuse of power—For the means should be suited to the end; a government should be framed with a view to the objects to which it extends: if these be few in number, and of such a nature as to give but small occasion or opportunity to work oppression in the exercise of authority, there will be less need of a numerous representation, and special guards against abuse, than if the powers of the government are very extensive, and include a great variety of cases.[39] It will also be found necessary to examine the extent of these powers, in order to form a just opinion how far this system can be considered as a confederation, or a consolidation of the states. Many of the advocates for, and most of the opponents to this system, agree that the form of government most suitable for the United States, is that of a confederation.[40] The idea of a confederated government is that of a number of independent states entering into a compact, for the conducting certain general concerns, in which they have a common interest, leaving the management of their internal and local affairs to their separate governments. But whether the system proposed is of this nature cannot be determined without a strict enquiry into the powers proposed to be granted.

2.9.57 This constitution considers the people of the several states as one body corporate, and is intended as an original compact, it will therefore dissolve all contracts which may be inconsistent with it. This not only results from its nature, but is expressly declared in the *6th article* of it. The design of the constitution is expressed in the preamble, to be, "in order to form a more perfect union, to establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity." These are the ends this government is to accomplish, and for which it is invested with certain powers, among these

is the power "to make all laws which are *necessary and proper* for carrying into execution the foregoing powers, and *all other* powers vested by this constitution in the government of the United States, or in any department or officer thereof." It is a rule in construing a law to consider the objects the legislature had in view in passing it, and to give it such an explanation as to promote their intention. The same rule will apply in explaining a constitution. The great objects then are declared in this preamble in general and indefinite terms to be to provide for the common defence, promote the general welfare, and an express power being vested in the legislature to make all laws which shall be necessary and proper for carrying into execution all the powers vested in the general government. The inference is natural that the legislature will have an authority to make all laws which they shall judge necessary for the common safety, and to promote the general welfare. This amounts to a power to make laws at discretion: No terms can be found more indefinite than these, and it is obvious, that the legislature alone must judge what laws are proper and necessary for the purpose. It may be said, that this way of explaining the constitution, is torturing and making it speak what it never intended. This is far from my intention, and I shall not even insist upon this implied power, but join issue with those who say we are to collect the idea of the powers given from the express words of the clauses granting them; and it will not be difficult to shew that the same authority is expressly given which is supposed to be implied in the forgoing paragraphs.

In the 1st article, 8th section, it is declared, "that Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts, and provide for the common defence, and general welfare of the United States." In the preamble, the intent of the constitution, among other things, is declared to be to provide for the common defence, and promote the general welfare, and in this clause the power is in express words given to Congress "to provide for the common defence, and general welfare."—And in the last paragraph of the same section there is an express authority to make all laws which shall be necessary and proper for carrying into execution this power. It is therefore evident, that the legislature under this constitution may pass any law which they may think proper. It is true the 9th section restrains their power with respect to certain objects. But these restrictions are very limited, some of them improper, some unimportant, and others not easily understood, as I shall hereafter shew. It has been urged that the meaning I give to this part of the constitution is not the true one, that the intent of it is to confer on the legislature the power to lay and collect taxes, etc. in order to provide for the common defence and general welfare.[41] To this I would reply, that the meaning and intent of the constitution is to be collected from the words of it, and I submit to the public, whether the construction I have given it is not the most natural and easy. But admitting the contrary opinion to prevail, I shall nevertheless, be able to shew,

2.9.58

that the same powers are substantially vested in the general government, by several other articles in the constitution. It invests the legislature with authority to lay and collect taxes, duties, imposts and excises, in order to provide for the common defence, and promote the general welfare, and to pass all laws which shall be necessary and proper for carrying this power into effect. To comprehend the extent of this authority, it will be requisite to examine 1st. what is included in this power to lay and collect taxes, duties, imposts and excises.

2d. What is implied in the authority, to pass all laws which shall be necessary and proper for carrying this power into execution.

3d. What limitation, if any, is set to the exercise of this power by the constitution.

2.9.59 1st. To detail the particulars comprehended in the general terms, taxes, duties, imposts and excises, would require a volume, instead of a single piece in a news-paper. Indeed it would be a task far beyond my ability, and to which no one can be competent, unless possessed of a mind capable of comprehending every possible source of revenue; for they extend to every possible way of raising money, whether by direct or indirect taxation. Under this clause may be imposed a poll-tax, a land-tax, a tax on houses and buildings, on windows and fire places, on cattle and on all kinds of personal property:—It extends to duties on all kinds of goods to any amount, to tonnage and poundage on vessels, to duties on written instruments, newspapers, almanacks, and books:—It comprehends an excise on all kinds of liquors, spirits, wines, cyder, beer, etc. and indeed takes in duty or excise on every necessary or conveniency of life; whether of foreign or home growth or manufactory. In short, we can have no conception of any way in which a government can raise money from the people, but what is included in one or other of three general terms. We may say then that this clause commits to the hands of the general legislature every conceivable source of revenue within the United States. Not only are these terms very comprehensive, and extend to a vast number of objects, but the power to lay and collect has great latitude; it will lead to the passing a vast number of laws, which may affect the personal rights of the citizens of the states, expose their property to fines and confiscation, and put their lives in jeopardy: it opens a door to the appointment of a swarm of revenue and excise officers to pray [*sic*] upon the honest and industrious part of the community, eat up their substance, and riot on the spoils of the country.

2.9.60 2d. We will next enquire into what is implied in the authority to pass all laws which shall be necessary and proper to carry this power into execution.

It is, perhaps, utterly impossible fully to define this power. The authority granted in the first clause can only be understood in its full extent, by descending to all the particular cases in which a revenue can be raised; the number and variety of these cases are so endless, and as it were infinite, that no man living has, as yet, been able to reckon them up. The greatest

geniuses in the world have been for ages employed in the research, and when mankind had supposed that the subject was exhausted they have been astonished with the refined improvements that have been made in modern times, and especially in the English nation on the subject—If then the objects of this power cannot be comprehended, how is it possible to understand the extent of that power which can pass all laws which shall be necessary and proper for carrying it into execution? It is truly incomprehensible. A case cannot be conceived of, which is not included in this power. It is well known that the subject of revenue is the most difficult and extensive in the science of government. It requires the greatest talents of a statesman, and the most numerous and exact provisions of the legislature. The command of the revenues of a state gives the command of every thing in it.—He that has the purse will have the sword, and they that have both, have every thing; so that the legislature having every source from which money can be drawn under their direction, with a right to make all laws necessary and proper for drawing forth all the resource of the country, would have, in fact, all power.[42]

2.9.61 Were I to enter into the detail, it would be easy to shew how this power in its operation, would totally destroy all the powers of the individual states.[43] But this is not necessary for those who will think for themselves, and it will be useless to such as take things upon trust, nothing will awaken them to reflection, until the iron hand of oppression compel them to it.

2.9.62 I shall only remark, that this power, given to the federal legislature, directly annihilates all the powers of the state legislatures.[44] There cannot be a greater solecism in politics than to talk of power in a government, without the command of any revenue. It is as absurd as to talk of an animal without blood, or the subsistence of one without food.[45] Now the general government having in their controul every possible source of revenue, and authority to pass any law they may deem necessary to draw them forth, or to facilitate their collection; no source of revenue is therefore left in the hands of any state. Should any state attempt to raise money by law, the general government may repeal or arrest it in the execution, for all their laws will be the supreme law of the land: If then any one can be weak enough to believe that a government can exist without having the authority to raise money to pay a door-keeper to their assembly, he may believe that the state government can exist, should this new constitution take place.[46]

2.9.63 It is agreed by most of the advocates of this new system, that the government which is proper for the United States should be a confederated one: that the respective states ought to retain a portion of their sovereignty, and that they should preserve not only the forms of their legislatures, but also the power to conduct certain internal concerns. How far the powers to be retained by the states shall extend, is the question; we need not spend much time on this subject, as it respects this constitution, for a government without the power to raise money is one only in name. It is clear that the

legislatures of the respective states must be altogether dependent on the will of the general legislature, for the means of supporting their government. The legislature of the United States will have a right to exhaust every source of revenue in every state, and to annul all laws of the states which may stand in the way of effecting it; unless therefore we can suppose the state governments can exist without money to support the officers who execute them, we must conclude they will exist no longer than the general legislature choose they should. Indeed the idea of any government existing, in any respect, as an independent one, without any means of support in their own hands, is an absurdity. If therefore, this constitution has in view, what many of its framers and advocates say it has, to secure and guarantee to the separate states the exercise of certain powers of government[,] it certainly ought to have left in their hands some sources of revenue. It should have marked the line in which the general government should have raised money, and set bounds over which they should not pass, leaving to the separate states other means to raise supplies for the support of their governments, and to discharge their respective debts. To this it is objected, that the general government ought to have power competent to the purposes of the union; they are to provide for the common defence, to pay the debts of the United States, support foreign ministers, and the civil establishment of the union, and to do these they ought to have authority to raise money adequate to the purpose. On this I observe, that the state governments have also contracted debts, they require money to support their civil officers, and how this is to be done, if they give to the general government a power to raise money in every way in which it can possibly be raised, with such a controul over the state legislatures as to prohibit them, whenever the general legislature may think proper, from raising any money.[47] It is again objected that it is very difficult, if not impossible, to draw the line of distinction between the powers of the general and state governments on this subject. The first, it is said, must have the power of raising the money necessary for the purposes of the union, if they are limited to certain objects the revenue may fall short of a sufficiency for the public exigencies, they must therefore have discretionary power. The line may be easily and accurately drawn between the powers of the two governments on this head. The distinction between external and internal taxes, is not a novel one in this country, it is a plain one, and easily understood. The first includes impost duties on all imported goods; this species of taxes it is proper should be laid by the general government; many reasons might be urged to shew that no danger is to be apprehended from their exercise of it. They may be collected in few places, and from few hands with certainty and expedition. But few officers are necessary to be imployed in collecting them, and there is no danger of oppression in laying them, because, if they are laid higher than trade will bear, the merchants will cease importing, or smuggle their goods. We have therefore sufficient security, arising from the nature of the thing, against

burdensome and intolerable impositions from this kind of tax.[48] But the case is far otherwise with regard to direct taxes; these include poll taxes, land taxes, excises, duties on written instruments, on every thing we eat, drink, or wear; they take hold of every species of property, and come home to every man's house and packet. These are often so oppressive, as to grind the face of the poor, and render the lives of the common people a burden to them. The great and only security the people can have against oppression from this kind of taxes, must rest in their representatives. If they are sufficiently numerous to be well informed of the circumstances, and ability of those who send them, and have a proper regard for the people, they will be secure. The general legislature, as I have shewn in a former paper, will not be thus qualified, and therefore, on this account, ought not to exercise the power of direct taxation. If the power of laying imposts will not be sufficient, some other specific mode of raising a revenue should have been assigned the general government; many may be suggested in which their power may be accurately defined and limited, and it would be much better to give them authority to lay and collect a duty on exports, not to exceed a certain rate per cent, than to have surrendered every kind of resource that the country has, to the complete abolition of the state governments, and which will introduce such an infinite number of laws and ordinances, fines and penalties, courts, and judges, collectors, and excisemen, that when a man can number them, he may enumerate the stars of Heaven.

I shall resume this subject in my next, and by an induction of particulars shew, that this power, in its exercise, will subvert all state authority, and will work to the oppression of the people, and that there are no restrictions in the constitution that will soften its rigour, but rather the contrary.

Brutus.

VI

27 December 1787

It is an important question, whether the general government of the United States should be so framed, as to absorb and swallow up the state governments? or whether, on the contrary, the former ought not to be confined to certain defined national objects, while the latter should retain all the powers which concern the internal police of the states? 2.9.64

I have, in my former papers, offered a variety of arguments to prove, that a simple free government could not be exercised over this whole continent, and that therefore we must either give up our liberties and submit to an arbitrary one, or frame a constitution on the plan of confederation. Further 2.9.65

reasons might be urged to prove this point—but it seems unnecessary, because the principal advocates of the new constitution admit of the position. The question therefore between us, this being admitted, is, whether or not this system is so formed as either directly to annihilate the state governments, or that in its operation it will certainly effect it. If this is answered in the affirmative, then the system ought not to be adopted, without such amendments as will avoid this consequence. If on the contrary it can be shewn, that the state governments are secured in their rights to manage the internal police of the respective states, we must confine ourselves in our enquiries to the organization of the government and the guards and provisions it contains to prevent a misuse or abuse of power.[49] To determine this question, it is requisite, that we fully investigate the nature, and the extent of the powers intended to be granted by this constitution to the rulers.

2.9.66 In my last number I called your attention to this subject, and proved, as I think, uncontrovertibly, that the powers given the legislature under the 8th section of the 1st article, had no other limitation than the discretion of the Congress. It was shewn, that even if the most favorable construction was given to this paragraph, that the advocates for the new constitution could wish, it will convey a power to lay and collect taxes, imposts, duties, and excises, according to the discretion of the legislature, and to make all laws which they shall judge proper and necessary to carry this power into execution. This I shewed would totally destroy all the power of the state governments. To confirm this, it is worth while to trace the operation of the government in some particular instances.

2.9.67 The general government is to be vested with authority to levy and collect taxes, duties, and excises; the separate states have also power to impose taxes, duties, and excises, except that they cannot lay duties on exports and imports without the consent of Congress. Here then the two governments have concurrent jurisdiction; both may lay impositions of this kind. But then the general government have supperadded to this power, authority to make all laws which shall be necessary and proper for carrying the foregoing power into execution. Suppose then that both governments should lay taxes, duties, and excises, and it should fall so heavy on the people that they would be unable, or be so burdensome that they would refuse to pay them both—would it not be necessary that the general legislature should suspend the collection of the state tax? It certainly would. For, if the people could not, or would not pay both, they must be discharged from the tax to the state, or the tax to the general government could not be collected.—The conclusion therefore is inevitable, that the respective state governments will not have the power to raise one shilling in any way, but by the permission of the Congress. I presume no one will pretend, that the states can exercise legislative authority, or administer justice among their citizens for any length of time, without being able to raise a sufficiency to pay those who administer their governments.

If this be true, and if the states can raise money only by permission of the general government, it follows that the state governments will be dependent on the will of the general government for their existence. 2.9.68

What will render this power in Congress effectual and sure in its operation is, that the government will have complete judicial and executive authority to carry all their laws into effect, which will be paramount to the judicial and executive authority of the individual states: in vain therefore will be all interference of the legislatures, courts, or magistrates of any of the states on the subject; for they will be subordinate to the general government, and engaged by oath to support it, and will be constitutionally bound to submit to their decisions.[50]

The general legislature will be empowered to lay any tax they chuse, to annex any penalties they please to the breach of their revenue laws; and to appoint as many officers as they may think proper to collect the taxes. They will have authority to farm the revenues and to vest the farmer general, with his subalterns, with plenary powers to collect them, in any way which to them may appear eligible. And the courts of law, which they will be authorized to institute, will have cognizance of every case arising under the revenue laws, the conduct of all the officers employed in collecting them; and the officers of these courts will execute their judgments. There is no way, therefore, of avoiding the destruction of the state governments, whenever the Congress please to do it, unless the people rise up, and, with a strong hand, resist and prevent the execution of constitutional laws.[51] The fear of this, will, it is presumed, restrain the general government, for some time, within proper bounds; but it will not be many years before they will have a revenue, and force, at their command, which will place them above any apprehensions on that score. 2.9.69

How far the power to lay and collect duties and excises, may operate to dissolve the state governments, and oppress the people, it is impossible to say. It would assist us much in forming a just opinion on this head, to consider the various objects to which this kind of taxes extend, in European nations, and the infinity of laws they have passed respecting them. Perhaps, if leisure will permit, this may be essayed in some future paper.[52] 2.9.70

It was observed in my last number, that the power to lay and collect duties and excises, would invest the Congress with authority to impose a duty and excise on every necessary and convenience of life. As the principal object of the government, in laying a duty or excise, will be, to raise money, it is obvious, that they will fix on such articles as are of the most general use and consumption; because, unless great quantities of the article, on which the duty is laid, is used, the revenue cannot be considerable. We may therefore presume, that the articles which will be the object of this species of taxes will be either the real necessaries of life; or if not these, such as from custom and habit are esteemed so. I will single out a few of the productions of our own country, which may, and probably will, be of the number. 2.9.71

2.9.72 Cider is an article that most probably will be one of those on which an excise will be laid, because it is one, which this country produces in great abundance, which is in very general use, is consumed in great quantities, and which may be said too not to be a real necessary of life. An excise on this would raise a large sum of money in the United States. How would the power, to lay and collect an excise on cider, and to pass all laws proper and necessary to carry it into execution, operate in its exercise? It might be necessary, in order to collect the excise on cider, to grant to one man, in each county, an exclusive right of building and keeping cider-mills, and oblige him to give bonds and security for payment of the excise; or, if this was not done, it might be necessary to license the mills, which are to make this liquor, and to take from them security, to account for the excise; or, if otherwise, a great number of officers must be employed, to take account of the cider made, and to collect the duties on it.

2.9.73 Porter, ale, and all kinds of malt-liquors, are articles that would probably be subject also to an excise. It would be necessary, in order to collect such an excise, to regulate the manufactory of these, that the quantity made might be ascertained or otherwise security could not be had for the payment of the excise. Every brewery must then be licensed, and officers appointed, to take account of its product, and to secure the payment of the duty, or excise, before it is sold. Many other articles might be named, which would be objects of this species of taxation, but I refrain from enumerating them. It will probably be said, by those who advocate this system, that the observations already made on this head, are calculated only to inflame the minds of the people, with the apprehension of dangers merely imaginary. That there is not the least reason to apprehend, the general legislature will exercise their power in this manner. To this I would only say, that these kinds of taxes exist in Great Britain, and are severely felt. The excise on cider and perry, was imposed in that nation a few years ago, and it is in the memory of every one, who read the history of the transaction, what great tumults it occasioned.

2.9.74 This power, exercised without limitation, will introduce itself into every corner of the city, and country—It will wait upon the ladies at their toilett, and will not leave them in any of their domestic concerns; it will accompany them to the ball, the play, and the assembly; it will go with them when they visit, and will, on all occasions, sit beside them in their carriages, nor will it desert them even at church; it will enter the house of every gentleman, watch over his cellar, wait upon his cook in the kitchen, follow the servants into the parlour, preside over the table, and note down all he eats or drinks; it will attend him to his bed-chamber, and watch him while he sleeps; it will take cognizance of the professional man in his office, or his study; it will watch the merchant in the counting-house, or in his store; it will follow the mechanic to his shop, and in his work, and will haunt him in his family, and in his bed; it will be a constant companion of the industrious farmer in all his

labour, it will be with him in the house, and in the field, observe the toil of his hands, and the sweat of his brow; it will penetrate into the most obscure cottage; and finally, it will light upon the head of every person in the United States. To all these different classes of people, and in all these circumstances, in which it will attend them, the language in which it will address them, will be GIVE! GIVE!

A power that has such latitude, which reaches every person in the community in every conceivable circumstance, and lays hold of every species of property they possess, and which has no bounds set to it, but the discretion of those who exercise it[,] I say, such a power must necessarily, from its very nature, swallow up all the power of the state governments. 2.9.75

I shall add but one other observation on this head, which is this—It appears to me a solecism, for two men, or bodies of men, to have unlimited power respecting the same object. It contradicts the scripture maxim, which saith, "no man can serve two masters,"[53] the one power or the other must prevail, or else they will destroy each other, and neither of them effect their purpose. It may be compared to two mechanic powers, acting upon the same body in opposite directions, the consequence would be, if the powers were equal, the body would remain in a state of rest, or if the force of the one was superior to that of the other, the stronger would prevail, and overcome the resistance of the weaker. 2.9.76

But it is said, by some of the advocates of this system, "That the idea that Congress can levy taxes at pleasure, is false, and the suggestion wholly unsupported: that the preamble to the constitution is declaratory of the purposes of the union, and the assumption of any power not necessary to establish justice, &c. to provide for the common defence, &c. will be unconstitutional. Besides, in the very clause which gives the power of levying duties and taxes, the purposes to which the money shall be appropriated, are specified, viz. to pay the debts, and provide for the common defence and general welfare."* I would ask those, who reason thus, to define what ideas are included under the terms, to provide for the common defence and general welfare? Are these terms definite, and will they be understood in the same manner, and to apply to the same cases by every one? No one will pretend they will. It will then be matter of opinion, what tends to the general welfare; and the Congress will be the only judges in the matter. To provide for the general welfare, is an abstract proposition, which mankind differ in the explanation of, as much as they do on any political or moral proposition that can be proposed; the most opposite measures may be pursued by different parties, and both may profess, that they have in view the general welfare; and both sides may be honest in their professions, or both may have sinister views. Those who advocate this new constitution declare, they 2.9.77

*Vide an examination into the leading principles of the federal constitution, printed in Philadelphia, Page 34.[54]

are influenced by a regard to the general welfare; those who oppose it, declare they are moved by the same principle; and I have no doubt but a number on both sides are honest in their professions; and yet nothing is more certain than this, that to adopt this constitution, and not to adopt it, cannot both of them be promotive of the general welfare.

2.9.78 It is as absurd to say, that the power of Congress is limited by these general expressions, "to provide for the common safety, and general welfare," as it would be to say, that it would be limited, had the constitution said they should have power to lay taxes, &c. at will and pleasure. Were this authority given, it might be said, that under it the legislature could not do injustice, or pursue any measures, but such as were calculated to promote the public good, and happiness. For every man, rulers as well as others, are bound by the immutable laws of God and reason, always to will what is right. It is certainly right and fit, that the governors of every people should provide for the common defence and general welfare; every government, therefore, in the world, even the greatest despot, is limited in the exercise of his power. But however just this reasoning may be, it would be found, in practice, a most pitiful restriction. The government would always say, their measures were designed and calculated to promote the public good; and there being no judge between them and the people, the rulers themselves must, and would always, judge for themselves.

2.9.79 There are others of the favourers of this system, who admit, that the power of the Congress under it, with respect to revenue, will exist without limitation, and contend, that so it ought to be.

It is said, "The power to raise armies, to build and equip fleets, and to provide for their support, ought to exist without limitation, because it is impossible to foresee, or to define, the extent and variety of national exigencies, or the correspondent extent and variety of the means which may be necessary to satisfy them.["]

This, it is said, "is one of those truths which, to correct and unprejudiced minds, carries its own evidence along with it. It rests upon axioms as simple as they are universal: the means ought to be proportioned to the end; the person, from whose agency the attainment of any end is expected, ought to possess the means by which it is to be attained."*

2.9.80 This same writer insinuates, that the opponents to the plan promulgated by the convention, manifests a want of candor, in objecting to the extent of the powers proposed to be vested in this government; because he asserts, with an air of confidence, that the powers ought to be unlimited as to the object to which they extend; and that this position, if not self-evident, is at least clearly demonstrated by the foregoing mode of reasoning. But with submission to this author's better judgment, I humbly conceive his reasoning will appear, upon examination, more specious than solid. The means,

*Vide the Federalist, No. 23.[55]

says the gentleman, ought to be proportioned to the end: admit the proposition to be true it is then necessary to enquire, what is the end of the government of the United States, in order to draw any just conclusions from it. Is this end simply to preserve the general government, and to provide for the common defence and general welfare of the union only? certainly not: for beside this, the state governments are to be supported, and provision made for the managing such of their internal concerns as are allotted to them. It is admitted, "that the circumstances of our country are such, as to demand a compound, instead of a simple, a confederate, instead of a sole government," that the objects of each ought to be pointed out, and that each ought to possess ample authority to execute the powers committed to them.[56] The government then, being complex in its nature, the end it has in view is so also; and it is as necessary, that the state governments should possess the means to attain the ends expected from them, as for the general government. Neither the general government, nor the state governments, ought to be vested with all the powers proper to be exercised for promoting the ends of government. The powers are divided between them—certain ends are to be attained by the one, and other certain ends by the other; and these, taken together, include all the ends of good government. This being the case, the conclusion follows, that each should be furnished with the means, to attain the ends, to which they are designed.

To apply this reasoning to the case of revenue; the general government is charged with the care of providing for the payment of the debts of the United States; supporting the general government, and providing for the defence of the union. To obtain these ends, they should be furnished with means. But does it thence follow, that they should command all the revenues of the United States! Most certainly it does not. For if so, it will follow, that no means will be left to attain other ends, as necessary to the happiness of the country, as those committed to their care. The individual states have debts to discharge; their legislatures and executives are to be supported, and provision is to be made for the administration of justice in the respective states. For these objects the general government has no authority to provide; nor is it proper it should. It is clear then, that the states should have the command of such revenues, as to answer the ends they have to obtain. To say, "that the circumstances that endanger the safety of nations are infinite,"[57] and from hence to infer, that all the sources of revenue in the states should be yielded to the general government, is not conclusive reasoning: for the Congress are authorized only to controul in general concerns, and not regulate local and internal ones; and these are as essentially requisite to be provided for as those. The peace and happiness of a community is as intimately connected with the prudent direction of their domestic affairs, and the due administration of justice among themselves, as with a competent provision for their defence against foreign invaders, and indeed more so. 2.9.81

2.9.82 Upon the whole, I conceive, that there cannot be a clearer position than this, that the state governments ought to have an uncontroulable power to raise a revenue, adequate to the exigencies of their governments; and, I presume, no such power is left them by this constitution.

Brutus.

VII

3 January 1788

2.9.83 The result of our reasoning in the two preceeding numbers is this, that in a confederated government, where the powers are divided between the general and the state government, it is essential to its existence, that the revenues of the country, without which no government can exist, should be divided between them, and so apportioned to each, as to answer their respective exigencies, as far as human wisdom can effect such a division and apportionment.

2.9.84 It has been shewn, that no such allotment is made in this constitution, but that every source of revenue is under the controul of the Congress; it therefore follows, that if this system is intended to be a complex and not a simple, a confederate and not an entire consolidated government, it contains in it the sure seeds of its own dissolution.—One of two things must happen—Either the new constitution will become a mere *nudum pactum*, and all the authority of the rulers under it be cried down, as has happened to the present confederation—Or the authority of the individual states will be totally supplanted, and they will retain the mere form without any of the powers of government.—To one or the other of these issues, I think, this new government, if it is adopted, will advance with great celerity.

2.9.85 It is said, I know, that such a separation of the sources of revenue, cannot be made without endangering the public safety—"unless (says a writer) it can be shewn that the circumstances which may affect the public safety are reducible within certain determinate limits; unless the contrary of this position can be fairly and rationally disputed; it must be admitted as a necessary consequence, that there can be no limitation of that authority which is to provide for the defence and protection of the community, &c."*

2.9.86 The pretended demonstration of this writer will instantly vanish, when it is considered, that the *protection and defence* of the community is not intended to be entrusted *solely* into the hands of the general government, and by his own confession it ought not to be. It is true this system commits to the general government the protection and defence of the community against foreign force and invasion, against piracies and felonies on the high

**Federalist*, No. 23.

seas, and against insurrections among ourselves. They are also authorised to provide for the administration of justice in certain matters of a general concern, and in some that I think are not so. But it ought to be left to the state governments to provide for the protection and defence of the citizen against the hand of private violence, and the wrongs done or attempted by individuals to each other—Protection and defence against the murderer, the robber, the thief, the cheat, and the unjust person, is to be derived from the respective state governments.—The just way of reasoning therefore on this subject is this, the general government is to provide for the protection and defence of the community against foreign attacks, &c., they therefore ought to have authority sufficient to effect this, so far as is consistent with the providing for our internal protection and defence. The state governments are entrusted with the care of administring justice among its citizens, and the management of other internal concerns, they ought therefore to retain power adequate to the end. The preservation of internal peace and good order, and the due administration of law and justice, ought to be the first care of every government.—The happiness of a people depends infinitely more on this than it does upon all that glory and respect which nations acquire by the most brilliant martial achievements—and I believe history will furnish but few examples of nations who have duly attended to these, who have been subdued by foreign invaders. If a proper respect and submission to the laws prevailed over all orders of men in our country; and if a spirit of public and private justice, oeconomy and industry influenced the people, we need not be under any apprehensions but what they would be ready to repel any invasion that might be made on the country.[58] And more than this, I would not wish from them—A defensive war is the only one I think justifiable[59]—I do not make these observations to prove, that a government ought not to be authorised to provide for the protection and defence of a country against external enemies, but to shew that this is not the most important, much less the only object of their care.[60]

The European governments are almost all of them framed, and administered with a view to arms, and war, as that in which their chief glory consists; they mistake the end of government—it was designed to save men[']s lives, not to destroy them. We ought to furnish the world with an example of a great people, who in their civil institutions hold chiefly in view, the attainment of virtue, and happiness among ourselves. Let the monarchs in Europe, share among them the glory of depopulating countries, and butchering thousands of their innocent citizens, to revenge private quarrels, or to punish an insult offered to a wife, a mistress, or a favorite: I envy them not the honor, and I pray heaven this country may never be ambitious of it.[61] The czar Peter the great, acquired great glory by his arms; but all this was nothing, compared with the true glory which he obtained, by civilizing his rude and barbarous subjects, diffusing among them knowledge, and establishing, and cultivating the arts of life: by the former he desolated

2.9.87

countries, and drenched the earth with human blood: by the latter he softened the ferocious nature of his people, and pointed them to the means of human happiness. The most important end of government then, is the proper direction of its internal policy, and oeconomy; this is the province of the state governments, and it is evident, and is indeed admitted, that these ought to be under their controul. Is it not then preposterous, and in the highest degree absurd, when the state governments are vested with powers so essential to the peace and good order of society, to take from them the means of their own preservation?

2.9.88 The idea, that the powers of congress in respect to revenue ought to be unlimited, "because the circumstances which may affect the public safety are not reducible to certain determinate limits," is novel, as it relates to the government of the united states. The inconveniencies which resulted from the feebleness of the present confederation was discerned, and felt soon after its adoption. It was soon discovered, that a power to require money, without either the authority or means to enforce a collection of it, could not be relied upon either to provide for the common defence, the discharge of the national debt, or for support of government. Congress therefore, so early as February 1781, recommended to the states to invest them with a power to levy an impost of five per cent ad valorem, on all imported goods, as a fund to be appropriated to discharge the debts already contracted, or which should hereafter be contracted for the support of the war, to be continued until the debts should be fully and finally discharged. There is not the most distant idea held out in this act, that an unlimited power to collect taxes, duties and excises was necessary to be vested in the united states, and yet this was a time of the most pressing danger and distress. The idea then was, that if certain definite funds were assigned to the union, which were certain in their natures, productive, and easy of collection, it would enable them to answer their engagements, and provide for their defence, and the impost of five per cent was fixed upon for the purpose.

2.9.89 This same subject was revived in the winter and spring of 1783, and after a long consideration of the subject, and many schemes were proposed; the result was, a recommendation of the revenue system of April 1783; this system does not suggest an idea that it was necessary to grant the United States unlimited authority in matters of revenue. A variety of amendments were proposed to this system, some of which are upon the journals of Congress, but it does not appear that any of them proposed to invest the general government with discretionary power to raise money. On the contrary, all of them limit them to certain definite objects, and fix the bounds over which they could not pass. This recommendation was passed at the conclusion of the war, and was founded on an estimate of the whole national debt. It was computed, that one million and an half of dollars, in addition to the impost, was a sufficient sum to pay the annual interest of the debt, and gradually to abolish the principal.—Events have proved that their estimate

was sufficiently liberal, as the domestic debt appears upon its being adjusted to be less than it was computed, and since this period a considerable portion of the principal of the domestic debt has been discharged by the sale of the western lands. It has been constantly urged by Congress, and by individuals, ever since, until lately, that had this revenue been appropriated by the states, as it was recommended, it would have been adequate to every exigency of the union. Now indeed it is insisted, that all the treasures of the country are to be under the controul of that body, whom we are to appoint to provide for our protection and defence against foreign enemies. The debts of the several states, and the support of the governments of them are to trust to fortune and accident. If the union should not have occasion for all the money they can raise, they will leave a portion for the state, but this must be a matter of mere grace and favor. Doctrines like these would not have been listened to by any state in the union, at a time when we were pressed on every side by a powerful enemy, and were called upon to make greater exertions than we have any reason to expect we shall ever be again. The ability and character of the convention, who framed the proferred constitution, is sounded forth and reiterated by every declaimer and writer in its favor, as a powerful argument to induce its adoption. But are not the patriots who guided our councils in the perilous times of the war, entitled to equal respect. How has it happened, that none of these perceived a truth, which it is pretended is capable of such clear demonstration, that the power to raise a revenue should be deposited in the general government without limitation? Were the men so dull of apprehension, so incapable of reasoning as not to be able to draw the inference?[62] The truth is, no such necessity exists. It is a thing practicable, and by no means so difficult as is pretended, to limit the powers of the general government in respect to revenue, while yet they may retain reasonable means to provide for the common defence.

It is admitted, that human wisdom cannot foresee all the variety of circumstances that may arise to endanger the safety of nations—and it may with equal truth be added, that the power of a nation, exerted with its utmost vigour, may not be equal to repel a force with which it may be assailed, much less may it be able, with its ordinary resources and power, to oppose an extraordinary and unexpected attack;—but yet every nation may form a rational judgment, what force will be competent to protect and defend it, against any enemy with which it is probable it may have to contend. In extraordinary attacks, every country must rely upon the spirit and special exertions of its inhabitants—and these extraordinary efforts will always very much depend upon the happiness and good order the people experience from a wise and prudent administration of their internal government.[63] The states are as capable of making a just estimate on this head, as perhaps any nation in the world.—We have no powerful nation in our neighbourhood; if we are to go to war, it must either be with the Aboriginal natives, or with European nations. The first are so unequal to a contest with this whole

2.9.90

continent, that they are rather to be dreaded for the depredations they may make on our frontiers, than for any impression they will ever be able to make on the body of the country. Some of the European nations, it is true, have provinces bordering upon us, but from these, unsupported by their European forces, we have nothing to apprehend; if any of them should attack us, they will have to transport their armies across the atlantic, at immense expence, while we should defend ourselves in our own country, which abounds with every necessary of life. For defence against any assault, which there is any probability will be made upon us, we may easily form an estimate.

2.9.91 I may be asked to point out the sources, from which the general government could derive a sufficient revenue, to answer the demands of the union. Many might be suggested, and for my part, I am not disposed to be tenacious of my own opinion on the subject. If the object be defined with precision, and will operate to make the burden fall any thing nearly equal on the different parts of the union, I shall be satisfied.

2.9.92 There is one source of revenue, which it is agreed, the general government ought to have the sole controul of. This is an impost upon all goods imported from foreign countries. This would, of itself, be very productive, and would be collected with ease and certainty.—It will be a fund too, constantly encreasing—for our commerce will grow, with the productions of the country; and these, together with our consumption of foreign goods, will encrease with our population.[64] It is said, that the impost will not produce a sufficient sum to satisfy the demands of the general government; perhaps it would not. Let some other then, equally well defined, be assigned them:—that this is practicable is certain, because such particular objects were proposed by some members of Congress when the revenue system of April 1783, was agitated in that body. It was then moved, that a tax at the rate of ninetieths[65] of a dollar on surveyed land, and a house tax of half a dollar on a house, should be granted to the United States. I do not mention this, because I approve of raising a revenue in this mode. I believe such a tax would be difficult in its collection, and inconvenient in its operation. But it shews, that it has heretofore been the sense of some of those, who now contend, that the general government should have unlimited authority in matters of revenue, that their authority should be definite and limitted on that head.—My own opinion is, that the objects from which the general government should have authority to raise a revenue, should be of such a nature, that the tax should be raised by simple laws, with few officers, with certainty and expedition, and with the least interference with the internal police of the states.—Of this nature is the impost on imported goods—and it appears to me that a duty on exports, would also be of this nature—and therefore, for ought I can discover, this would be the best source of revenue to grant the general government. I know neither the Congress nor the state legislatures will have authority under the new constitution to raise a revenue

in this way. But I cannot perceive the reason of the restriction. It appears to me evident, that a tax on articles exported, would be as nearly equal as any that we can expect to lay, and it certainly would be collected with more ease and less expence than any direct tax. I do not however, contend for this mode, it may be liable to well founded objections that have not occurred to me. But this I do contend for, that some mode is practicable, and that limits must be marked between the general government, and the states on this head, or if they be not, either the Congress in the exercise of this power, will deprive the state legislatures of the means of their existence, or the states by resisting the constitutional authority of the general government, will render it nugatory.

Brutus.

VIII

10 January 1788

The next powers vested by this constitution in the general government, which we shall consider, are those, which authorise them to "borrow money on the credit of the United States, and to raise and support armies." I take these two together and connect them with the power to lay and collect taxes, duties, imposts and excises, because their extent, and the danger that will arise from the exercise of these powers, cannot be fully understood, unless they are viewed in relation to each other. 2.9.93

The power to borrow money is general and unlimited, and the clause so often before referred to, authorises the passing any laws proper and necessary to carry this into execution. Under this authority, the Congress may mortgage any or all the revenues of the union, as a fund to loan money upon, and it is probably, in this way, they may borrow of foreign nations, a principal sum, the interest of which will be equal to the annual revenues of the country.—By this means, they may create a national debt, so large, as to exceed the ability of the country ever to sink. I can scarcely contemplate a greater calamity that could befal this country, than to be loaded with a debt exceeding their ability ever to discharge. If this be a just remark, it is unwise and improvident to vest in the general government a power to borrow at discretion, without any limitation or restriction. 2.9.94

It may possibly happen that the safety and welfare of the country may require, that money be borrowed, and it is proper when such a necessity arises that the power should be exercised by the general government.—But it certainly ought never to be exercised, but on the most urgent occasions, and then we should not borrow of foreigners if we could possibly avoid it. 2.9.95

The constitution should therefore have so restricted, the exercise of this

power as to have rendered it very difficult for the government to practise it. The present confederation requires the assent of nine states to exercise this, and a number of the other important powers of the confederacy—and it would certainly have been a wise provision in this constitution, to have made it necessary that two thirds of the members should assent to borrowing money—when the necessity was indispensible, this assent would always be given, and in no other cause ought it to be.

2.9.96 The power to raise armies, is indefinite and unlimited, and authorises the raising forces, as well in peace as in war. Whether the clause which impowers the Congress to pass all laws which are proper and necessary, to carry this into execution, will not authorise them to impress men for the army, is a question well worthy consideration? If the general legislature deem it for the general welfare to raise a body of troops, and they cannot be procured by voluntary enlistments, it seems evident, that it will be proper and necessary to effect it, that men be impressed from the militia to make up the deficiency.

2.9.97 These powers taken in connection, amount to this: that the general government have unlimitted authority and controul over all the wealth and all the force of the union. The advocates for this scheme, would favor the world with a new discovery, if they would shew, what kind of freedom or independency is left to the state governments, when they cannot command any part of the property or of the force of the country, but at the will of the Congress. It seems to me as absurd, as it would be to say, that I was free and independent, when I had conveyed all my property to another, and was tenant to will to him, and had beside, given an indenture of myself to serve him during life.—The power to keep up standing armies in time of peace, has been justly objected, to this system, as dangerous and improvident. The advocates who have wrote in its favor, have some of them ridiculed the objection, as though it originated in the distempered brain of its opponents,[66] and others have taken pains to shew, that it is a power that was proper to be granted to the rulers in this constitution.[67] That you may be enabled to form a just opinion on this subject, I shall first make some remarks, tending to prove, that this power ought to be restricted, and then animadvert on the arguments which have been adduced to justify it.

2.9.98 I take it for granted, as an axiom in politic, that the people should never authorise their rulers to do any thing, which if done, would operate to their injury.

It seems equally clear, that in a case where a power, if given and exercised, will generally produce evil to the community, and seldom good—and which, experience has proved, has most frequently been exercised to the great injury, and very often to the total destruction of the government; in such a case, I say, this power, if given at all, should if possible be so restricted, as to prevent the ill effect of its operation.

2.9.99 Let us then enquire, whether standing armies in time of peace, would be

ever beneficial to our country—or if in some extraordinary cases, they might be necessary; whether it is not true, that they have generally proved a scourge to a country, and destructive of their liberty.

I shall not take up much of your time in proving a point, in which the friends of liberty, in all countries, have so universally agreed. The following extract from Mr. Pultney's speech, delivered in the house of commons of Great-Britain, on a motion for reducing the army, is so full to the point, and so much better than any thing I can say, that I shall be excused for inserting it.[68] He says, "I have always been, and always shall be against a standing army of any kind; to me it is a terrible thing, whether under that of a parliamentary, or any other designation; a standing army is still a standing army by whatever name it is called; they are a body of men distinct from the body of the people; they are governed by different laws, and blind obedience, and an entire submission to the orders of their commanding officer, is their only principle; the nations around us, sir, are already enslaved, and have been enslaved by those very means; by means of their standing armies they have every one lost their liberties; it is indeed impossible that the liberties of the people in any country can be preserved where a numerous standing army is kept up. Shall we then take our measures from the example of our neighbours? No, sir, on the contrary, from their misfortunes we ought to learn to avoid those rocks upon which they have split.

"It signifies nothing to tell me that our army is commanded by such 2.9.100
gentlemen as cannot be supposed to join in any measures for enslaving their country; it may be so; I have a very good opinion of many gentlemen now in the army; I believe they would not join in any such measures; but their lives are uncertain, nor can we be sure how long they will be kept in command, they may all be dismissed in a moment, and proper tools of power put in their room. Besides, sir, we know the passions of men, we know how dangerous it is to trust the best of men with too much power. Where was a braver army than that under Jul. Caesar? Where was there ever an army that had served their country more faithfully? That army was commanded generally by the best citizens of Rome, by men of great fortune and figure in their country, yet that army enslaved their country. The affections of the soldiers towards their country, the honor and integrity of the under officers, are not to be depended on. By the military law the administration of justice is so quick, and the punishment so severe, that neither the officer nor soldier dare dispute the orders of his supreme commander; he must not consult his own inclination. If an officer were commanded to pull his own father out of this house, he must do it; he dares not disobey; immediate death would be the sure consequence of the least grumbling: and if an officer were sent into the court of request, accompanied by a body of musketeers with screwed bayonets, and with orders to tell us what we ought to do, and how we were to vote: I know what would be the duty of this house; I know it would be our duty to order the officer to be hanged at the door of the lobby; but I doubt,

sir, I doubt much, if such a spirit could be found in the house, or in any house of commons that will ever be in England.

2.9.101 "Sir, I talk not of imaginary things? I talk of what has happened to an English house of commons, from an English army; not only from an English army, but an army that was raised by that very house of commons, an army that was paid by them, and an army that was commanded by generals appointed by them; therefore do not let us vainly imagine, that an army, raised and maintained by authority of parliament, will always be so submissive to them. If an army be so numerous as to have it in their power to overawe the parliament, they will be submissive as long as the parliament does nothing to disoblige their favourite general; but when that case happens, I am afraid, that in place of the parliament's dismissing the army, the army will dismiss the parliament."—If this great man's reasoning be just, it follows, that keeping up a standing army, would be in the highest degree dangerous to the liberty and happiness of the community—and if so, the general government ought not to have authority to do it; for no government should be empowered to do that which if done, would tend to destroy public liberty.

Brutus.

IX

17 January 1788

2.9.102 The design of civil government is to protect the rights and promote the happiness of the people.

For this end, rulers are invested with powers. But we cannot from hence justly infer that these powers should be unlimited. There are certain rights which mankind possess, over which government ought not to have any controul, because it is not necessary they should, in order to attain the end of its institution. There are certain things which rulers should be absolutely prohibited from doing, because, if they should do them, they would work an injury, not a benefit to the people. Upon the same principles of reasoning, if the exercise of a power, is found generally or in most cases to operate to the injury of the community, the legislature should be restricted in the exercise of that power, so as to guard, as much as possible, against the danger. These principles seem to be the evident dictates of common sense, and what ought to give sanction to them in the minds of every American, they are the great principles of the late revolution, and those which governed the framers of all our state constitutions. Hence we find, that all the state constitutions, contain either formal bills of rights, which set bounds to the powers of the legislature, or have restrictions for the same purpose in the body of the

constitutions. Some of our new political Doctors, indeed, reject the idea of the necessity, or propriety of such restrictions in any elective government, but especially in the general one.[69]

2.9.103 But it is evident, that the framers of this new system were of a contrary opinion, because they have prohibited the general government, the exercise of some powers, and restricted them in that of others.

I shall adduce two instances, which will serve to illustrate my meaning, as well as to confirm the truth of the preceeding remark.

In the 9th section, it is declared, "no bill of attainder shall be passed." This clause takes from the legislature all power to declare a particular person guilty of a crime by law. It is proper the legislature should be deprived of the exercise of this power, because it seldom is exercised to the benefit of the community, but generally to its injury.

2.9.104 In the same section it is provided, that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion and invasion, the public safety may require it." This clause limits the power of the legislature to deprive a citizen of the right of habeas corpus, to particular cases viz. those of rebellion and invasion; the reason is plain, because in no other cases can this power be exercised for the general good.

Let us apply these remarks to the case of standing armies in times of peace. If they generally prove the destruction of the happiness and liberty of the people, the legislature ought not to have power to keep them up, or if they had, this power should be so restricted, as to secure the people against the danger arising from the exercise of it.

2.9.105 That standing armies are dangerous to the liberties of a people was proved in my last number—If it was necessary, the truth of the position might be confirmed by the history of almost every nation in the world. A cloud of the most illustrious patriots of every age and country, where freedom has been enjoyed, might be adduced as witnesses in support of the sentiment. But I presume it would be useless, to enter into a laboured argument, to prove to the people of America, a position, which has so long and so generally been received by them as a kind of axiom.

2.9.106 Some of the advocates for this new system controvert this sentiment, as they do almost every other that has been maintained by the best writers on free government.—Others, though they will not expressly deny, that standing armies in times of peace are dangerous, yet join with these in maintaining, that it is proper the general government should be vested with the power to do it.[70] I shall now proceed to examine the arguments they adduce in support of their opinions.

2.9.107 A writer, in favor of this system, treats this objection as a ridiculous one.[71] He supposes it would be as proper to provide against the introduction of Turkish janizaries, or against making the Alcoran a rule of faith.

From the positive, and dogmatic manner, in which this author delivers his opinions, and answers objections made to his sentiments—one would con-

clude, that he was some pedantic pedagogue who had been accustomed to deliver his dogmas to pupils, who always placed implicit faith in what he delivered.

2.9.108 But, why is this provision so ridiculous? because, says this author, it is unnecessary. But, why is it unnecessary? "because, the principles and habits, as well as the power of the Americans are directly opposed to standing armies; and there is as little necessity to guard against them by positive constitutions, as to prohibit the establishment of the Mahometan religion." It is admitted then, that a standing army in time of peace, is an evil. I ask then, why should this government be authorised to do evil? If the principles and habits of the people of this country are opposed to standing armies in time of peace, if they do not contribute to the public good, but would endanger the public liberty and happiness, why should the government be vested with the power? No reason can be given, why rulers should be authorised to do, what, if done, would oppose the principles and habits of the people, and endanger the public safety, but there is every reason in the world, that they should be prohibited from the exercise of such a power. But this author supposes, that no danger is to be apprehended from the exercise of this power, because, if armies are kept up, it will be by the people themselves, and therefore, to provide against it, would be as absurd as for a man to "pass a law in his family, that no troops should be quartered in his family by his consent." This reasoning supposes, that the general government is to be exercised by the people of America themselves—But such an idea is groundless and absurd. There is surely a distinction between the people and their rulers, even when the latter are representatives of the former.—They certainly are not identically the same, and it cannot be disputed, but it may and often does happen, that they do not possess the same sentiments or pursue the same interests. I think I have shewn, that as this government is constituted, there is little reason to expect, that the interest of the people and their rulers will be the same.

2.9.109 Besides, if the habits and sentiments of the people of America are to be relied upon, as the sole security against the encroachment of their rulers, all restrictions in constitutions are unnecessary; nothing more is requisite, than to declare who shall be authorized to exercise the powers of government, and about this we need not be very careful—for the habits and principles of the people will oppose every abuse of power. This I suppose to be the sentiments of this author, as it seems to be of many of the advocates of this new system. An opinion like this, is as directly opposed to the principles and habits of the people of America, as it is to the sentiments of every writer of reputation on the science of government, and repugnant to the principles of reason and common sense.[72]

2.9.110 The idea that there is no danger of the establishment of a standing army, under the new constitution, is without foundation.

It is a well known fact, that a number of those who had an agency in

producing this system, and many of those who it is probable will have a principal share in the administration of the government under it, if it is adopted, are avowedly in favour of standing armies. It is a language common among them, "That no people can be kept in order, unless the government have an army to awe them into obedience; it is necessary to support the dignity of government, to have a military establishment."[73] And there will not be wanting a variety of plausible reason to justify the raising one, drawn from the danger we are in from the Indians on our frontiers, or from the European provinces in our neighbourhood. If to this we add, that an army will afford a decent support, and agreeable employment to the young men of many families, who are too indolent to follow occupations that will require care and industry, and too poor to live without doing any business[,] we can have little reason to doubt, but that we shall have a large standing army, as soon as this government can find money to pay them, and perhaps sooner.[74]

A writer, who is the boast of the advocates of this new constitution, has taken great pains to shew, that this power was proper and necessary to be vested in the general government. 2.9.111

He sets out with calling in question the candour and integrity of those who advance the objection, and with insinuating, that it is their intention to mislead the people, by alarming their passions, rather than to convince them by arguments addressed to their understandings.[75]

The man who reproves another for a fault, should be careful that he himself be not guilty of it. How far this writer has manifested a spirit of candour, and has pursued fair reasoning on this subject, the impartial public will judge, when his arguments pass before them in review.

He first attempts to shew, that this objection is futile and disingenuous, because the power to keep up standing armies, in time of peace, is vested, under the present government, in the legislature of every state in the union, except two. Now this is so far from being true, that it is expressly declared, by the present articles of confederation, that no body of forces "shall be kept up by any state, in time of peace, except such number only, as in the judgment of the United States in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state."[76] Now, was it candid and ingenuous to endeavour to persuade the public, that the general government had no other power than your own legislature have on this head; when the truth is, your legislature have no authority to raise and keep up any forces? 2.9.112

He next tells us, that the power given by this constitution, on this head, is similar to that which Congress possess under the present confederation. As little ingenuity is manifested in this representation as in that of the former.

I shall not undertake to enquire whether or not Congress are vested with a power to keep up a standing army in time of peace; it has been a subject warmly debated in Congress, more than once, since the peace; and one of 2.9.113

the most respectable states in the union, were so fully convinced that they had no such power, that they expressly instructed their delegates to enter a solemn protest against it on the journals of Congress, should they attempt to exercise it.

But should it be admitted that they have the power, there is such a striking dissimilarity between the restrictions under which the present Congress can exercise it, and that of the proposed government, that the comparison will serve rather to shew the impropriety of vesting the proposed government with the power, than of justifying it.

2.9.114 It is acknowledged by this writer, that the powers of Congress, under the present confederation, amount to little more than that of recommending. If they determine to raise troops, they are obliged to effect it through the authority of the state legislatures. This will, in the first instance, be a most powerful restraint upon them, against ordering troops to be raised. But if they should vote an army, contrary to the opinion and wishes of the people, the legislatures of the respective states would not raise them. Besides, the present Congress hold their places at the will and pleasure of the legislatures of the states who send them, and no troops can be raised, but by the assent of nine states out of the thirteen. Compare the power proposed to be lodged in the legislature on this head, under this constitution, with that vested in the present Congress, and every person of the least discernment, whose understanding is not totally blinded by prejudice, will perceive, that they bear no analogy to each other. Under the present confederation, the representatives of nine states, out of thirteen, must assent to the raising of troops, or they cannot be levied: under the proposed constitution, a less number than the representatives of two states, in the house of representatives, and the representatives of three states and an half in the senate, with the assent of the president, may raise any number of troops they please. The present Congress are restrained from an undue exercise of this power, from this consideration, they know [that] the state legislatures, through whose authority it must be carried into effect, would not comply with the requisition for the purpose, if it was evidently opposed to the public good: the proposed constitution authorizes the legislature to carry their determinations into execution, without the intervention of any other body between them and the people. The Congress under the present form are amenable to, and removable by, the legislatures of the respective states, and are chosen for one year only: the proposed constitution does not make the members of the legislature accountable to, or removeable by the state legislatures at all; and they are chosen, the one house for six, and the other for two years; and cannot be removed until their time of service is expired, let them conduct [themselves] ever so badly.—The public will judge, from the above comparison, how just a claim this writer has to that candour he affects to possess. In the mean time, to convince him, and the advocates for this system, that I possess some share of candor, I pledge myself to give up all opposition to it, on the head of standing armies, if the power to raise them be restricted as it is in the

present confederation; and I believe I may safely answer, not only for myself, but for all who make the objection, that they will be satisfied with less.

Brutus.

X

24 January 1788

To the People of the State of New-York.

The liberties of a people are in danger from a large standing army, not only because the rulers may employ them for the purposes of supporting themselves in any usurpations of power, which they may see proper to exercise, but there is great hazard, that an army will subvert the forms of the government, under whose authority, they are raised, and establish one, according to the pleasure of their leader. 2.9.115

We are informed, in the faithful pages of history, of such events frequently happening.—Two instances have been mentioned in a former paper.[77] They are so remarkable, that they are worthy of the most careful attention of every lover of freedom.—They are taken from the history of the two most powerful nations that have ever existed in the world; and who are the most renowned, for the freedom they enjoyed, and the excellency of their constitutions:—I mean Rome and Britain. 2.9.116

In the first, the liberties of the commonwealth was destroyed, and the constitution overturned, by an army, lead by Julius Cesar, who was appointed to the command, by the constitutional authority of that commonwealth. He changed it from a free republic, whose fame had sounded, and is still celebrated by all the world, into that of the most absolute despotism. A standing army effected this change, and a standing army supported it through a succession of ages, which are marked in the annals of history, with the most horrid cruelties, bloodshed, and carnage;—The most devilish, beastly, and unnatural vices, that ever punished or disgraced human nature. 2.9.117

The same army, that in Britain, vindicated the liberties of that people from the encroachments and despotism of a tyrant king, assisted Cromwell, their General, in wresting from the people, that liberty they had so dearly earned.

You may be told, these instances will not apply to our case:—But those who would persuade you to believe this, either mean to deceive you, or have not themselves considered the subject. 2.9.118

I firmly believe, no country in the world had ever a more patriotic army, than the one which so ably served this country, in the late war.

But had the General who commanded them, been possessed of the spirit 2.9.119

of a Julius Cesar or a Cromwell, the liberties of this country, had in all probability, terminated with the war; or had they been maintained, might have cost more blood and treasure, than was expended in the conflict with Great-Britain. When an anonimous writer addressed the officers of the army at the close of the war, advising them not to part with their arms, until justice was done them—the effect it had is well known.[78] It affected them like an electric shock. He wrote like Cesar; and had the commander in chief, and a few more officers of rank, countenanced the measure, the desperate resolution had been taken, to refuse to disband. What the consequences of such a determination would have been, heaven only knows.—The army were in the full vigor of health and spirits, in the habit of discipline, and possessed of all our military stores and apparatus. They would have acquired great accessions of strength from the country.—Those who were disgusted at our republican forms of government (for such there then were, of high rank among us) would have lent them all their aid.—We should in all probability have seen a constitution and laws, dictated to us, at the head of an army, and at the point of a bayonet, and the liberties for which we had so severely struggled, snatched from us in a moment. It remains a secret, yet to be revealed, whether this measure was not suggested, or at least countenanced, by some, who have had great influence in producing the present system.—Fortunately indeed for this country, it had at the head of the army, a patriot as well as a general; and many of our principal officers, had not abandoned the characters of citizens, by assuming that of soldiers, and therefore, the scheme proved abortive. But are we to expect, that this will always be the case? Are we so much better than the people of other ages and of other countries, that the same allurements of power and greatness, which led them aside from their duty, will have no influence upon men in our country? Such an idea, is wild and extravagant.—Had we indulged such a delusion, enough has appeared in a little time past, to convince the most credulous, that the passion for pomp, power and greatness, works as powerfully in the hearts of many of our better sort, as it ever did in any country under heaven.—Were the same opportunity again to offer, we should very probably be grossly disappointed, if we made dependence, that all who then rejected the overture, would do it again.

2.9.120 From these remarks, it appears, that the evil[79] to be feared from a large standing army in time of peace, does not arise solely from the apprehension, that the rulers may employ them for the purpose of promoting their own ambitious views, but that equal, and perhaps greater danger, is to be apprehended from their overturning the constitutional powers of the government, and assuming the power to dictate any form they please.

2.9.121 The advocates for power, in support of this right in the proposed government, urge that a restraint upon the discretion of the legislatures, in respect to military establishments in time of peace, would be improper to be imposed, because they say, it will be necessary to maintain small garrisons on

the frontiers, to guard against the depredations of the Indians, and to be prepared to repel any encroachments or invasions that may be made by Spain or Britain.[80]

The amount of this argument striped of the abundant verbages with which the author has dressed it, is this: 2.9.122

It will probably be necessary to keep up a small body of troops to garrison a few posts, which it will be necessary to maintain, in order to guard against the sudden encroachments of the Indians, or of the Spaniards and British; and therefore, the general government ought to be invested with power to raise and keep up a standing army in time of peace, without restraint; at their discretion.

I confess, I cannot perceive that the conclusion follows from the premises. Logicians say, it is not good reasoning to infer a general conclusion from particular premises: though I am not much of a Logician, it seems to me, this argument is very like that species of reasoning.

When the patriots in the parliament in Great-Britain, contended with such force of argument, and all the powers of eloquence, against keeping up standing armies in time of peace, it is obvious, they never entertained an idea, that small garrisons on their frontiers, or in the neighbourhood of powers, from whom they were in danger of encroachments, or guards, to take care of public arsenals would thereby be prohibited. 2.9.123

The advocates for this power farther urge that it is necessary, because it may, and probably will happen, that circumstances will render it requisite to raise an army to be prepared to repel attacks of an enemy, before a formal declaration of war, which in modern times has fallen into disuse.[81] If the constitution prohibited the raising an army, until a war actually commenced, it would deprive the government of the power of providing for the defence of the country, until the enemy were within our territory. If the restriction is not to extend to the raising armies in cases of emergency, but only to the keeping them up, this would leave the matter to the discretion of the legislature; and they might, under the pretence that there was danger of an invasion, keep up the army as long as they judged proper—and hence it is inferred, that the legislature should have authority to raise and keep up an army without any restriction. But from these premises nothing more will follow than this, that the legislature should not be so restrained, as to put it out of their power to raise an army, when such exigencies as are instanced shall arise. But it does not thence follow, that the government should be empowered to raise and maintain standing armies at their discretion as well in peace as in war. If indeed, it is impossible to vest the general government with the power of raising troops to garrison the frontier posts, to guard arsenals, or to be prepared to repel an attack, when we saw a power preparing to make one, without giving them a general and indefinite authority, to raise and keep up armies, without any restriction or qualification, then this reasoning might have weight; but this has not been proved nor can it be. 2.9.124

2.9.125 It is admitted that to prohibit the general government, from keeping up standing armies, while yet they were authorised to raise them in case of exigency, would be an insufficient guard against the danger. A discretion of such latitude would give room to elude the force of the provision.

It is also admitted that an absolute prohibition against raising troops, except in cases of actual war, would be improper; because it will be requisite to raise and support a small number of troops to garrison the important frontier posts, and to guard arsenals; and it may happen, that the danger of an attack from a foreign power may be so imminent, as to render it highly proper we should raise an army, in order to be prepared to resist them. But to raise and keep up forces for such purposes and on such occasions, is not included in the idea, of keeping up standing armies in times of peace.

2.9.126 It is a thing very practicable to give the government sufficient authority to provide for these cases, and at the same time to provide a reasonable and competent security against the evil of a standing army—a clause to the following purpose would answer the end:

As standing armies in time of peace are dangerous to liberty, and have often been the means of overturning the best constitutions of government, no standing army, or troops of any description whatsoever, shall be raised or kept up by the legislature, except so many as shall be necessary for guards to the arsenals of the United States, or for garrisons to such posts on the frontiers, as it shall be deemed absolutely necessary to hold, to secure the inhabitants, and facilitate the trade with the Indians: unless when the United States are threatened with an attack or invasion from some foreign power, in which case the legislature shall be authorised to raise an army to be prepared to repel the attack; provided that no troops whatsoever shall be raised in time of peace, without the assent of two thirds of the members, composing both houses of the legislature.

2.9.127 A clause similar to this would afford sufficient latitude to the legislature to raise troops in all cases that were really necessary, and at the same time competent security against the establishment of that dangerous engine of despotism a standing army.

The same writer who advances the arguments I have noticed, makes a number of other observations with a view to prove that the power to raise and keep up armies, ought to be discretionary in the general legislature; some of them are curious; he instances the raising of troops in Massachusetts and Pennsylvania, to shew the necessity of keeping a standing army in time of peace;[82] the least reflection must convince every candid mind that both these cases are totally foreign to his purpose—Massachusetts raised a body of troops for six months, at the expiration of which they were to disband of course; this looks very little like a standing army. But beside, was that commonwealth in a state of peace at that time? So far from it that they were in the most violent commotions and contents, and their legislature had formally declared that an unnatural rebellion existed within the state. The situation of Pennsylvania was similar; a number of

armed men had levied war against the authority of the state, and openly avowed their intention of withdrawing their allegiance from it. To what purpose examples are brought, of states raising troops for short periods in times of war or insurrections, on a question concerning the propriety of keeping up standing armies in times of peace, the public must judge.

It is farther said, that no danger can arise from this power being lodged in the hands of the general government, because the legislatures will be a check upon them, to prevent their abusing it.[83] 2.9.128

This is offered, as what force there is in it will hereafter receive a more particular examination. At present, I shall only remark, that it is difficult to conceive how the state legislatures can, in any case, hold a check over the general legislature, in a constitutional way. The latter has, in every instance to which their powers extend, complete controul over the former. The state legislatures can, in no case, by law, resolution, or otherwise, of right, prevent or impede the general government, from enacting any law, or executing it, which this constitution authorizes them to enact or execute. If then the state legislatures check the general legislatures [*sic*], it must be by exciting the people to resist constitutional laws. In this way every individual, or every body of men, may check any government, in proportion to the influence they may have over the body of the people. But such kinds of checks as these, though they sometimes correct the abuses of government, oftner destroy all government.[84]

It is further said, that no danger is to be apprehended from the exercise of this power, because it is lodged in the hands of representatives of the people; if they abuse it, it is in the power of the people to remove them, and chuse others who will pursue their interests.[85] Not to repeat what has been said before, That it is unwise in any people, to authorize their rulers to do, what, if done, would prove injurious—I have, in some former numbers, shewn, that the representation in the proposed government will be a mere shadow without the substance.[86] I am so confident that I am well founded in this opinion, that I am persuaded, if it was to be adopted or rejected, upon a fair discussion of its merits, without taking into contemplation circumstances extraneous to it, as reasons for its adoption, nineteen-twentieths of the sensible men in the union would reject it on this account alone; unless its powers were confined to much fewer objects than it embraces. 2.9.129

Brutus.

XI

31 January 1788

The nature and extent of the judicial power of the United States, proposed to be granted by this constitution, claims our particular attention. 2.9.130

Much has been said and written upon the subject of this new system on both sides, but I have not met with any writer, who has discussed the judicial powers with any degree of accuracy. And yet it is obvious, that we can form but very imperfect ideas of the manner in which this government will work, or the effect it will have in changing the internal police and mode of distributing justice at present subsisting in the respective states, without a thorough investigation of the powers of the judiciary and of the manner in which they will operate. This government is a complete system, not only for making, but for executing laws. And the courts of law, which will be constituted by it, are not only to decide upon the constitution and the laws made in pursuance of it, but by officers subordinate to them to execute all their decisions. The real effect of this system of government, will therefore be brought home to the feelings of the people, through the medium of the judicial power.[87] It is, moreover, of great importance, to examine with care the nature and extent of the judicial power, because those who are to be vested with it, are to be placed in a situation altogether unprecedented in a free country. They are to be rendered totally independent, both of the people and the legislature, both with respect to their offices and salaries. No errors they may commit can be corrected by any power above them, if any such power there be, nor can they be removed from office for making ever so many erroneous adjudications.

2.9.131 The only causes for which they can be displaced, is, conviction of treason, bribery, and high crimes and misdemeanors.

This part of the plan is so modelled, as to authorise the courts, not only to carry into execution the powers expressly given, but where these are wanting or ambiguously expressed, to supply what is wanting by their own decisions.

That we may be enabled to form a just opinion on this subject, I shall, in considering it,

1st. Examine the nature and extent of the judicial powers—and

2d. Enquire, whether the courts who are to exercise them, are so constituted as to afford reasonable ground of confidence, that they will exercise them for the general good.

2.9.132 With a regard to the nature and extent of the judicial powers, I have to regret my want of capacity to give that full and minute explanation of them that the subject merits. To be able to do this, a man should be possessed of a degree of law knowledge far beyond what I pretend to. A number of hard words and technical phrases are used in this part of the system, about the meaning of which gentlemen learned in the law differ.

2.9.133 Its advocates know how to avail themselves of these phrases. In a number of instances, where objections are made to the powers given to the judicial, they give such an explanation to the technical terms as to avoid them.

Though I am not competent to give a perfect explanation of the powers granted to this department of the government, I shall yet attempt to trace

some of the leading features of it, from which I presume it will appear, that they will operate to a total subversion of the state judiciaries, if not, to the legislative authority of the states.

In article 3d, sect. 2d, it is said, "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, &c." 2.9.134

The first article to which this power extends, is, all cases in law and equity arising under this constitution.

What latitude of construction this clause should receive, it is not easy to say. At first view, one would suppose, that it meant no more than this, that the courts under the general government should exercise, not only the powers of courts of law, but also that of courts of equity, in the manner in which those powers are usually exercised in the different states. But this cannot be the meaning, because the next clause authorises the courts to take cognizance of all cases in law and equity arising under the laws of the United States; this last article, I conceive, conveys as much power to the general judicial as any of the state courts possess.

The cases arising under the constitution must be different from those arising under the laws, or else the two clauses mean exactly the same thing. 2.9.135

The cases arising under the constitution must include such, as bring into question its meaning, and will require an explanation of the nature and extent of the powers of the different departments under it.

This article, therefore, vests the judicial with a power to resolve all questions that may arise on any case on the construction of the constitution, either in law or in equity.[88]

1st. They are authorised to determine all questions that may arise upon the meaning of the constitution in law. This article vests the courts with authority to give the constitution a legal construction, or to explain it according to the rules laid down for construing a law.—These rules give a certain degree of latitude of explanation. According to this mode of construction, the courts are to give such meaning to the constitution as comports best with the common, and generally received acceptation of the words in which it is expressed, regarding their ordinary and popular use, rather than their grammatical propriety. Where words are dubious, they will be explained by the context. The end of the clause will be attended to, and the words will be understood, as having a view to it; and the words will not be so understood as to bear no meaning or a very absurd one. 2.9.136

2d. The judicial are not only to decide questions arising upon the meaning of the constitution in law, but also in equity. 2.9.137

By this they are empowered, to explain the constitution according to the reasoning spirit of it, without being confined to the words or letter.[89]

"From this method of interpreting laws (says Blackstone) by the reason of them, arises what we call equity;" which is thus defined by Grotius, "the

correction of that, wherein the law, by reason of its universality, is deficient["]; for since in laws all cases cannot be foreseen, or expressed, it is necessary, that when the decrees of the law cannot be applied to particular cases, there should some where be a power vested of defining those circumstances, which had they been foreseen the legislator would have expressed; and these are the cases, which according to Grotius, ["]lex non exacte definit, sed arbitrio boni viri permittet."

2.9.138 The same learned author observes, "That equity, thus depending essentially upon each individual case, there can be no established rules and fixed principles of equity laid down, without destroying its very essence, and reducing it to a positive law."[90]

From these remarks, the authority and business of the courts of law, under this clause, may be understood.

They will give the sense of every article of the constitution, that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine, according to what appears to them, the reason and spirit of the constitution. The opinions of the supreme court, whatever they may be, will have the force of law; because there is no power provided in the constitution, that can correct their errors, or controul their adjudications. From this court there is no appeal. And I conceive the legislature themselves, cannot set aside a judgment of this court, because they are authorised by the constitution to decide in the last resort. The legislature must be controuled by the constitution, and not the constitution by them. They have therefore no more right to set aside any judgment pronounced upon the construction of the constitution, than they have to take from the president, the chief command of the army and navy, and commit it to some other person. The reason is plain; the judicial and executive derive their authority from the same source, that the legislature do theirs; and therefore in all cases, where the constitution does not make the one responsible to, or controulable by the other, they are altogether independent of each other.

2.9.139 The judicial power will operate to effect, in the most certain, but yet silent and imperceptible manner, what is evidently the tendency of the constitution:—I mean, an entire subversion of the legislative, executive and judicial powers of the individual states. Every adjudication of the supreme court, on any question that may arise upon the nature and extent of the general government, will affect the limits of the state jurisdiction. In proportion as the former enlarge the exercise of their powers, will that of the latter be restricted.

2.9.140 That the judicial power of the United States, will lean strongly in favour of the general government, and will give such an explanation to the constitution, as will favour an extension of its jurisdiction, is very evident from a variety of considerations.

2.9.141 1st. The constitution itself strongly countenances such a mode of con-

struction. Most of the articles in this system, which convey powers of any considerable importance, are conceived in general and indefinite terms, which are either equivocal, ambiguous, or which require long definitions to unfold the extent of their meaning. The two most important powers committed to any government, those of raising money, and of raising and keeping up troops, have already been considered, and shewn to be unlimitted by any thing but the discretion of the legislature.[91] The clause which vests the power to pass all laws which are proper and necessary, to carry the powers given into execution, it has been shewn, leaves the legislature at liberty, to do every thing, which in their judgment is best.[92] It is said, I know, that this clause confers no power on the legislature, which they would not have had without it[93]—though I believe this is not the fact, yet, admitting it to be, it implies that the constitution is not to receive an explanation strictly, according to its letter; but more power is implied than is expressed. And this clause, if it is to be considered, as explanatory of the extent of the powers given, rather than giving a new power, is to be understood as declaring, that in construing any of the articles conveying power, the spirit, intent and design of the clause, should be attended to, as well as the words in their common acceptation.

This constitution gives sufficient colour for adopting an equitable construction, if we consider the great end and design it professedly has in view—these appear[94] from its preamble to be, "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and posterity." The design of this system is here expressed, and it is proper to give such a meaning to the various parts, as will best promote the accomplishment of the end; this idea suggests itself naturally upon reading the preamble, and will countenance the court in giving the several articles such a sense, as will the most effectually promote the ends the constitution had in view—how this manner of explaining the constitution will operate in practice, shall be the subject of future enquiry.

2d. Not only will the constitution justify the courts in inclining to this mode of explaining it, but they will be interested in using this latitude of interpretation. Every body of men invested with office are tenacious of power; they feel interested, and hence it has become a kind of maxim, to hand down their offices, with all its rights and privileges, unimpared to their successors; the same principle will influence them to extend their power, and increase their rights; this of itself will operate strongly upon the courts to give such a meaning to the constitution in all cases where it can possibly be done, as will enlarge the sphere of their own authority. Every extension of the power of the general legislature, as well as of the judicial powers, will increase the powers of the courts; and the dignity and importance of the judges, will be in proportion to the extent and magnitude of the powers they exercise. I add, it is highly probable the emolument of the judges will be 2.9.142

increased, with the increase of the business they will have to transact and its importance. From these considerations the judges will be interested to extend the powers of the courts, and to construe the constitution as much as possible, in such a way as to favour it; and that they will do it, appears probable.

2.9.143 3d. Because they will have precedent to plead, to justify them in it. It is well known, that the courts in England, have by their own authority, extended their jurisdiction far beyond the limits set them in their original institution, and by the laws of the land.

The court of exchequer is a remarkable instance of this. It was originally intended principally to recover the king's debts, and to order the revenues of the crown. It had a common law jurisdiction, which was established merely for the benefit of the king's accomptants. We learn from Blackstone, that the proceedings in this court are grounded on a writ called quo minus, in which the plaintiff suggests, that he is the king's farmer or debtor, and that the defendant hath done him the damage complained of, by which he is less able to pay the king.[95] These suits, by the statute of Rutland, are expressly directed to be confined to such matters as specially concern the king, or his ministers in the exchequer. And by the articuli super cartas, it is enacted, that no common pleas be thenceforth held in the exchequer contrary to the form of the great charter: but now any person may sue in the exchequer. The surmise of being debtor to the king being matter of form, and mere words of course; and the court is open to all the nation.

2.9.144 When the courts will have a precedent[96] before them of a court which extended its jurisdiction in opposition to an act of the legislature, is it not to be expected that they will extend theirs, especially when there is nothing in the constitution expressly against it? and they are authorised to construe its meaning, and are not under any controul?

This power in the judicial, will enable them to mould the government, into almost any shape they please.—The manner in which this may be effected we will hereafter examine.

Brutus.

XII

7 February 1788

2.9.145 In my last, I shewed, that the judicial power of the United States under the first clause of the second section of article eight, would be authorized to explain the constitution, not only according to its letter, but according to its spirit and intention; and having this power, they would strongly incline to

give it such a construction as to extend the powers of the general government, as much as possible, to the diminution, and finally to the destruction, of that of the respective states.

I shall now proceed to shew how this power will operate in its exercise to effect these purposes. In order to perceive the extent of its influence, I shall consider,

First. How it will tend to extend the legislative authority.

Second. In what manner it will increase the jurisdiction of the courts, and

Third. The way in which it will diminish, and destroy, both the legislative and judicial authority of the United States.

First. Let us enquire how the judicial power will effect an extension of the legislative authority. 2.9.146

Perhaps the judicial power will not be able, by direct and positive decrees, ever to direct the legislature, because it is not easy to conceive how a question can be brought before them in a course of legal discussion, in which they can give a decision, declaring, that the legislature have certain powers which they have not exercised, and which, in consequence of the determination of the judges, they will be bound to exercise. But it is easy to see, that in their adjudications they may establish certain principles, which being received by the legislature, will enlarge the sphere of their power beyond all bounds.

It is to be observed, that the supreme court has the power, in the last resort, to determine all questions that may arise in the course of legal discussion, on the meaning and construction of the constitution. This power they will hold under the constitution, and independent of the legislature. The latter can no more deprive the former of this right, than either of them, or both of them together, can take from the president, with the advice of the senate, the power of making treaties, or appointing ambassadors. 2.9.147

In determining these questions, the court must and will assume certain principles, from which they will reason, in forming their decisions. These principles, whatever they may be, when they become fixed, by a course of decisions, will be adopted by the legislature, and will be the rule by which they will explain their own powers. This appears evident from this consideration, that if the legislature pass laws, which, in the judgment of the court, they are not authorised to do by the constitution, the court will not take notice of them; for it will not be denied, that the constitution is the highest or supreme law.[97] And the courts are vested with the supreme and uncontroulable power, to determine, in all cases that come before them, what the constitution means; they cannot, therefore, execute a law, which, in their judgment, opposes the constitution, unless we can suppose they can make a superior law give way to an inferior. The legislature, therefore, will not go over the limits by which the courts may adjudge they are confined. And there is little room to doubt but that they will come up to those bounds, as 2.9.148

often as occasion and opportunity may offer, and they may judge it proper to do it. For as on the one hand, they will not readily pass laws which they know the courts will not execute, so on the other, we may be sure they will not scruple to pass such as they know they will give effect, as often as they may judge it proper.

2.9.149 From these observations it appears, that the judgment of the judicial, on the constitution, will become the rule to guide the legislature in their construction of their powers.

What the principles are, which the courts will adopt, it is impossible for us to say; but taking up the powers as I have explained them in my last number, which they will possess under this clause, it is not difficult to see, that they may, and probably will, be very liberal ones.

We have seen, that they will be authorized to give the constitution a construction according to its spirit and reason, and not to confine themselves to its letter.

2.9.150 To discover the spirit of the constitution, it is of the first importance to attend to the principal ends and designs it has in view. These are expressed in the preamble, in the following words, viz. "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution," &c. If the end of the government is to be learned from these words, which are clearly designed to declare it, it is obvious it has in view every object which is embraced by any government. The preservation of internal peace—the due administration of justice—and to provide for the defence of the community, seems to include all the objects of government; but if they do not, they are certainly comprehended in the words, "to provide for the general welfare." If it be further considered, that this constitution, if it is ratified, will not be a compact entered into by states, in their corporate capacities, but an agreement of the people of the United States, as one great body politic, no doubt can remain, but that the great end of the constitution, if it is to be collected from the preamble, in which its end is declared, is to constitute a government which is to extend to every case for which any government is instituted, whether external or internal. The courts, therefore, will establish this as a principle in expounding the constitution, and will give every part of it such an explanation, as will give latitude to every department under it, to take cognizance of every matter, not only that affects the general and national concerns of the union, but also of such as relate to the administration of private justice, and to regulating the internal and local affairs of the different parts.

2.9.151 Such a rule of exposition is not only consistent with the general spirit of the preamble, but it will stand confirmed by considering more minutely the different clauses of it.

The first object declared to be in view is, "To form a perfect union." It is to be observed, it is not an union of states or bodies corporate; had this been the case the existence of the state governments, might have been secured. But it is a union of the people of the United States considered as one body, who are to ratify this constitution, if it is adopted. Now to make a union of this kind perfect, it is necessary to abolish all inferior governments, and to give the general one compleat legislative, executive and judicial powers to every purpose. The courts therefore will establish it as a rule in explaining the constitution to give it such a construction as will best tend to perfect the union or take from the state governments every power of either making or executing laws. The second object is "to establish justice." This must include not only the idea of instituting the rule of justice, or of making laws which shall be the measure or rule of right, but also of providing for the application of this rule or of administering justice under it. And under this the courts will in their decisions extend the power of the government to all cases they possibly can, or otherwise they will be restricted in doing what appears to be the intent of the constitution they should do, to wit, pass laws and provide for the execution of them, for the general distribution of justice between man and man. Another end declared is "to insure domestic tranquility." This comprehends a provision against all private breaches of the peace, as well as against all public commotions or general insurrections; and to attain the object of this clause fully, the government must exercise the power of passing laws on these subjects, as well as of appointing magistrates with authority to execute them. And the courts will adopt these ideas in their expositions. I might proceed to the other clause, in the preamble, and it would appear by a consideration of all of them separately, as it does by taking them together, that if the spirit of this system is to be known from its declared end and design in the preamble, its spirit is to subvert and abolish all the powers of the state government, and to embrace every object to which any government extends.

As it sets out in the preamble with this declared intention, so it proceeds 2.9.152
in the different parts with the same idea. Any person, who will peruse the 8th section with attention, in which most of the powers are enumerated, will perceive that they either expressly or by implication extend to almost every thing about which any legislative power can be employed. But if this equitable mode of construction is applied to this part of the constitution; nothing can stand before it.

This will certainly give the first clause in that article a construction which I confess I think the most natural and grammatical one, to authorise the Congress to do any thing which in their judgment will tend to provide for the general welfare, and this amounts to the same thing as general and unlimited powers of legislation in all cases.

(To be continued.)

XII
14 February 1788

(*Continued from last Thursday's paper.*)

2.9.153 This same manner of explaining the constitution, will fix a meaning, and a very important one too, to the 12th [18th?] clause of the same section, which authorises the Congress to make all laws which shall be proper and necessary for carrying into effect the foregoing powers, &c. A voluminous writer in favor of this system, has taken great pains to convince the public, that this clause means nothing: for that the same powers expressed in this, are implied in other parts of the constitution.[98] Perhaps it is so, but still this will undoubtedly be an excellent auxilliary to assist the courts to discover the spirit and reason of the constitution, and when applied to any and every of the other clauses granting power, will operate powerfully in extracting the spirit from them.

2.9.154 I might instance a number of clauses in the constitution, which, if explained in an *equitable* manner, would extend the powers of the government to every case, and reduce the state legislatures to nothing; but, I should draw out my remarks to an undue length, and I presume enough has been said to shew, that the courts have sufficient ground in the exercise of this power, to determine, that the legislature have no bounds set to them by this constitution, by any supposed right the legislatures of the respective states may have, to regulate any of their local concerns.

2.9.155 I proceed, 2d, To inquire, in what manner this power will increase the jurisdiction of the courts.

I would here observe, that the judicial power extends, expressly, to all civil cases that may arise save such as arise between citizens of the same state, with this exception to those of that description, that the judicial of the United States have cognizance of cases between citizens of the same state, claiming lands under grants of different states. Nothing more, therefore, is necessary to give the courts of law, under this constitution, complete jurisdiction of all civil causes, but to comprehend cases between citizens of the same state not included in the foregoing exception.

2.9.156 I presume there will be no difficulty in accomplishing this. Nothing more is necessary than to set forth, in the process, that the party who brings the suit is a citizen of a different state from the one against whom the suit is brought, and there can be little doubt but that the court will take cognizance of the matter, and if they do, who is to restrain them?[99] Indeed, I will freely confess, that it is my decided opinion, that the courts ought to take cognizance of such causes, under the powers of the constitution. For one of the great ends of the constitution is, "to establish justice." This supposes that this cannot be done under the existing governments of the states; and there is certainly as good reason why individuals, living in the same state, should

have justice, as those who live in different states. Moreover, the constitution expressly declares, that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." It will therefore be no fiction, for a citizen of one state to set forth, in a suit, that he is a citizen of another; for he that is entitled to all the privileges and immunities of a country, is a citizen of that country. And in truth, the citizen of one state will, under this constitution, be a citizen of every state.

But supposing that the party, who alledges that he is a citizen of another state, has recourse to fiction in bringing in his suit, it is well known, that the courts have high authority to plead, to justify them in suffering actions to be brought before them by such fictions. In my last number I stated, that the court of exchequer tried all causes in virtue of such a fiction. The court of king's bench, in England, extended their jurisdiction in the same way. Originally, this court held pleas, in civil cases, only of trespasses and other injuries alledged to be committed *vi et armis*. They might likewise, says Blackstone,[100] upon the division of the *aula regia*, have originally held pleas of any other civil action whatsoever (except in real actions which are now very seldom in use) provided the defendant was an officer of the court, or in the custody of the marshall or prison-keeper of this court, for breach of the peace, &c. In process of time, by a fiction, this court began to hold pleas of any personal action whatsoever; it being surmised, that the defendant has been arrested for a supposed trespass that "he has never committed, and being thus in the custody of the marshall of the court, the plaintiff is at liberty to proceed against him, for any other personal injury: which surmise of being in the marshall's custody, the defendant is not at liberty to dispute." By a much less fiction, may the pleas of the courts of the United States extend to cases between citizens of the same state. I shall add no more on this head, but proceed briefly to remark, in what way this power will diminish and destroy both the legislative and judicial authority of the states. 2.9.157

It is obvious that these courts will have authority to decide upon the validity of the laws of any of the states, in all cases where they come in question before them. Where the constitution gives the general government exclusive jurisdiction, they will adjudge all laws made by the states, in such cases, void *ab initio*. Where the constitution gives them concurrent jurisdiction, the laws of the United States must prevail, because they are the supreme law. In such cases, therefore, the laws of the state legislatures must be repealed, restricted, or so construed, as to give full effect to the laws of the union on the same subject. From these remarks it is easy to see, that in proportion as the general government acquires power and jurisdiction, by the liberal construction which the judges may give the constitution, will those of the states lose its rights, until they become so trifling and unimportant, as not to be worth having. I am much mistaken, if this system will not operate to effect this with as much celerity, as those who have the 2.9.158

administration of it will think prudent to suffer it. The remaining objections to the judicial power shall be considered in a future paper.

Brutus.

XIII

21 February 1788

2.9.159 Having in the two preceding numbers, examined the nature and tendency of the judicial power, as it respects the explanation of the constitution, I now proceed to the consideration of the other matters, of which it has cognizance.—The next paragraph extends its authority, to all cases, in law and equity, arising under the laws of the United States. This power, as I understand it, is a proper one. The proper province of the judicial power, in any government, is, as I conceive, to declare what is the law of the land.[101] To explain and enforce those laws, which the supreme power or legislature may pass; but not to declare what the powers of the legislature are. I suppose the cases in equity, under the laws, must be so construed, as to give the supreme court not only a legal, but equitable jurisdiction of cases which may be brought before them, or in other words, so, as to give them, not only the powers which are now exercised by our courts of law, but those also, which are now exercised by our court of chancery. If this be the meaning, I have no other objection to the power, than what arises from the undue extension of the legislative power. For, I conceive that the judicial power should be commensurate with the legislative. Or, in other words, the supreme court should have authority to determine questions arising under the laws of the union.

2.9.160 The next paragraph which gives a power to decide in law and equity, on all cases arising under treaties, is unintelligible to me. I can readily comprehend what is meant by deciding a case under a treaty. For as treaties will be the law of the land, every person who have rights or privileges secured by treaty, will have aid of the courts of law, in recovering them. But I do not understand, what is meant by equity arising under a treaty. I presume every right which can be claimed under a treaty, must be claimed by virtue of some article or clause contained in it, which gives the right in plain and obvious words; or at least, I conceive, that the rules for explaining treaties, are so well ascertained, that there is no need of having recourse to an equitable construction. If under this power, the courts are to explain treaties, according to what they conceive are their spirit, which is nothing less than a power to give them whatever extension they may judge proper, it is a dangerous and improper power. The cases affecting ambassadors, public ministers, and consuls—of admiralty and maritime jurisdiction; con-

troversies to which the United States are a party, and controversies between states, it is proper should be under the cognizance of the courts of the union, because none but the general government, can, or ought to pass laws on their subjects. But, I conceive the clause which extends the power of the judicial to controversies arising between a state and citizens of another state, improper in itself, and will, in its exercise, prove most pernicious and destructive.

It is improper, because it subjects a state to answer in a court of law, to the suit of an individual.[102] This is humiliating and degrading to a government, and, what I believe, the supreme authority of no state ever submitted to. 2.9.161

The states are now subject to no such actions. All contracts entered into by individuals with states, were made upon the faith and credit of the states; and the individuals never had in contemplation any compulsory mode of obliging the government to fulfil its engagements.

The evil consequences that will flow from the exercise of this power, will best appear by tracing it in its operation. The constitution does not direct the mode in which an individual shall commence a suit against a state or the manner in which the judgement of the court shall be carried into execution, but it gives the legislature full power to pass all laws which shall be proper and necessary for the purpose. And they certainly must make provision for these purposes, or otherwise the power of the judicial will be nugatory. For, to what purpose will the power of a judicial be, if they have no mode, in which they can call the parties before them? Or of what use will it be, to call the parties to answer, if after they have given judgement, there is no authority to execute the judgment? We must, therefore, conclude, that the legislature will pass laws which will be effectual in this head. An individual of one state will then have a legal remedy against a state for any demand he may have against a state to which he does not belong. Every state in the union is largely indebted to individuals. For the payment of these debts they have given notes payable to the bearer. At least this is the case in this state. Whenever a citizen of another state becomes possessed of one of these notes, he may commence an action in the supreme court of the general government; and I cannot see any way in which he can be prevented from recovering. It is easy to see, that when this once happens, the notes of the state will pass rapidly from the hands of citizens of the state to those of other states. 2.9.162

And when the citizens of other states possess them, they may bring suits against the state for them, and by this means, judgments and executions may be obtained against the state for the whole amount of the state debt. It is certain the state, with the utmost exertions it can make, will not be able to discharge the debt she owes, under a considerable number of years, perhaps with the best management, it will require twenty or thirty years to discharge it. This new system will protract the time in which the ability of the state will 2.9.163

enable them to pay off their debt, because all the funds of the state will be transferred to the general government, except those which arise from internal taxes.

2.9.164 The situation of the states will be deplorable. By this system, they will surrender to the general government, all the means of raising money, and at the same time, will subject themselves to suits at law, for the recovery of the debts they have contracted in effecting the revolution.

The debts of the individual states will amount to a sum, exceeding the domestic debt of the United States; these will be left upon them, with power in the judicial of the general government, to enforce their payment, while the general government will possess an exclusive command of the most productive funds, from which the states can derive money, and a command of every other source of revenue paramount to the authority of any state.

2.9.165 It may be said that the apprehension that the judicial power will operate in this manner is merely visionary, for that the legislature will never pass laws that will work these effects. Or if they were disposed to do it, they cannot provide for levying an execution on a state, for where will the officer find property whereon to levy?

To this I would reply, if this is a power which will not or cannot be executed, it was useless and unwise to grant it to the judicial. For what purpose is a power given which it is imprudent or impossible to exercise? If it be improper for a government to exercise a power, it is improper they should be vested with it. And it is unwise to authorise a government to do what they cannot effect.

2.9.166 As to the idea that the legislature cannot provide for levying an execution on a state, I believe it is not well founded. I presume the last paragraph of the 8th section of article 1, gives the Congress express power to pass any laws they may judge proper and necessary for carrying into execution the power vested in the judicial department. And they must exercise this power, or otherwise the courts of justice will not be able to carry into effect the authorities with which they are invested. For the constitution does not direct the mode in which the courts are to proceed, to bring parties before them, to try causes, or to carry the judgment of the courts into execution. Unless they are pointed out by law, how are these to proceed, in any of the cases of which they have cognizance? They have the same authority to establish regulations in respect to these matters, where a state is a party, as where an individual is a party. The only difficulty is, on whom shall process be served, when a state is a party, and how shall execution be levied. With regard to the first, the way is easy, either the executive or legislative of the state may be notified, and upon proof being made of the service of the notice, the court may proceed to a hearing of the cause. Execution may be levied on any property of the state, either real or personal. The treasury may be seized by the officers of the general government, or any lands the property of the state, may be made subject to seizure and sale to satisfy any judgment against it. Whether the estate of any individual citizen may not be

made answerable for the discharge of judgments against the state, may be worth consideration. In some corporations this is the case.

If the power of the judicial under this clause will extend to the cases above stated, it will, if executed, produce the utmost confusion, and in its progress, will crush the states beneath its weight. And if it does not extend to these cases, I confess myself utterly at a loss to give it any meaning. For if the citizen of one state, possessed of a written obligation, given in pursuance of a solemn act of the legislature, acknowledging a debt due to the bearer, and promising to pay it, cannot recover in the supreme court, I can conceive of no case in which they can recover. And it appears to me ridiculous to provide for obtaining judgment against a state, without giving the means of levying execution. 2.9.167

Brutus.

XIV

28 February 1788

The second paragraph of sect. 2d. art. 3, is in these words: "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.["] 2.9.168

Although it is proper that the courts of the general government should have cognizance of all matters affecting ambassadors, foreign ministers, and consuls; yet I question much the propriety of giving the supreme court original jurisdiction in all cases of this kind.

Ambassadors, and other public ministers, claim, and are entitled by the law of nations, to certain privileges, and exemptions, both for their persons and their servants.

The meanest servant of an ambassador is exempted by the law of nations from being sued for debt. Should a suit be brought against such an one by a citizen, through inadvertency or want of information, he will be subject to an action in the supreme court. All the officers concerned in issuing or executing the process will be liable to like actions. Thus may a citizen of a state be compelled, at great expence and inconveniency, to defend himself against a suit, brought against him in the supreme court, for inadvertently commencing an action against the most menial servant of an ambassador for a just debt. 2.9.169

The appellate jurisdiction granted to the supreme court, in this paragraph, has justly been considered as one of the most objectionable parts of the constitution: under this power, appeals may be had from the inferior courts

to the supreme, in every case to which the judicial power extends, except in the few instances in which the supreme court will have original jurisdiction.

2.9.170 By this article, appeals will lie to the supreme court, in all criminal as well as civil causes. This I know, has been disputed by some; but I presume the point will appear clear to any one, who will attend to the connection of this paragraph with the one that precedes it. In the former, all the cases, to which the power of the judicial shall extend, whether civil or criminal, are enumerated. There is no criminal matter, to which the judicial power of the United States will extend; but such as are included under some one of the cases specified in this section. For this section is intended to define all the cases, of every description, to which the power of the judicial shall reach. But in all these cases it is declared, the supreme court shall have appellate jurisdiction, except in those which affect ambassadors, other public ministers and consuls, and those in which a state shall be a party. If then this section extends the power of the judicial, to criminal cases, it allows appeals in such cases. If the power of the judicial is not extended to criminal matters by this section, I ask, by what part of this system does it appear, that they have any cognizance of them?

2.9.171 I believe it is a new and unusual thing to allow appeals in criminal matters. It is contrary to the sense of our laws, and dangerous to the lives and liberties of the citizen. As our law now stands, a person charged with a crime has a right to a fair and impartial trial by a jury of his country [county?], and their verdict is final. If he is acquitted no other court can call upon him to answer for the same crime. But by this system, a man may have had ever so fair a trial, have been acquitted by ever so respectable a jury of his country; and still the officer of the government who prosecutes, may appeal to the supreme court. The whole matter may have a second hearing. By this means, persons who may have disobliged those who execute the general government, may be subjected to intolerable oppression. They may be kept in long and ruinous confinement, and exposed to heavy and insupportable charges, to procure the attendence of witnesses, and provide the means of their defence, at a great distance from their places of residence.

2.9.172 I can scarcely believe there can be a considerate citizen of the United States, that will approve of this appellate jurisdiction, as extending to criminal cases, if they will give themselves time for reflection.

Whether the appellate jurisdiction as it respects civil matters, will not prove injurious to the rights of the citizens, and destructive of those privileges which have ever been held sacred by Americans, and whether it will not render the administration of justice intolerably burthensome, intricate, and dilatory, will best appear, when we have considered the nature and operation of this power.

2.9.173 It has been the fate of this clause, as it has of most of those, against which unanswerable objections have been offered, to be explained different ways, by the advocates and opponents to the constitution. I confess I do not know

what the advocates of the system, would make it mean, for I have not been fortunate enough to see in any publication this clause taken up and considered. It is certain however, they do not admit the explanation which those who oppose the constitution give it, or otherwise they would not so frequently charge them with want of candor, for alledging that it takes away the trial by jury[;] appeals from an inferior to a superior court, as practised in the civil law courts, are well understood. In these courts, the judges determine both on the law and the fact; and appeals are allowed from the inferior to the superior courts, on the whole merits: the superior tribunal will re-examine all the facts as well as the law, and frequently new facts will be introduced, so as many times to render the cause in the court of appeals very different from what it was in the court below.

If the appellate jurisdiction of the supreme court, be understood in the above sense, the term is perfectly intelligible. The meaning then is, that in all the civil causes enumerated, the supreme court shall have authority to re-examine the whole merits of the case, both with respect to the facts and the law which may arise under it, without the intervention of a jury; that this is the sense of this part of the system appears to me clear, from the express words of it, "in all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, &c." Who are the supreme court? Does it not consist of the judges? and they are to have the same jurisdiction of the fact as they are to have of the law. They will therefore have the same authority to determine the fact as they will have to determine the law, and no room is left for a jury on appeals to the supreme court. 2.9.174

If we understand the appellate jurisdiction in any other way, we shall be left utterly at a loss to give it a meaning; the common law is a stranger to any such jurisdiction: no appeals can lie from any of our common law courts, upon the merits of the case; the only way in which they can go up from an inferior to a superior tribunal is by habeas corpus before a hearing, or by certiorari, or writ of error, after they are determined in the subordinate courts; but in no case, when they are carried up, are the facts re-examined, but they are always taken as established in the inferior courts.[103] 2.9.175

(*To be continued.*)

XIV

6 March 1788

(*Continued.*)

It may still be insisted that this clause does not take away the trial by jury on appeals, but that this may be provided for by the legislature, under that 2.9.176

paragraph which authorises them to form regulations and restrictions for the court in the exercise of this power.

The natural meaning of this paragraph seems to be no more than this, that Congress may declare, that certain cases shall not be subject to the appellate jurisdiction, and they may point out the mode in which the court shall proceed in bringing up the causes before them, the manner of their taking evidence to establish the facts, and the method of the courts proceeding. But I presume they cannot take from the court the right of deciding on the fact, any more than they can deprive them of the right of determining on the law, when a cause is once before them; for they have the same jurisdiction as to fact, as they have as to the law. But supposing the Congress may under this clause establish the trial by jury on appeals, it[104] does not seem to me that it will render this article much less exceptionable. An appeal from one court and jury, to another court and jury, is a thing altogether unknown in the laws of our state, and in most of the states in the union. A practice of this kind prevails in the eastern states; actions are there commenced in the inferior courts, and an appeal lies from them on the whole merits to the superior courts: the consequence is well known, very few actions are determined in the lower courts; it is rare that a case of any importance is not carried by appeal to the supreme court, and the jurisdiction of the inferior courts is merely nominal; this has proved so burthensome to the people in Massachusetts, that it was one of the principal causes which excited the insurrection in that state, in the year past; very few sensible and moderate men in that state but what will admit, that the inferior courts are almost entirely useless, and answer very little purpose, save only to accumulate costs against the poor debtors who are already unable to pay their just debts.

2.9.177 But the operation of the appellate power in the supreme judicial of the United States, would work infinitely more mischief than any such power can do in a single state.

The trouble and expence to the parties would be endless and intolerable. No man can say where the supreme court are to hold their sessions, the presumption is, however, that it must be at the seat of the general government: in this case parties must travel many hundred miles, with their witnesses and lawyers, to prosecute or defend a suit; no man of midling fortune, can sustain the expence of such a law suit, and therefore the poorer and midling class of citizens will be under the necessity of submitting to the demands of the rich and the lordly, in cases that will come under the cognizance of this court. If it be said, that to prevent this oppression, the supreme court will set in different parts of the union, it may be replied, that this would only make the oppression somewhat more tolerable, but by no means so much as to give a chance of justice to the poor and midling class. It is utterly impossible that the supreme court can move into so many different parts of the Union, as to make it convenient or even tolerable to attend

before them with witnesses to try causes from every part of the United states; if to avoid the expence and inconvenience of calling witnesses from a great distance, to give evidence before the supreme court, the expedient of taking the deposition of witnesses in writing should be adopted, it would not help the matter. It is of great importance in the distribution of justice that witnesses should be examined face to face, that the parties should have the fairest opportunity of cross examining them in order to bring out the whole truth; there is something in the manner in which a witness delivers his testimony which cannot be committed to paper, and which yet very frequently gives a complexion to his evidence, very different from what it would bear if committed to writing, besides the expence of taking written testimony would be enormous; those who are acquainted with the costs that arise in the courts, where all the evidence is taken in writing, well know that they exceed beyond all comparison those of the common law courts, where witnesses are examined viva voce.

The costs accruing in courts generally advance with the grade of the court; thus the charges attending a suit in our common pleas, is much less than those in the supreme court, and these are much lower than those in the court of chancery; indeed the costs in the last mentioned court, are in many cases so exorbitant and the proceedings so dilatory that the suitor had almost as well give up his demand as to prosecute his suit. We have just reason to suppose, that the costs in the supreme general court will exceed either of our courts; the officers of the general court will be more dignified than those of the states, the lawyers of the most ability will practice in them, and the trouble and expence of attending them will be greater. From all these considerations, it appears, that the expence attending suits in the supreme court will be so great, as to put it out of the power of the poor and midling class of citizens to contest a suit in it. 2.9.178

From these remarks it appears, that the administration of justice under the powers of the judicial will be dilatory; that it will be attended with such an heavy expence as to amount to little short of a denial of justice to the poor and middling class of people who in every government stand most in need of the protection of the law; and that the trial by jury, which has so justly been the boast of our fore fathers as well as ourselves is taken away under them. 2.9.179

These extraordinary powers in this court are the more objectionable, because there does not appear the least necessity for them, in order to secure a due and impartial distribution of justice.

The want of ability or integrity, or a disposition to render justice to every suitor, has not been objected against the courts of the respective states: so far as I have been informed, the courts of justice in all the states, have ever been found ready, to administer justice with promptitude and impartiality according to the laws of the land; It is true in some of the states, paper money has been made, and the debtor authorised to discharge his debts with 2.9.180

it, at a depreciated value, in orders, tender laws have been passed, obliging the creditor to receive on execution other property than money in discharge of his demand, and in several of the states laws have been made unfavorable to the creditor and tending to render property insecure.

2.9.181 But these evils have not happened from any defect in the judicial departments of the states; the courts indeed are bound to take notice of these laws, and so will the courts of the general government be under obligation to observe the laws made by the general legislature not repugnant to the constitution; but so far have the judicial been from giving undue latitude of construction to laws of this kind, that they have invariably strongly inclined to the other side. All the acts of our legislature, which have been charged with being of this complexion, have uniformly received the strictest construction by the judges, and have been extended to no cases but to such as came within the strict letter of the law. In this way, have our courts, I will not say evaded the law, but so limited it in its operation as to work the least possible injustice: the same thing has taken place in Rhode-Island, which has justly rendered herself infamous, by her tenaciously adhering to her paper money system. The judges there gave a decision, in opposition to the words of the Statute, on this principle, that a construction according to the words of it, would contradict the fundamental maxims of their laws and constitution.[105]

2.9.182 No pretext therefore, can be formed, from the conduct of the judicial courts which will justify giving such powers to the supreme general court, for their decisions have been such as to give just ground of confidence in them, that they will firmly adhere to the principles of rectitude, and there is no necessity of lodging these powers in the courts, in order to guard against the evils justly complained of, on the subject of security of property under this constitution. For it has provided, "that no state shall emit bills of credit, or make any thing but gold and silver coin a tender in payment of debts." It has also declared, that "no state shall pass any law impairing the obligation of contracts."—These prohibitions give the most perfect security against those attacks upon property which I am sorry to say some of the states have but too wantonly made, by passing laws sanctioning fraud in the debtor against his creditor. For "this constitution will be the supreme law of the land, and the judges in every state will be bound thereby; any thing in the constitution and laws of any state to the contrary notwithstanding."

2.9.183 The courts of the respective states might therefore have been securely trusted, with deciding all cases between man and man, whether citizens of the same state or of different states, or between foreigners and citizens, and indeed for ought I see every case that can arise under the constitution or laws of the United States, ought in the first instance to be tried in the court of the state, except those which might arise between states, such as respect ambassadors, or other public ministers, and perhaps such as call in question the claim of lands under grants from different states. The state courts would

be under sufficient controul, if writs of error were allowed from the state courts to the supreme court of the union, according to the practice of the courts in England and of this state, on all cases in which the laws of the union are concerned, and perhaps to all cases in which a foreigner is a party.

This method would preserve the good old way of administering justice, 2.9.184
would bring justice to every man's door, and preserve the inestimable right of trial by jury. It would be following, as near as our circumstances will admit, the practice of the courts in England, which is almost the only thing I would wish to copy in their government.

But as this system now stands, there is to be as many inferior courts as Congress may see fit to appoint, who are to be authorised to originate and in the first instance to try all the cases falling under the description of this article; there is no security that a trial by jury shall be had in these courts, but the trial here will soon become, as it is in Massachusetts' inferior courts, mere matter of form; for an appeal may be had to the supreme court on the whole merits. This court is to have power to determine in law and in equity, on the law and the fact, and this court is exalted above all other power in the government, subject to no controul, and so fixed as not to be removeable, but upon impeachment, which I shall hereafter shew, is much the same thing as not to be removeable at all.

To obviate the objections made to the judicial power it has been said, that 2.9.185
the Congress, in forming the regulations and exceptions which they are authorised to make respecting the appellate jurisdiction, will make provision against all the evils which are apprehended from this article. On this I would remark, that this way of answering the objection made to the power, implies an admission that the power is in itself improper without restraint, and if so, why not restrict it in the first instance.

The just way of investigating any power given to a government, is to examine its operation supposing it to be put in exercise. If upon enquiry, it appears that the power, if exercised, would be prejudicial, it ought not to be given. For to answer objections made to a power given to a government, by saying it will never be exercised, is really admitting that the power ought not to be exercised, and therefore ought not to be granted.

Brutus.

XV
20 March 1788

(*Continued.*)[106]

I said in my last number, that the supreme court under this constitution 2.9.186
would be exalted above all other power in the government, and subject to no

controul. The business of this paper will be to illustrate this, and to shew the danger that will result from it. I question whether the world ever saw, in any period of it, a court of justice invested with such immense powers, and yet placed in a situation so little responsible. Certain it is, that in England, and in the several states, where we have been taught to believe, the courts of law are put upon the most prudent establishment, they are on a very different footing.

2.9.187 The judges in England, it is true, hold their offices during their good behaviour, but then their determinations are subject to correction by the house of lords; and their power is by no means so extensive as that of the proposed supreme court of the union.—I believe they in no instance assume the authority to set aside an act of parliament under the idea that it is inconsistent with their constitution. They consider themselves bound to decide according to the existing laws of the land, and never undertake to controul them by adjudging that they are inconsistent with the constitution—much less are they vested with the power of giving an *equitable* construction to the constitution.

2.9.188 The judges in England are under the controul of the leigislature, for they are bound to determine according to the laws passed by them. But the judges under this constitution will controul the legislature, for the supreme court are authorised in the last resort,[107] to determine what is the extent of the powers of the Congress; they are to give the constitution an explanation, and there is no power above them to set[108] aside their judgment. The framers of this constitution appear to have followed that of the British, in rendering the judges independent, by granting them their offices during good behaviour, without following the constitution of England, in instituting a tribunal in which their errors may be corrected; and without adverting to this, that the judicial under this system have a power which is above the legislative, and which indeed transcends any power before given to a judicial by any free government under heaven.

2.9.189 I do not object to the judges holding their commissions during good behaviour. I suppose it a proper provision provided they were made properly responsible. But I say, this system has followed the English government in this, while it has departed from almost every other principle of their jurisprudence, under the idea, of rendering the judges independent; which, in the British constitution, means no more than that they hold their places during good behaviour, and have fixed salaries, they have made the judges *independent,* in the fullest sense of the word. There is no power above them, to controul any of their decisions. There is no authority that can remove them, and they cannot be controuled by the laws of the legislature. In short, they are independent of the people, of the legislature, and of every power under heaven. Men placed in this situation will generally soon feel themselves independent of heaven itself. Before I proceed to illustrate the truth of these assertions, I beg liberty to make one remark—Though in my opin-

ion the judges ought to hold their offices during good behaviour, yet I think it is clear, that the reasons in favour of this establishment of the judges in England, do by no means apply to this country.

The great reason assigned, why the judges in Britain ought to be commissioned during good behaviour, is this, that they may be placed in a situation, not to be influenced by the crown, to give such decisions, as would tend to increase its powers and prerogatives. While the judges held their places at the will and pleasure of the king, on whom they depended not only for their offices, but also for their salaries, they were subject to every undue influence. If the crown wished to carry a favorite point, to accomplish which the aid of the courts of law was necessary, the pleasure of the king would be signified to the judges. And it required the spirit of a martyr, for the judges to determine contrary to the king's will.—They were absolutely dependent upon him both for their offices and livings. The king, holding his office during life, and transmitting it to his posterity as an inheritance, has much stronger inducements to increase the prerogatives of his office than those who hold their offices for stated periods, or even for life. Hence the English nation gained a great point, in favour of liberty. When they obtained the appointment of the judges, during good behaviour, they got from the crown a concession, which deprived it of one of the most powerful engines with which it might enlarge the boundaries of the royal prerogative and encroach on the liberties of the people. But these reasons do not apply to this country, we have no hereditary monarch; those who appoint the judges do not hold their offices for life, nor do they descend to their children. The same arguments, therefore, which will conclude in favor of the tenor of the judge's offices for good behaviour, lose a considerable part of their weight when applied to the state and condition of America. But much less can it be shewn, that the nature of our government requires that the courts should be placed beyond all account more independent, so much so as to be above controul. 2.9.190

I have said that the judges under this system will be *independent* in the strict sense of the word: To prove this I will shew—That there is no power above them that can controul their decisions, or correct their errors. There is no authority that can remove them from office for any errors or want of capacity, or lower their salaries, and in many cases their power is superior to that of the legislature. 2.9.191

1st. There is no power above them that can correct their errors or controul their decisions—The adjudications of this court are final and irreversible, for there is no court above them to which appeals can lie, either in error or on the merits.—In this respect it differs from the courts in England, for there the house of lords is the highest court, to whom appeals, in error, are carried from the highest of the courts of law.

2d. They cannot be removed from office or suffer a dimunition of their salaries, for any error in judgement or want of capacity. 2.9.192

It is expressly declared by the constitution,—"That they shall at stated times receive a compensation for their services which shall not be diminished during their continuance in office."

The only clause in the constitution which provides for the removal of the judges from office, is that which declares, that "the president, vice-president, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." By this paragraph, civil officers, in which the judges are included, are removable only for crimes. Treason and bribery are named, and the rest are included under the general terms of high crimes and misdemeanors.—Errors in judgement, or want of capacity to discharge the duties of the office, can never be supposed to be included in these words, *high crimes and misdemeanors*. A man may mistake a case in giving judgment, or manifest that he is incompetent to the discharge of the duties of a judge, and yet give no evidence of corruption or want of integrity. To support the charge, it will be necessary to give in evidence some facts that will shew, that the judges commited the error from wicked and corrupt motives.

2.9.193 3d. The power of this court is in many cases superior to that of the legislature. I have shewed, in a former paper, that this court will be authorised to decide upon the meaning of the constitution, and that, not only according to the natural and ob[vious] meaning of the words, but also according to the spirit and intention of it.[109] In the exercise of this power they will not be subordinate to, but above the legislature. For all the departments of this government will receive their powers, so far as they are expressed in the constitution, from the people immediately, who are the source of power. The legislature can only exercise such powers as are given them by the constitution, they cannot assume any of the rights annexed to the judicial, for this plain reason, that the same authority which vested the legislature with their powers, vested the judicial with theirs—both are derived from the same source, both therefore are equally valid, and the judicial hold their powers independently of the legislature, as the legislature do of the judicial.—The supreme cort then have a right, independent of the legislature, to give a construction to the constitution and every part of it, and there is no power provided in this system to correct their construction or do it away. If, therefore, the legislature pass any laws, inconsistent with the sense the judges put upon the constitution, they will declare it void; and therefore in this respect their power is superior to that of the legislature.[110] In England the judges are not only subject to have their decisions set aside by the house of lords, for error, but in cases where they give an explanation to the laws or constitution of the country, contrary to the sense of the parliament, though the parliament will not set aside the judgement of the court, yet, they have authority, by a new law, to explain a former one, and

by this means to prevent a reception of such decisions. But no such power is in the legislature. The judges are supreme—and no law, explanatory of the constitution, will be binding on them.

From the preceding remarks, which have been made on the judicial powers proposed in this system, the policy of it may be fully developed.

I have, in the course of my observation on this constitution, affirmed and endeavored to shew, that it was calculated to abolish entirely the state governments, and to melt down the states into one entire government, for every purpose as well internal and local, as external and national. In this opinion the opposers of the system have generally agreed—and this has been uniformly denied by its advocates in public. Some individuals, indeed, among them, will confess, that it has this tendency, and scruple not to say, it is what they wish; and I will venture to predict, without the spirit of prophecy, that if it is adopted[111] without amendments, or some such precautions as will ensure amendments immediately after its adoption, that the same gentlemen who have employed their talents and abilities with such success to influence the public mind to adopt this plan, will employ the same to persuade the people, that it will be for their good to abolish the state governments as useless and burdensome. 2.9.194

Perhaps nothing could have been better conceived to facilitate the abolition of the state governments than the constitution of the judicial. They will be able to extend the limits of the general government gradually, and by insensible degrees, and to accomodate themselves to the temper of the people. Their decisions on the meaning of the constitution will commonly take place in cases which arise between individuals, with which the public will not be generally acquainted; one adjudication will form a precedent to the next, and this to a following one. These cases will immediately affect individuals only; so that a series of determinations will probably take place before even the people will be informed of them. In the mean time all the art and address of those who wish for the change will be employed to make converts to their opinion. The people will be told, that their state officers, and state legislatures are a burden and expence without affording any solid advantage, for that all the laws passed by them, might be equally well made by the general legislature. If to those who will be interested in the change, be added, those who will be under their influence, and such who will submit to almost any change of government, which they can be persuaded to believe will ease them of taxes, it is easy to see, the party who will favor the abolition of the state governments would be far from being inconsiderable.—In this situation, the general legislature, might pass one law after another, extending the general and abridging the state jurisdictions, and to sanction their proceedings would have a course of decisions of the judicial to whom the constitution has committed the power of explaining the constitution.—If the states remonstrated, the constitutional mode of decid- 2.9.195

ing upon the validity of the law, is with the supreme court, and neither people, nor state legislatures, nor the general legislature can remove them or reverse their decrees.

2.9.196 Had the construction of the constitution been left with the legislature, they would have explained it at their peril; if they exceed their powers, or sought to find, in the spirit of the constitution, more than was expressed in the letter, the people from whom they derived their power could remove them, and do themselves right; and indeed I can see no other remedy that the people can have against their rulers for encroachments of this nature. A constitution is a compact of a people with their rulers; if the rulers break the compact, the people have a right and ought to remove them and do themselves justice; but in order to enable them to do this with the greater facility, those whom the people chuse at stated periods, should have the power in the last resort to determine the sense of the compact; if they determine contrary to the understanding of the people, an appeal will lie to the people at the period when the rulers are to be elected, and they will have it in their power to remedy the evil; but when this power is lodged in the hands of men independent of the people, and of their representatives, and who are not, constitutionally, accountable for their opinions, no way is left to controul them but *with a high hand and an outstretched arm.*

Brutus.

XVI

10 April 1788

2.9.197 When great and extraordinary powers are vested in any man, or body of men, which in their exercise, may operate to the oppression of the people, it is of high importance that powerful checks should be formed to prevent the abuse of it.

Perhaps no restraints are more forcible, than such as arise from responsibility to some superior power.—Hence it is that the true policy of a republican government is, to frame it in such manner, that all persons who are concerned in the government, are made accountable to some superior for their conduct in office.—This responsibility should ultimately rest with the People. To have a government well administered in all its parts, it is requisite the different departments of it should be separated and lodged as much as may be in different hands. The legislative power should be in one body, the executive in another, and the judicial in one different from either—But still each of these bodies should be accountable for their conduct.[112] Hence it is impracticable, perhaps, to maintain a perfect distinction between these several departments—For it is difficult, if not impossible, to

call to account the several officers in government, without in some degree mixing the legislative and judicial. The legislature in a free republic are chosen[113] by the people at stated periods, and their responsibility consists, in their being amenable to the people. When the term, for which they are chosen, shall expire, who will then have opportunity to displace them if they disapprove of their conduct—but it would be improper that the judicial should be elective, because their business requires that they should possess a degree of law knowledge, which is acquired only by a regular education, and besides it is fit that they should be placed, in a certain degree in an independent situation, that they may maintain firmness and steadiness in their decisions.[114] As the people therefore ought not to elect the judges, they cannot be amenable to them immediately, some other mode of amenability must therefore be devised for these, as well as for all other officers which do not spring from the immediate choice of the people: this is to be effected by making one court subordinate to another, and by giving them cognizance of the behaviour of all officers; but on this plan we at last arrive at some supreme, over whom there is no power to controul but the people themselves. This supreme controling power should be in the choice of the people, or else you establish an authority independent, and not amenable at all, which is repugnant to the principles of a free government. Agreeable to these principles I suppose the supreme judicial ought to be liable to be called to account, for any misconduct, by some body of men, who depend upon the people for their places; and so also should all other great officers in the State, who are not made amenable to some superior officers. This policy seems in some measure to have been in view of the framers of the new system, and to have given rise to the institution of a court of impeachments—How far this Court will be properly qualified to execute the trust which will be reposed in them, will be the business of a future paper to investigate. To prepare the way to do this, it shall be the business of this, to make some remarks upon the constitution and powers of the Senate, with whom the power of trying impeachments is lodged.

The following things may be observed with respect to the constitution of the Senate. 2.9.198

1st. They are to be elected by the legislatures of the States and not by the people, and each State is to be represented by an equal number.

2d. They are to serve for six years, except that one third of those first chosen are to go out of office at the expiration of two years, one third at the expiration of four years, and one third at the expiration of six years, after which this rotation is to be preserved, but still every member will serve for the term of six years.

3d. If vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive is authorised to make temporary appointments until the next meeting of the legislature.

4. No person can be a senator who has not arrived to the age of thirty

years, been nine years a citizen of the United States, and who is not at the time he is elected an inhabitant of the State for which he is elected.

2.9.199 The apportionment of members of Senate among the States is not according to numbers, or the importance of the States; but is equal. This, on the plan of a consolidated government, is unequal and improper; but is proper on the system of confederation—on this principle I approve of it.[115] It is indeed the only feature of any importance in the constitution of a confederated government. It was obtained after a vigorous struggle of that part of the Convention who were in favor of preserving the state governments. It is to be regretted, that they were not able to have infused other principles into the plan, to have secured the government of the respective states, and to have marked with sufficient precision the line between them and the general government.

2.9.200 The term for which the senate are to be chosen, is in my judgment too long, and no provision being made for a rotation will, I conceive, be of dangerous consequence.

It is difficult to fix the precise period for which the senate should be chosen. It is a matter of opinion, and our sentiments on the matter must be formed, by attending to certain principles. Some of the duties which are to be performed by the senate, seem evidently to point out the propriety of their term of service being extended beyond the period of that of the assembly. Besides as they are designed to represent the aristocracy of the country, it seems fit they should possess more stability, and so continue a longer period than that branch who represent the democracy. The business of making treaties and some other which it will be proper to commit to the senate, requires that they should have experience, and therefore that they should remain some time in office to acquire it.—But still it is of equal importance that they should not be so long in office as to be likely to forget the hand that formed them, or be insensible of their interests. Men long in office are very apt to feel themselves independent [and] to form and pursue interests separate from those who appointed them. And this is more likely to be the case with the senate, as they will for the most part of the time be absent from the state they represent, and associate with such company as will possess very little of the feelings of the middling class of people. For it is to be remembered that there is to be a *federal city,* and the inhabitants of it will be the great and the mighty of the earth. For these reasons I would shorten the term of their service to four years. Six years is a long period for a man to be absent from his home, it would have a tendency to wean him from his constituents.

2.9.201 A rotation in the senate, would also in my opinion be of great use. It is probable that senators once chosen for a state will, as the system now stands, continue in office for life. The office will be honorable if not lucrative. The persons who occupy it will probably wish to continue in it, and therefore use all their influence and that of their friends to continue in

office.—Their friends will be numerous and powerful, for they will have it in their power to confer great favors; besides it will before long be considered as disgraceful not to be re-elected. It will therefore be considered as a matter of delicacy to the character of the senator not to return him again.—Every body acquainted with public affairs knows how difficult it is to remove from office a person who is [has?] long been in it. It is seldom done except in cases of gross misconduct. It is rare that want of competent ability procures it. To prevent this inconvenience I conceive it would be wise to determine, that a senator should not be eligible after he had served for the period assigned by the constitution for a certain number of years; perhaps three would be sufficient. A farther benefit would be derived from such an arrangement; it would give opportunity to bring forward a greater number of men to serve their country, and would return those, who had served, to their state, and afford them the advantage of becoming better acquainted with the condition and politics of their constituents. It farther appears to me proper, that the legislatures should retain the right which they now hold under the confederation, of recalling their members. It seems an evident dictate of reason, that when a person authorises another to do a piece of business for him, he should retain the power to displace him, when he does not conduct according to his pleasure. This power in the state legislatures, under confederation, has not been exercised to the injury of the government, nor do I see any danger of its being so exercised under the new system. It may operate much to the public benefit.

These brief remarks are all I shall make on the organization of the senate. 2.9.202
The powers with which they are invested will require a more minute investigation.

This body will possess a strange mixture of legislative, executive and judicial powers, which in my opinion will in some cases clash with each other.

1. They are one branch of the legislature, and in this respect will possess equal powers in all cases with the house of representatives; for I consider the clause which gives the house of representatives the right of originating bills for raising a revenue as merely nominal, seeing the senate be[116] authorised to propose or concur with amendments.

2. They are a branch of the executive in the appointment of ambassadors and public ministers, and in the appointment of all other officers, not otherwise provided for; whether the forming of treaties, in which they are joined with the president, appertains to the legislative or the executive part of the government, or to neither, is not material.

3. They are part of the judicial, for they form the court of impeachments.

It has been a long established maxim, that the legislative, executive and 2.9.203
judicial departments in government should be kept distinct. It is said, I know, that this cannot be done. And therefore that this maxim is not just, or at least that it should only extend to certain leading features in a govern-

ment. I admit that this distinction cannot be perfectly preserved. In a due ballanced government, it is perhaps absolutely necessary to give the executive qualified legislative powers, and the legislative or a branch of them judicial powers in the last resort. It may possibly also, in some special cases, be adviseable to associate the legislature, or a branch of it, with the executive, in the exercise of acts of great national importance. But still the maxim is a good one, and a separation of these powers should be sought as far as is practicable. I can scarcely imagine that any of the advocates of the system will pretend, that it was necessary to accumulate all these powers in the senate.

2.9.204 There is a propriety in the senate's possessing legislative powers; this is the principal end which should be held in view in their appointment. I need not here repeat what has so often and ably been advanced on the subject of a division of the legislative power into two branches—The arguments in favor of it I think conclusive. But I think it equally evident, that a branch of the legislature should not be invested with the power of appointing officers. This power in the senate is very improperly lodged for a number of reasons—These shall be detailed in a future number.[117]

Brutus.

1. This essay was replied to by Pelatiah Webster in a pamphlet, "The Weakness of Brutus Exposed," published in Philadelphia in 1787; Ford, *Pamphlets* 117–31.

2. Cf. Federal Farmer I, 2.8.9, whose argument Brutus follows in many respects. Jeffrey points to numerous specific similarities. *University of Cincinnati Law Review* 40, no. 4 (1971): 643 ff., passim, nn. 5, 10, 32, 35, 45, 60, 64.

3. The taxing power is discussed at length in essays V–VIII, 2.9.55–101.

4. See V, 2.9.60–61; cf. Federal Farmer IV, 2.8.51.

5. These powers are discussed in VIII–X, 2.9.93–129.

6. The judiciary is discussed in XI–XV, 2.4.130–96.

7. The classic exposition of the meaning of the necessary and proper clause is in *The Federalist* no. 33. See also Ford, *Pamphlets* 233–34 (Aristides), 356–57 (Iredell); McMaster and Stone 329–30 (Wilson). For other Anti-Federalist discussions of this clause see Centinel V, 2.7.97; Federal Farmer IV, 2.8.49; Old Whig II, 3.3.12; Countryman from Dutchess County 6.6.25 n. 12.

8. Beccaria, *An Essay on Crimes and Punishments* ch. 26, "Of the Spirit of Family in States." On editions of this work, see above, Federal Farmer VI, 2.8.97 n. 61.

9. The subject of representation is discussed at length in essays III and IV, 2.9.34–54.

10. The argument here should, of course, be compared with that of Publius in *The Federalist* no. 10. See also Federal Farmer VIII, 2.8.108, and Cato III, 2.6.13 n. 8.

11. Cf. Federal Farmer III, 2.8.24 n. 19; and Brutus IV, 2.9.47.

12. See IV, 2.9.48–50.

13. Cf. the discussion of the executive by Franklin in the Philadelphia Convention, Farrand I, 81–85 (2 June). Brutus does not treat the executive at any length. For the discussion by Federal Farmer, see above, XIV, 2.8.177–82. See also "The Weakness of Brutus Exposed," Ford, *Pamphlets* 130; and Federal Farmer XIV, 2.8.179 n. 107.

14. Cf. Federal Farmer's scheme of rights, VI, 2.8.80–86.

15. See IX, 2.9.102.

16. Brutus' argument calls to mind the more famous but fundamentally identical statement by Publius: "If men were angels, no government would be necessary. If

angels were to govern men, neither external nor internal controuls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to controul the governed; and in the next place, oblige it to controul itself." *The Federalist* no. 51, 349. Publius differs from Brutus in his solution of this difficulty; and to understand the Anti-Federalists it is necessary to grasp both the difference and the profound agreement upon which it rests. See IV, 2.9.45–46; XVI, 2.9.197.

17. James Wilson, "Address to Citizens of Philadelphia," McMaster and Stone 143. Wilson's argument is not the "piece of foolishness" that William Jeffrey calls it (*University of Cincinnati Law Review* 40, no. 4 [1971]: 681n), as is suggested by the great efforts made by the Anti-Federalists in refuting it. The fuller view is that Wilson's argument has a solid basis but is insufficient to prove that a bill of rights is unnecessary.

18. These bills of rights can be found in Thorpe, *Federal and State Constitutions*.

19. The quotation is from the Maryland constitution of 1776, Declaration of Rights, arts. XXII–XXIII. Virginia, Massachusetts, New Hampshire, North Carolina, and Pennsylvania had similar provisions.

20. The quotation is from the North Carolina constitution, Declaration of Rights, art. XIV. Maryland, Massachusetts, New Hampshire, Virginia, and Pennsylvania had similar provisions.

21. The constitutions of Virginia, Pennsylvania, Maryland, North Carolina, New York, Massachusetts, New Hampshire had such provisions regarding the militia. The constitutions of Massachusetts, Maryland, New Hampshire prohibited the keeping up of standing armies "without the consent of the legislature." The constitutions of North Carolina, Pennsylvania, Virginia advised the avoidance of standing armies "in time of peace." See *The Federalist* no. 24, 153 and note; no. 26, 167–68. For Brutus' criticism of Publius on standing army, see IX, 2.9.111–14.

22. Edmund Randolph was one of the few Federalists who attempted to meet this objection (see Elliot III, 464–66), though McKean and Yeates made similar but weaker attempts in the Pennsylvania ratifying convention (McMaster and Stone 278–79, 296. For other Anti-Federal discussions of this point see, Federal Farmer IV, 2.8.51–52; XVI, 2.8.196–97; Agrippa XIV, 4.6.66; Henry 5.16.24, 36; Cincinnatus I, 6.1.4–5; Old Whig II, 3.3.7 ff.

23. Cf. Old Whig III, 3.3.15; Agrippa VI, 4.6.22 ff; One of the Common People 4.8.1 ff. For Federalist arguments, of varying penetration, that the new government will be limited by existing state bills of rights, see Ford, *Pamphlets* 48 (A Citizen of America), 148 (An American Citizen); Ford, *Essays* 398 (Williamson); McMaster and Stone 112–13 (A Citizen of Pennsylvania); New Hampshire *Freeman's Oracle* 18 January 1788 (Alfredus); *The Country Journal and the Poughkeepsie Advertiser* 15 April 1788 (A Friend to Good Government); *Massachusetts Centinel* 28 November 1787 (One of the Middle Interest). "The State Declarations of Rights are not repealed by this Constitution," Roger Sherman said in the Philadelphia convention, "and being in force are sufficient." Farrand II, 588 (12 September).

24. *The Spirit of Laws* XI, ch. 6. Brutus abridges the part of Montesquieu's comment relating to representation.

25. This is not a new paragraph in the original.

26. Cf. XVI, 2.9.199, where Brutus takes a different view. The question of the apportionment of Senate seats equally among the states was one on which the Anti-Federalists were equivocal. Like Brutus, The Federal Farmer seems to have changed his mind; see above, III, 2.8.28; XI, 2.8.143. See also Martin 2.4.35, 42; Centinel I, 2.7.23; Impartial Examiner 5.14.34; Symmes 4.5.2

27. Above, II, 2.9.23–24. For references to other Anti-Federalist discussions see Federal Farmer II, 2.8.15 n. 11.

28. Cf. *The Federalist* nos. 35–36; for other Anti-Federalist discussions of the natural aristocracy see Federal Farmer VII, 2.8.97 n. 64.

29. Brutus probably refers to Alexander Hamilton and Gouverneur Morris and perhaps also to Nathaniel Gorham and Rufus King. Farrand I, 282–311, 381–82, 375–76, 392–93, 513–14; II, 490–91. While no one in the Convention expressed exactly the opinion Brutus describes, John Francis Mercer—an Anti-Federalist and probably

the author of the essays of A [Maryland] Farmer—came close; see Farrand II, 284–85, and [Maryland] Farmer II, 5.1.29. Cf. Federal Farmer III, 2.8.37.

30. Essay IV, 2.9.45–54.

31. Note that Brutus does not seem to acknowledge here a possibility of a tyranny of the many; but see V, 2.9.56. Cf. Federal Farmer V, 2.8.60; Agrippa XVI, 4.6.73; [Maryland] Farmer I, 5.1.15 and n. 11; Henry 5.16.14. On the Federalist side see, in addition to *The Federalist* no. 10, Ford, *Pamphlets* 200–201 (Fabius), 354 (Marcus); *Virginia Independent Chronicle* 6 February 1788 (The State Soldier).

32. This is not a new paragraph in the original.

33. The original reads, "going into so an entire consolidation. . . ."

34. See below, V–X, 2.9.55–129. Many Anti-Federalists made this somewhat desperate argument. See Federal Farmer III, 2.8.34; Mason 5.17.1; Smith 6.12.9, 38–40.

35. The original reads, "and of whose talents . . . they are total strangers to. . . ."

36. Cf. *The Federalist* nos. 27–28.

37. Ephesians 5:29.

38. II Kings 8:13.

39. Compare Publius' different formulation of the issue, *The Federalist* nos. 23, 150–51; no. 31, 197. Cf. VI, 2.9.66.

40. See above, Federal Farmer XVII, 2.8.204 n. 123.

41. See Ford, *Pamphlets* 50–51 (A Citizen of America), and McMaster and Stone 274–75 (McKean, answering Smilie, ibid. 268–69). Cf. *The Federalist* no. 41. See Brutus VI, 2.9.77–78.

42. "As the duties of superintending the national defence and of securing the public peace against foreign or domestic violence, involve a provision for casualties and dangers, to which no possible limit can be assigned, the power of making that provision ought to know no other bounds than the exigencies of the nation and the resources of the community." *The Federalist* no. 31, 195–96, and generally nos. 30–36.

43. In addition to the discussion immediately following, Brutus treats this question in essay VI, 2.9.64–82.

44. Publius replies to this argument in *The Federalist* nos. 32 and 34.

45. "Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion and enables it to perform its most essential functions." *The Federalist* no. 30, 188.

46. "This mode of reasoning," Publius argues, "appears sometimes to turn upon the suggestion of usurpation in the national government; at other times it seems to be designed only as a deduction from the constitutional operation of its intended powers. It is only in the latter light, that it can be admitted to have any pretensions to fairness. . . . [A]ll observations founded upon the danger of usurpation, ought to be referred to the composition and structure of the government, not to the nature or extent of its powers." *The Federalist* no. 31, 197.

47. Publius argues that there is no legal or constitutional power in either the national or the state governments to annul the taxes of the other. "And in practice there is little reason to apprehend any inconvenience; because in a short course of time the wants of the States will naturally reduce themselves within *a very narrow compass;* and in the interim, the United States will in all probability find it convenient to abstain wholly from those objects to which the particular States would be inclined to resort." *The Federalist* no. 34, 210. See above, Federal Farmer III, 2.8.39 n. 29.

48. Discussed in *The Federalist* no. 35, 216–18.

49. See above, n. 39.

50. No state interposition here!

51. See below, n. 84.

52. Brutus does not reach this question.

53. Matthew 6:24; Luke 16:13.

54. See Ford, *Pamphlets* 50 (Noah Webster). The quotation is slightly altered from the original. See above, V, 2.9.58.

55. P. 147. The statement is slightly revised from the original.

56. Publius does not quite admit this. He says: "*If* the circumstances of our coun-

try are such, as to demand a compound instead of a simple, a confederate instead of a sole government, the essential point which will remain to be adjusted, will be to discriminate the OBJECTS, *as far as it can be done*, which shall appertain to the different provinces or departments of power; allowing to each the most ample authority for fulfilling the objects committed to its charge." *The Federalist* no. 23 (italics added). Other Federalists were less equivocal. See for example McMaster and Stone 99 (P. Webster); Ford, *Pamphlets* 121–22, 128 (A Citizen of Philadelphia), 252 (Aristides); Ford, *Essays* 238 ff. (*A Citizen of New Haven*); Elliot III, 301 (Pendleton). On the critical importance of the line to be drawn between federal and state powers see Monroe 5.21.17 n. 8.

57. *The Federalist* no. 23, 147.

58. Cf. the forceful argument to this effect made by George Mason in the Constitutional Convention, Farrand I, 112–13 (4 June); see below, Old Whig VIII, 3.3.53–54; Philadelphiensis VI, 3.9.37–38; [Maryland] Farmer V, 5.1.82; Henry 5.16.2.

59. Publius calls the policy "of tying up the hands of government from offensive war founded upon reasons of state" a "novel and absurd experiment in politics." *The Federalist* no. 34, 211. See [New Hampshire] Farmer 4.17.4.

60. See the exchange between Roger Sherman and James Madison regarding the objects of the general government, Farrand I, 133–36 (6 June).

61. Cf. the intriguing discussion of the causes of hostilities among nations in *The Federalist* no. 6.

62. See above, Federal Farmer VI, 2.8.74 n. 54.

63. On the comparative merits of the administration of the state and federal governments, see *The Federalist* no. 27, 172–75. See below, n. 87.

64. See *The Federalist* no. 41, 276–77. Publius points out that the growth of imports for consumption will not grow in the same proportion as the growth of the population and economy in general. See Centinel II, 2.7.52 n. 30.

65. The space is left blank by Brutus.

66. See *The Federalist* no. 24; Ford, *Pamphlets* 51–52 (A Citizen of America), 234–35 (Aristides). Some of the more interesting of the Anti-Federal discussions of the dangers of a standing army, in addition to that of Brutus, are those of Federal Republican 3.6.21; DeWitt 4.3.9, 14, 28–29; [New Hampshire] Farmer 4.17.4; [Maryland] Farmer II, 5.1.33, 45–49; Impartial Examiner 5.14.8.

67. James Wilson, "Address to Citizens of Philadelphia," McMaster and Stone 145–46; *The Federalist* no. 24, 155–57. See also Ford, *Pamphlets* 234–36 (Aristides), 363–66 (Marcus); Ford, *Essays* 156–57 (A Landholder); McMaster and Stone 101, 107 (Pelatiah Webster), 170 (A Federalist), 373 (McKean). Other Federalists denied that a "standing army," properly speaking, is provided for. See An American Citizen [Tench Coxe], in Ford, *Pamphlets* 150–51.

68. *Cobbett's Parliamentary History of England* (London 1811), VIII (1722–33), 904–10.

69. See *The Federalist* no. 84; Mason 2.2.1 n. 1; Federal Farmer IV, 2.8.50 nn. 38–40.

70. See above, nn. 66, 67.

71. A Citizen of America [Noah Webster], "An Examination . . . ," Ford, *Pamphlets* 51–52. Compare in this connection the more subtle argument of An American Citizen [Tench Coxe] in Ford, *Pamphlets* 150–51.

72. See Federal Farmer X, 2.8.127 n. 80.

73. I know of no such Federalist language. James Wilson did argue in favor of the power to maintain a standing army as necessary to secure "the dignity and safety" of the country. McMaster and Stone 145–46. Publius, tough-minded as ever, admits that military force may have to turn inward: "seditions and insurrections are unhappily maladies as inseparable from the body politic, as tumours and eruptions from the natural body; that the idea of governing at all times by the simple force of law (which we have been told is the only admissible principle of republican government) has no place but in the reveries of those political doctors, whose sagacity disdains the admonitions of experimental instruction." *The Federalist* no. 28, 176. See above, n. 66.

The possibility of military enforcement of federal law was a major Anti-Federal concern. See for example Cato III, 2.6.17; Federal Farmer II, 2.8.23; Pennsylvania Convention Minority 3.11.50; Columbian Patriot 4.28.4.

74. Cf. Federal Farmer III, 2.8.39.

75. *The Federalist* no. 24, 154–55.

76. Article VI. Publius' statement is that "*two* only [of the State constitutions] contained an interdiction of standing armies in time of peace; that the other eleven had either observed a profound silence on the subject, or had in express terms admitted the right of the legislature to authorize their existence." *The Federalist* no. 24, 153–54. Publius refers in his next paper (no. 25, 159–60) to the provision in the Articles of Confederation prohibiting the states from maintaining military forces in peacetime without the consent of Congress.

77. VIII, 2.9.100–101.

78. See John Marshall, *The Life of George Washington* (Philadelphia 1804–7; 2d ed. 1839) IV, 74 ff.

79. The original reads, "evils."

80. *The Federalist* no. 24, 155–57.

81. *The Federalist* no. 25, 161; see Marcus [James Iredell], Ford, *Pamphlets* 364–65.

82. *The Federalist* no. 25, 162–63.

83. *The Federalist* no. 26, 168–69.

84. See VI, 2.9.69; Federal Farmer X, 2.8.128 n. 82; Henry, 5.16.2, 14; Smith 6.12.31. Publius agrees, indeed insists, that the states have no constitutional check on the general legislature. See *The Federalist* nos. 15, 16, especially p. 103. Cf. Tocqueville, *Democracy in America* I, ch. 8, subsection entitled "What Distinguishes the Federal Constitution of the United States of America from All Other Federal Constitutions." On the states as arms of revolution, see *The Federalist* no. 26, 168–69; no. 28, 178–79; no. 46, 321–22; no. 60, 404.

85. *The Federalist* no. 26, 169.

86. See above, essays I, III, IV, 2.9.1–21, 34–54.

87. The federal government, Publius argued two months earlier, "must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislations, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods, of executing the powers, with which it is intrusted, that are possessed and exercised by the governments of the particular States." *The Federalist* no. 16, 102–3. Jeffrey suggests that there is a contradiction between this argument and Publius' statement the next day (no. 17, 106) that the administration of private justice and other local matters can never be desirable cares of a general jurisdiction. Jeffrey thinks that the "entire performance must have been the cause of much innocent merriment among knowledgeable New Yorkers, as well as the source of considerable irritation to Federalists who had abundant reasons to feel ashamed at his sophistries and pettifogging." *University of Cincinnati Law Review* 40, no. 4 (1971): 739 n. 47. Careless readers may have had some such reactions, yet it is to be hoped that there were not many who came to such harsh conclusions on such slender evidence. Even on their face, the two statements of Publius are not contradictory, though it is true that their reconciliation points to further questions. These statements are, moreover, part of a larger and subtle argument by Publius looking to the eventual replacement of the state governments by the federal government in the hearts and minds of the people. The attentive reader can follow this argument in *The Federalist* no. 16, 102–3; no. 17, 106–7; and no. 27, 171–74. See above, Cato III, 2.6.20 n. 14; Federal Farmer XVIII, 2.8.13 n. 128. See John Smilie's keen analysis in the Pennsylvania ratifying convention, McMaster and Stone 270–71. See also Smith 6.12.31.

88. See below, n. 101.

89. Cf. Publius' narrow interpretation of the "equity" jurisdiction, *The Federalist* no. 80, 539–40.

90. Blackstone, *Commentaries on the Laws of England* I, 61–62.

91. Above, I, V–X, 2.9.1–21, 55–129.

92. See I, 2.9.1–21; V, 55–63; XII, 2.9.153 ff.

93. See *The Federalist* no. 33, and above, n. 7.

94. The original reads, "there appears."

95. *Commentaries on the Laws of England* III, 45.

96. The original reads, "president."

97. Cf. *The Federalist* no. 78, 524–26. The power of judicial review of acts of the legislature was explicitly assumed by a number of Anti-Federalist and Federalist writers, though seldom so thoughtfully argued as by Brutus and Publius. See for example, Martin 2.4.89; Centinel XVI, 2.7.168; Ford, *Pamphlets* 234 (Aristides); McMaster and Stone 304–5 (Wilson). Cf. the provocative comparison of Brutus and Publius in Ann Stuart Diamond, "The Anti-Federalist Brutus," *Political Science Reviewer*, Fall 1976.

98. Referring, no doubt, to *The Federalist*, especially no. 33, 204–6, and no. 44, 302–5, both of which had been published at this time.

99. See The Federal Farmer's suggestion that fictional residence or action in the federal city may be used as the means of establishing federal jurisdiction, XVIII, 2.8.224.

100. *Commentaries on the Laws of England* III, 42.

101. This premise is of course also the basis of Publius' different conclusion. No. 78, 525: "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents." *The Federalist* no. 78.

102. See *Chisholm* v. *Georgia*, 2 Dall. 419 (1793), the outcry over which led to the Eleventh Amendment.

103. See the discussion of this matter by A Democratic Federalist, below, 3.5.6, and references collected there in n. 6.

104. The original reads, "on appeals. It does not. . ."

105. *Trevett* v. *Weeden* (1786); see Frank G. Bates, *Rhode Island and the Formation of the Union* (New York 1898) 131–38; William W. Crosskey, *Politics and the Constitution* II, 965–68.

106. The "continued" signifies merely that the series is being continued, apparently because there was a larger than usual gap between the last essay and this one. There is no essay by Brutus in the *Journal* between "XIV continued," on 6 March, and this one; and this is evidently the whole of XV and not a continuation.

107. The original reads, "last report."

108. The original reads, "sit aside."

109. See XI, 2.9.130–44.

110. Publius denies that the power to declare an act of the legislature void supposes "a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both, and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws rather than by those which are not fundamental." *The Federalist* no. 78, 525.

111. The original reads, "adoption."

112. Although a system of separation of functions is advocated, there is nothing in Brutus like Publius' discussion of separation of powers in *The Federalist* no. 51, and there is no articulation of the connection between the principle of *responsibility*, on

which so much emphasis is laid, and the principle of *balanced government*. See above, Centinel I, 2.7.7 n. 4; II, 2.7.50 n. 29.

113. The original reads, "in a free and republic are chosen. . . ." Jeffrey suggests "in a free and [equal?] republic are chosen. . . ." *University of Cincinnati Law Review* 40, no. 4 (1971): 773, n. 73.

114. Cf. *The Federalist* no. 78.

115. Cf. above, III, 2.9.40.

116. The original reads, "the Senate we authorised. . ."

117. No further essays were published.

The Complete Anti-Federalist

The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 3

Pennsylvania

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Contents

VOLUME THREE

Pennsylvania

Contents of Other Volumes vii
A Note on Cross References xi
Works Frequently Cited xiii

Introduction 3
3.1 Speech of William Findley in the Pennsylvania Assembly (28 September 1787) 5
3.2 Address of the Minority of the Pennsylvania House of Representatives (4 October 1787) 11
3.3 Essays of An Old Whig (Philadelphia *Independent Gazetteer* October 1787–February 1788) 17
3.4 Essay by Montezuma (Philadelphia *Independent Gazetteer* 17 October 1787) 53
3.5 Essay of A Democratic Federalist (*Pennsylvania Herald* 17 October 1787) 58
3.6 A Review of the Constitution Proposed by the Late Convention, by A Federal Republican (1787) 65
3.7 Address of John Humble (Philadelphia *Independent Gazetteer* 29 October 1787) 89
3.8 Letter by An Officer of the Late Continental Army (Philadelphia *Independent Gazetteer* 6 November 1787) 91
3.9 Essays of Philadelphiensis (Philadelphia *Independent Gazetteer* November 1787–April 1788) 99
3.10 Essay by Alfred (Philadelphia *Independent Gazetteer* 13 December 1787) 141
3.11 The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to Their Constitutents (*Pennsylvania Packet and Daily Advertiser* 18 Decembet 1787) 145
3.12 Essays by William Penn (Philadelphia *Independent Gazetteer* January 1788) 168

3.13 Essay by Deliberator (Philadelphia *Freeman's Journal* 20 February 1788) 176
3.14 The Fallacies of the Freeman Detected by A Farmer (Philadelphia *Freeman's Journal* April 1788) 181
3.15 Essay by None of the Well-Born Conspirators (Philadelphia *Freeman's Journal* 23 April 1788) 194
3.16 The Government of Nature Delineated, or An Exact Picture of the New Federal Constitution, by Aristocrotis (Carlisle 1788) 196

Contents of Other Volumes

VOLUME ONE

Foreword by Joseph Cropsey
Preface by Murray Dry
Prefatory Notes by Herbert J. Storing

What the Anti-Federalists Were *For*

1 Introduction
2 Conservatives
3 The Small Republic
4 Union
5 The Federalist Reply
6 The Aristocratic Tendency of the Constitution
7 Complex Government
8 Bill of Rights
9 Conclusion

The Articles of Confederation, Keyed to the Principal Anti-Federalist Discussions
The Constitution of the United States, Keyed to the Principal Anti-Federalist Discussions

VOLUME TWO

PART I

Objections of Non-Signers of the Constitution

2.1 Elbridge Gerry (3 November 1787)
2.2 George Mason (1787)
2.3 Robert Yates and John Lansing (14 January 1788)
2.4 Luther Martin (1788)
2.5 Edmund Randolph (10 October 1787)

PART 2

Major Series of Essays at the Outset

2.6 Cato (September 1787–January 1788)
2.7 Centinel (October 1787–April 1788)
2.8 The Federal Farmer (1787 and 1788)
2.9 Brutus (October 1787–April 1788)

VOLUME FOUR

Massachusetts and New England

4.1 Anon., "A confederation" (9 October 1787)
4.2 A Gentleman in a Neighbouring State (October 1787)
4.3 John DeWitt (October–December 1787)
4.4 Vox Populi (October–November 1787)
4.5 William Symmes (15 November 1787)
4.6 Agrippa (November 1787–February 1788)
4.7 A Federalist (26 November 1787)
4.8 One of the Common People (3 December 1787)
4.9 Candidus (December 1787–January 1788)
4.10 Cornelius (December 1787)
4.11 Poplicola (24 December 1787)
4.12 Helvidius Priscus (December 1787–February 1788)
4.13 A Republican Federalist (December 1787–February 1788)
4.14 Samuel (10 January 1788)
4.15 Hampden (January–February 1788)
4.16 A Customer (March 1788)
4.17 A Farmer (January–June 1788)
4.18 Charles Turner (17 January and 6 February 1788)
4.19 The Yeomanry of Massachusetts (25 January 1788)
4.20 An American (28 January 1788)
4.21 A Bostonian (4 February 1788)
4.22 A Watchman (February 1788)
4.23 A Friend to the Rights of the People, A Friend to the Republic (February 1788)
4.24 David (7 March 1788)
4.25 A Newport Man (March 1788)
4.26 Consider Arms, Malichi Maynard, and Samuel Field (April 1788)
4.27 Phileleutheros (May 1788)
4.28 A Columbian Patriot (1788)

Volume Five

PART 1

Maryland

5.1 A Farmer (February–April 1788)
5.2 A Farmer and Planter (April 1788)
5.3 Samuel Chase (April 1788)
5.4 Minority of the Maryland Ratifying Convention (May 1788)
5.5 John Francis Mercer (April or May 1788)

PART 2

Virginia and the South

5.6 Richard Henry Lee (16 October 1787)
5.7 Cato Uticensis (17 October 1787)
5.8 A Proposal for Reviving Christian Conviction (October 1787)
5.9 A Georgian (15 November 1787)
5.10 Cato (November–December 1787)
5.11 Tamony (9 January 1788)
5.12 Rawlins Lowndes (January 1788)
5.13 Republicus (February and March 1788)
5.14 The Impartial Examiner (February–June 1788)
5.15 Brutus (14 May 1788)
5.16 Patrick Henry (June 1788)
5.17 George Mason (4 June 1788)
5.18 Denatus (11 June 1788)
5.19 A Delegate Who Has Catched Cold (June 1788)
5.20 Sentiments of Many (18 June 1788)
5.21 James Monroe (1788)

Volume Six

PART 1

New York

6.1 Cincinnatus (November–December 1787)
6.2 A Son of Liberty (8 November 1787)
6.3 Brutus, Jr. (8 November 1787)
6.4 An Observor (19 November 1787)
6.5 A Citizen (24 November 1787)
6.6 A Countryman from Dutchess County (November 1787–February 1788)

6.7 A Countryman (December 1787–January 1788)
6.8 Sidney (February–March 1788)
6.9 Sydney (June 1788)
6.10 Albany Antifederal Committee (26 April 1788)
6.11 A Plebeian (1788)
6.12 Melancton Smith (June 1788)
6.13 George Clinton (June–July 1788)

PART 2

Conclusion

6.14 Mercy Warren (1805)

VOLUME SEVEN

Index

A Note on Cross References

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.16.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 above. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

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Blackstone, *Commentaries*	William Blackstone, *Commentaries on the Laws of England* (1765–69)
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Curtis, *Constitutional History*	George Ticknor Curtis, *Constitutional History of the United States: From Their Declaration of Independence to the Close of the Civil War* (New York 1889)
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Pennsylvania

Introduction

The first state to take action on the Constitution was Pennsylvania, where sharp party divisions centered upon the state's 1776 constitution, which established what one historian called "the first triumph of democracy" and another "the most democratic form of government ever tried by an American state."[1] The government was one of legislative dominance—the traditional form in the Proprietary regime—a multiple and weak executive, and a judiciary dependent on the legislature. The defenders of this constitution, the "Constitutionalists," later Anti-Federalists, saw it as the means of protecting the ordinary people of Pennsylvania, particularly the farm people, from the wealthier, better educated, better connected commercial and propertied classes. The opponents, the "Republicans," saw it as defective in principle, because of its lack of provision for stability and balance, and as illiberal and undemocratic in practice.[2] Additional objects of contention were the severe test oaths required of citizens by the constitution and subsequent legislation, and the Bank of North America, whose Pennsylvania charter was abruptly repealed by the Constitutionalist-controlled legislature leading to a Republican legislative victory in 1786. Political power alternated between these groups—often by popular response to excessive partisanship and vindictiveness on one side or the other—with the Republicans increasingly looking to a more energetic federal government, while the Constitutionalists remained steadfastly local. Samuel Bannister Harding describes the situation in Pennsylvania on the eve of the ratification debate as follows:

> In the State were two parties, embittered by a dozen years of violent struggle. On the one side, and for the moment in power, stood the greater proportion of the men of property, of education, of large ideas, and federal views; six of the eight delegates sent by the State to the Federal convention had come from their number, and the other two—Franklin and Ingersoll—if not neutral, were at most but moderate Constitutionalists. On the other side the leadership had been assumed by men of obscure birth, of little education or property, and of the narrowest views. Small wonder, then, that the cause espoused by the first met with the violent condemnation of the second, and that the contest which ensued was unprecedented in virulence and animosity.[3]

Moving very quickly, the Republican-controlled legislature called for a convention to meet on 20 November. While they did not achieve for Pennsylvania the honor of being the first state to ratify—Delaware having unanimously ratified on 7 December—the Pennsylvania convention acceded to the Constitution on 12 December by the substantial margin of 46 to 23. The Pennsylvania Anti-Federalists remained unreconciled, however, and continued to press their attack on the Constitution, providing much material for the debate in other states.

1. Douglass, *Rebels and Democrats* 214. Samuel Bannister Harding, "Party Struggles over the First Pennsylvania Constitution," *Annual Report of the American Historical Association for the Year 1894* (Washington, D.C., 1895) 376. See also Harry Marlin Tinkcom, *The Republicans and Federalists in Pennsylvania 1790–1801* (Harrisburg 1950) 1; and David Hawke, *In the Midst of a Revolution* (Philadelphia 1961). For a general background in Pennsylvania see, in addition to the above, Brunhouse, *The Counter Revolution in Pennsylvania, 1776–1790;* Paul Leicester Ford, "The Adoption of the Pennsylvania Constitution of 1776," *Political Science Quarterly* September 1895; Jensen, *New Nation;* Charles H. Lincoln, *The Revolutionary Movement in Pennsylvania, 1760–1776* (Philadelphia 1901); McDonald, *We the People;* McDonald, *E Pluribus Unum;* Allan Nevins, *The American States during and after the Revolution, 1775–1789* (New York 1924); J. Paul Selsam, *The Pennsylvania Constitution of 1776* (Philadelphia 1935).

2. McDonald may exaggerate when he says that in the Pennsylvania ratifying convention it was Wilson who argued on democratic grounds and Smilie and Findley who took the ground of republican principle; but there is enough truth in this view to seriously qualify and complicate the common terms of the arguments about the degree of "democracy" in both the Pennsylvania and the U.S. constitutions. See *We the People* 165.

3. Harding, *Annual Report of the American Historical Association 1894* 391.

Speech of William Findley in the Pennsylvania Assembly

28 September 1787

On 28 September 1787, only eleven days after the adjournment of the Constitutional Convention, before the Congress had concluded its consideration of the proposed Constitution and during the waning days of the session of the Pennsylvania Assembly, George Clymer proposed to the latter body that elections be held the next month to select delegates for a state convention to consider the Constitution. Robert Whitehill immediately moved for a postponement until the next session; this was discussed and soundly defeated. Hugh Brackenridge then argued that there was no need to wait for Congress to act, contending that he had "not been able to discover any principle on which an idea of this nature can be founded."[1] In the speech printed here, William Findley attempted to provide that principle.[2] Findley, second in ability only to George Bryan among the Anti-Federalists and, like him (and John Smilie, another Anti-Federalist leader in Pennsylvania), born in Ireland, was a leading western Constitutionalist. He later bore the brunt of the opposition in the Pennsylvania ratifying convention, to which Bryan was not elected, and produced a series of Anti-Federal essays as An Officer of the Late Continental Army.[3]

Findley urged that Pennsylvania should stand, as she had stood in the past, on the rock of legitimacy, which was the rock of federalism. The argument is essentially that the ratification should follow the course laid down in the Articles of Confederation rather than that laid down in the Constitution. This was an appropriate Anti-Federalist argument so long as there was some possibility of adhering to the established conventions; but there never was much chance of that, and consequently the more common Anti-Federalist argument was not Findley's but, for example, Cato's, which emphasized the *illegality* of the Convention, the need for a recourse to the original authority of the people to legitimize the Constitution, and the consequent need for due deliberation in taking such a fundamental step.[4] The Pennsylvania Anti-Federalists themselves made the same argument once it was clear that the established channels of legitimacy had been breached.[5]

1. See McMaster and Stone 40; for the full report of this debate see ibid. 27–72, and n. 2 below.

2. The speech is reprinted from *Proceedings and Debates of the General Assembly of Pennsylvania,* Taken in short-hand by Thomas Lloyd (Philadelphia 1787) I, 125–28.

3. See below, 3.8. Little has been written about Findley. See the biographical sketch by W. H. Egle in McMaster and Stone 727–30; and Asa E. Martin, "William Findley," *Dictionary of American Biography* 385–86. See also the autobiographical letter printed as "William Findley of Westmoreland, Pennsylvania," *Pennsylvania Magazine of History and Biography* 5 (1881): 440–50.

4. See Cato II, 2.6.9.

5. See Pennsylvania House Minority 3.2.4–7.

3.1.1 I do not intend to reply to the arguments used in favour of the present measure—but only examine the ground on which we stand.—When the question was on postponement, I did not think it right, that gentlemen should have introduced the observations which they did, nor that the manner of speaking, which some used, was proper.[1] It was only addressed to the passions, and in my reply I do not mean to justify such language, by using what may be similar. No, Sir, I intend to address the judgment, and not the passions of any man. I have, no doubt, *but a Convention might be called, and will be called. That it ought to be called, and will be called,* is seen so clearly, that I shall add nothing to enforce it—therefore, I take it—that the propriety of calling a convention is not the question before us. After declaring my sentiments so far, I shall proceed—Sir, now to examine the ground on which we stand—I believe we stand on foederal ground; therefore, we are not in a state of nature. If we were in a state of nature, all the arguments produced, for hastening this business, would apply—but as we are not, I would observe, that the most deliberate manner of proceeding, is the best manner—But the manner in which this subject has been introduced, is an indeliberate manner, and seems to argue, that we are not on foederal ground. The design of carrying this through, I say, Sir, is a presumption, that we are in a state of nature: if that is the case, then it can only be proper to use this expedition. What I mean, Sir, by a state of nature, is with respect to the confederation, or union of the states, and not any wise alluding to our particular state government. Now my opinion is, Sir, that we are on foederal ground—that the foederal convention was a foederal convention—that it had the powers of a foederal convention, and that they were limited to act foederally—that they have acted agreeable to the limitation, and have acted foederally. I know by some of the arguments which have been used, that some gentlemen suppose otherwise. Well then, Sir, we will have recourse to the confederation itself, and then to the law which appointed delegates to the convention, and let them decide whether we are on foederal ground or not.

3.1.2 The sixth article of the confederation says, "No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in Congress assembled, specifying,

accurately, the purposes for which the same is to be entered into, and how long it shall continue." It may be said this don't apply—Well let us examine what it says further in the thirteenth article—"The articles of confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state." Now did we act in conformity with these articles by passing the law appointing delegates to the convention, or did we not? I say we did. I know the contrary has been said, but let us have recourse to our own act. I don't mean, as I said before, to reply particularly to any arguments, but to establish the point that we have all along acted upon foederal principles, and that we ought to continue foederal, and I have no doubt but we shall. But what says the preamble of the law—Hear our own words, Sir,—"Whereas the general assembly of this commonwealth, taking into their serious consideration the representations heretofore made to the legislatures of the several states in the union, by the United States in Congress assembled," &c. It has been mentioned that we took it up in consequence of Virginia's having engaged in the measure; and as the reasons are only mentioned in the preamble, they may not deserve much attention, but the second section of the law decides this point. The words are, after enumerating the persons, that they are hereby constituted and appointed deputies from this state, with powers to meet such deputies as may be appointed and authorized by the other states to assemble in the said convention at the city aforesaid, and to join with them in devising, deliberating on, and discussing all such alterations and further provisions as may be necessary to render the foederal constitution fully adequate to the exigencies of the Union; and in reporting such act or acts for that purpose, to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.[2]

Now I consider it as a question of importance, whether we are to take up 3.1.3
the new constitution, as being in a state of nature, or acting on federal ground, whether we stand unconnected or subordinate to the present confederation; if we are bound by that, it obliges us to continue on federal ground. I should conceive, that we are still bound by the confederation, and that the conduct of the House has hitherto been federal; that the convention was federal as appears by their appointment, and their report to Congress. Did they, Sir, address their report to this House? No, Sir, they did not. It is true, Sir, we were honored with a report from our own delegates. No, Sir, I retract the word—the delegates were honored; they did themselves the honour of communicating the result of their deliberations. But did the convention address this House? No, Sir, they did not. They addressed Congress, as they were ordered to do.—Hitherto the business has been in a federal channel, and this, Sir, is the first step that places us upon unfederal ground. The report is before Congress, and it is to be presumed Congress

will agree to it—but has such a length of time elapsed, as to induce us to suspect they will not concur, or to justify our going into it without their recommendation? We may act, Sir, without due deliberation, and hurry on without consideration, but Congress will not. I know the propriety of waiting to hear from them must have weight with every Member, and I ask every gentleman in this House, will they take upon themselves to doubt of the acquiescence of Congress, in order to furnish an argument for dispatch? If any will, let him say so, and take the consequences upon his character. No doubt can be entertained, but Congress will recommend, as the acquisition of power is a desirable object with them. Their disposition must be to promote the present plan, but they must wish to preserve the appearance of decency on such a subject. I ask, can any gentleman suppose but what Congress will come readily into it? They who have been many years recommending and requiring, nay I may say, begging for such powers as are now proposed to be given them, cannot change their disposition, and decline receiving an increase. Well, what does all this tend to prove; have we not all along been a federal state, remarkably so? And shall we be the first to step out of our way wantonly, and without any reason? Certainly we will not.[3]

3.1.4 However, I suppose some gentlemen will say, it is necessary for Pennsylvania to shew a ready compliance on the present occasion—that it is absolutely necessary to supercede the existing confederation. Why, Sir, we know that nothing, no argument, no opposition can withstand the plea of necessity—well, but the absolute necessity must arise from the dangers we are in. Now where are any dangers to be avoided while Congress are going only through their usual forms to recommend this measure? They must have time to read and consider the plan; it must go through the usual course of business. Circular letters must be prepared and sent with authenticated copies of the new form of government. I am of opinion all this will be done with proper speed, and the communications will be made as soon as possible. Why send the plan to Congress at all, if we must act upon it without their approbation. If the present confederation is not adequate to the great national purposes, it is fair to put it in competition with the proposed one. We know it was framed by good and wise men, and so was this. Wise and great men were employed in framing both. Nay, some of the same men prepared them—but as time and experience have shewn a revision to be necessary, has it not been entered into [on] a federal ground? And will the state of Pennsylvania quit this to answer the concealed purposes of those, who urge on the present measure? No, I hope not,—but they will agree to leave it to another House, by which time the usual formalities may be given it by the United States. Surely Pennsylvania can take it up early enough to prevent any damage that is feared. In doing so, we act federally. What are held out as inducements to act with such precipitation, as some Members say the *honor* of being foremost; but I would rather say the *dishonor* of

acting unfederally; and will any federal purposes be answered by a breach of the confederation, which can counterbalance the disgrace of being the first to dissolve the union? And, Sir, it is not convenient that one state should enter into this measure any length of time before the others. This is one reason of waiting the recommendation of Congress—for then the new constitution comes officially and all are prepared to go hand in hand in perfecting the work—but will a name justify us for a breach of faith unnecessarily, and no necessity is alledged to justify the measure. Sir, in acting the part I do in supporting federal measures, I am justified by every citizen, who will think with deliberation on a subject of this importance. I have supposed the gentlemen who support the resolutions before you, have some object in view which is not understood. I have a right for such suspicion, or why was it delayed to the last but one day of the sessions? We do not treat this subject which is allowed to be one of importance with any respect; we treat it rather as a matter of no importance, when we hurry it on in this manner. Why, Sir, even the trifling business of appointing a prothonotary, or register, is made the order of the day. Certainly then we treat this with indignity.

There must be some reasons for this, but though I cannot see it[,] I may 3.1.5
suppose it, and I would ask the gentleman whether it is that they may have the merit of promoting a business which appears to be very popular; but will this consist with our federal engagements. I would go further, and assign another reason against it, but I may be supposed to touch it with indelicacy. It may be asked, was this House elected with a view of entering into matters of this importance? I say this may be indelicate, as the House have elected delegates to convention—but then, Sir, I have shewed they had that right by the articles of confederation, so that the House so far did their duty.—It is true they happened in their choice of delegates, to choose a number of their own Members, but in this they were also justified for one reason; perhaps they thought them better judges of what would be for the benefit of a state they regulated by their legislation. I believe nothing was improper in this; but, I remember, it was lamented that some persons were not chosen better to represent the country interest. And it is these very men, who now come forward with the resolutions, they, no doubt, are able to decide; but I think they should indulge others with time, for a like consideration—therefore, I hope they will agree to let it lie over to the next House. I don't think that it will be then too late, and few or none of the other states can be forwarder than ourselves, in calling a convention.

1. Referring to the Federalist discussion of the merits of the Constitution and allusions to the character and motives of the Anti-Federalist leaders.

2. Farrand III, 565–66.

3. Mr. Hugh Brackenridge: "All efforts to restore energy to the federal government have proved ineffectual, when exerted in the mode directed by the 13th article of the confederation, and it is in consequence of this that recourse is once more had to the *authority of the people*. The first step toward obtaining this was anti-federal; the acquiescence of Congress was anti-federal; the whole process has been anti-federal so

far as it was not conducted in the manner prescribed by the articles of union. But the first and every step was *federal,* inasmuch as it was sanctioned by the PEOPLE OF THE UNITED STATES. The member from Westmoreland [Mr. Findley] pleases his fancy with being on federal ground, pursuing federal measures, and being a very federal sort of person; he concludes we are not in a state of nature, because we are on federal ground. But, Sir, we are not on federal ground, but on the wild and extended field of nature, unrestrained by any former compact, bound by no peculiar tie; at least so far are we disengaged as to be capable of forming a constitution which shall be the wonder of the universe. It is on the principle of self-conservation that we act. The former articles of confederation have received sentence of death, and though they may be on earth, yet are inactive, and have no efficacy." McMaster and Stone 58.

Address of the Minority of the Pennsylvania House of Representatives

4 October 1787

The Pennsylvania legislature did not proceed on Findley's federal ground but called for a convention to meet on 20 November. The Anti-Federalists tried to block action by boycotting the Assembly, but two of them were brought to the house by a group of Philadelphia citizens and retained there by the Federalists to make a quorum. The "Sixteen Seceders' " account of the action, together with their objections to the Constitution, was published in the *Pennsylvania Packet*, 4 October 1787, from which it is taken here; and it was quickly and widely reprinted. The author is identified by Konkle as George Bryan.[1] McMaster and Stone print several replies, the most substantial of which are essays by Pelatiah Webster and A Citizen of Pennsylvania.[2]

1. See Konkle, *George Bryan and the Pennsylvania Constitution, 1731–1791* 308. The Centinel essays and the "Address and Reasons of Dissent" of the Minority of the Pennsylvania ratifying convention, also said by Konkle to have been written by George Bryan, were in fact probably written by his son Samuel (see Centinel II, 2.7 intro. n. 4, and Pennsylvania Convention Minority 3.11.8 n. 2); but the son does not appear to have claimed the authorship of the address of the minority of the House of Representatives.
2. McMaster and Stone 89–113.

An Address of the Subscribers Members of the late House of Representatives of the Commonwealth of Pennsylvania to their Constituents.

Gentlemen,

When in consequence of your suffrages at the last election we were chosen to represent you in the General Assembly of this commonwealth, we accepted of the important trust, with a determination to execute it in the best manner we were able, and we flatter ourselves we acted in such a 3.2.1

manner as to convince you, that your interests with that of the good of the state has been the object of our measures.

3.2.2 During the fall a[nd?] spring sessions of the legislature, on the recommendation of the Congress of the United States, your representatives proceeded to the appointment of delegates to attend a convention to be held in the city of Philadelphia, for the purposes of revising and amending the present articles of confederation, and to report their proceedings to Congress, and when adopted by them, and ratified by the several states, to become binding on them as part of the confederation of the United States. We lamented at the time, that a majority of our legislature appointed men to represent this state who were all citizens of Philadelphia, none of them calculated to represent the landed interest of Pennsylvania, and almost all of them of one political party, men who have been uniformly opposed to that constitution for which you have on every occasion manifested your attachment.[1] We were apprehensive at the time, of the ill consequences of so partial a representation, but all opposition was in vain. When the convention met, members from twelve states attended, and after deliberating upwards of four months on the subject, agreed on a plan of government which was sent forward by them to Congress, and which was reported to the house by the delegates of Pennsylvania as mere matter of information, and printed in the newspapers of the city of Philadelphia; but the house had not received it officially from Congress, nor had we the least idea, that as the annual election was so near, we should be called upon to deliberate, much less to act on so momentous a business; a business of the utmost importance to you and your posterity. We conceived it required the most minute examination and mature consideration, and that it ought to be taken up by the next house. Judge then of our surprise on finding the last day but one in the sessions, a member of the house who had been a delegate in the convention [George Clymer], without any previous notice or any intimation of his intentions to the house, offer a resolution recommending the calling a convention to consider of the proposed constitution, and to direct the electing members for the same, at so early a period as the day of your annual election, thus attempting to surprise you into a choice of members—to approve or disapprove of a constitution, which, is to entail happiness or misery forever without giving time to the greatest part of the state even to see, much less to examine the plan of government.

3.2.3 Our duty to ourselves and our regard for your dearest interests induced us to oppose the measure by every possible argument that we could suggest at the time; but all our efforts were insufficient even to produce a postponement until the afternoon. We urged and urged in vain the constant practice of the house when any important business was to be brought on, of giving previous notice and making it the order of the day sometime before hand; that no bill, however trifling, was passed without three readings, and without this formality which gave the members time and opportunity to think on

the subject; that the rules were adhered to so strictly, that even the building of a bridge, or the laying out a road, could not be determined on without this form; but this, the most important of all matters, was to be done by surprise, and as we conceived with design to preclude you from having it in your power to deliberate on the subject. Our anxiety for your interests was great, but notwithstanding the firmest and most determined opposition, no respite could be obtained, and the first resolution was adopted by a majority of the house, when they adjourned till the afternoon to complete the business. In these circumstances we had no alternative, we were under a necessity of either returning to the house, and by our presence enabling them to call a convention before our constituents could have the means of information, or time to deliberate on the subject, or by absenting ourselves from the house, prevent the measure taking place. Our regard for you induced us to prefer the latter, and we determined not to attend in the afternoon. We conceived that at the time we were chosen you had no view to this business, and we could see no inconvenience nor loss of time from deferring a matter of such importance and which would in its consequences affect, or perhaps, annihilate our own constitution, as well as that of every constitution in the union to a house chosen after the people had some knowledge of the plan, especially as the next house will meet at so early a period, and a convention could be called by them time enough to meet in a few months, which would be as early as any state in the union, and would be allowing you time to make up your minds on a matter which appeared to us to require so much deliberation. Thus circumstanced and thus influenced, we determined the next morning, again to absent ourselves from the house, when James M'Calmont, esquire, a member from Franklin, and Jacob Miley, esquire, a member from Dauphin, were seized by a number of citizens of Philadelphia, who had collected together for that purpose, their lodgings were violently broken open, their cloaths torn, and after much abuse and insult, they were forcibly dragged through the streets of Philadelphia to the State house, and there detained by force, and in the presence of the majority, who had, the day before, voted for the first of the proposed resolutions, treated with the most insulting language; while the house so formed proceeded to finish their resolutions, which they mean to offer to you as the doings of the legislature of Pennsylvania. On this outrageous proceeding we make no comment. The inhabitants of Franklin and Dauphin have been grossly insulted by the treatment of their members.[2] We know the feelings of the people of these counties are sufficiently keen; it becomes us, not to add to them by dwelling longer on the subject; but as our conduct may, and we have no doubt, will be misrepresented, we thought it our duty to lay before our constituents, to whom alone we are accountable, a real state of facts; that they may judge for themselves. We need not tell you, that we could have no interested motive to influence our conduct. A sense of that duty which we owed to you and to ourselves, could have alone induced us to submit to the variety of abuse and

insults which many of us have experienced, for not consenting to a measure that might probably have surprised you into a surrender of your dearest rights. Our conduct has at least had the good effect to lengthen out the time of election, and induced them to postpone the election for members of the convention until the first Tuesday in November next; whereas the resolution first proposed, directed it to be holden for all the counties east of Bedford, on the day of the annual election, nine days from the time of proposing the measure.

3.2.4 We cannot conclude without requesting you to turn your serious attention to the government now offered to your consideration: "We are persuaded that a free and candid discussion of any subject tends greatly to the improvement of knowledge, and that a matter in which the public are so deeply interested cannot be too well understood. A good constitution and government is a blessing from heaven, and the right of posterity and mankind; suffer then we intreat you no interested motive, sinister view, or improper influence to direct your determinations or biass your judgements."[3] Provide yourselves with the new constitution offered to you by the convention, look it over with attention that you be enabled to think for yourselves. We confess when the legislature appointed delegates to attend the convention, our ideas extended no farther than a revision or amendment of the present confederation, nor were our delegates, by the acts of assembly appointing them, authorised to do more, as will appear by referring to the said act, the second section of which describes their powers in the following words, viz.

3.2.5 2. Be it enacted, and it is hereby enacted by the representatives of the freemen of the commonwealth of Pennsylvania in general assembly met, and by the authority of the same. That Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimons, James Wilson and Governeur Morris, Esquires, are hereby appointed deputies from this state to meet in the convention of the deputies of the respective states of North-America, to be held at the city of Philadelphia, on the second day of the month of May next. And the said Thomas Mifflin, Robert Morris, George Clymer, Jared Ingersoll, Thomas Fitzsimons, James Wilson and Governeur Morris, Esquires, or any four of them are hereby constituted and appointed deputies from this state, with powers to meet such deputies as may be appointed and authorised by the other states to assemble in the said convention at the city aforesaid, and to join with them in devising, deliberating on, and discussing all such alterations and further provisions as may be necessary to render the federal constitution fully adequate to the exigencies of the union; and in reporting such act or acts for that purpose, to the United States in Congress assembled, as when agreed to by them, and duly confirmed by the several states, will effectually provide for the same.[4]

3.2.6 You will therefore perceive that they had no authority whatever from the legislature, to annihilate the present confederation and form a constitution entirely new, and in doing which they have acted as mere individuals, not as

the official deputies of this commonwealth. If however, after mature deliberation you are of opinion that the plan of government which they have offered for your consideration is best calculated to promote your political happiness and preserve those invaluable privileges you at present enjoy, you will no doubt chose men to represent you in convention who will adopt it; if you think otherwise you will, with your usual firmness, determine accordingly.

You have a right, and we have no doubt you will consider whether or not 3.2.7
you are in a situation to support the expence of such a government as is now offered to you, as well as the expence of your state government? or whether a legislature consisting of three branches,[5] neither of them chosen annually, and that the senate, the most powerful, the members of which are for six years, are likely to lessen your burthens or encrease your taxes? or whether in case your state government should be annihilated, which will probably be the case, or dwindle into a mere corporation, the continental government will be competent to attend to your local concerns? You can also best determine whether the power of levying and imposing internal taxes at pleasure, will be of real use to you or not? or whether a continental collector assisted by a few faithful soldiers will be more eligible than your present collectors of taxes? You will also in your deliberations on this important business judge, whether the liberty of the press may be considered as a blessing or a curse in a free government, and whether a declaration for the preservation of it is necessary? or whether in a plan of government any declaration of rights should be prefixed or inserted? You will be able likewise to determine, whether in a free government there ought or ought not to be any provision against a standing army in time of peace? or whether the trial by jury in civil causes is become dangerous and ought to be abolished? and whether the judiciary of the United States is not so constructed as to absorb and destroy the judiciaries of the several states? you will also be able to judge whether such inconveniencies have been experienced by the present mode of tryal between citizen and citizen, of different states as to render a continental court necessary for that purpose? or whether there can be any real use in the appellate jurisdiction with respect to fact as well as law? we shall not dwell longer on the subject; one thing however, it is proper you should be informed of: the convention were not unanimous with respect to men though they were as states, several of those who have signed did not fully approve of the plan of government, and three of the members, viz. Governor Randolph and Colonel George Mason of Virginia, and Eldridge Gerry, Esquire, of Massachusetts, whose characters are very respectable, had such strong objections as to refuse signing. The confederation no doubt is defective and requires amendment and revision, and had the convention extended their plan to the enabling the United States to regulate commerce, equalize the impost, collect it throughout the United States and have the entire jurisdiction over maritime affairs, leaving the

exercise of internal taxation to the separate states, we apprehend there would have been no objection to the plan of government.

3.2.8 The matter will be before you, and you will be able to judge for yourselves. "Shew that you seek not yourselves, but the good of your country, and may he who alone has dominion over the passions and understandings of men enlighten and direct you aright, that posterity may bless God for the wisdom of their ancestors."[6]

James M'Calmont	*John Gilchrist*
Robert Clark	*Abraham Smith*
Jacob Miley	*Robert Whitehill*
Alexander Wright	*David Mitchell*
John M'Dowell	*John Piper*
John Flenniken	*Samuel Dale*
James Allison	*William Findley*
Theophilus Philips	*James Barr.*

Saturday, Sept. 29, 1787.

1. With the Republicans in control of the state legislature, and considering the party animosities in Pennsylvania, it is not surprising that the Pennsylvania delegation to the Philadelphia Convention in 1787 was made up of men from their own party. It must also be said, however, that the Constitutionalists seem to have underestimated the importance of the Convention. George Bryan somewhat vaguely recalled that "very little bustle was made and little or no opposition." Konkle, *George Bryan* 300. Harding reports that Constitutionalist leader William Findley was asked to attend the Convention but declined on the ground that he could not afford to serve without a salary. *Annual Report of the American Historical Association 1894* 391 n. 2. The Constitutionalist posture was a typical grudging acquiescence to Republican initiatives in strengthening the confederation. On Pennsylvania's response to the proposal for a 5 percent federal impost, see Brunhouse, *The Counter Revolution in Pennsylvania* 132.

2. An Independent Citizen replied that the persons responsible for this action "were induced by motives of necessity, and public good to exert themselves in bringing your servants as well as theirs, to that duty from which they had disgracefully absconded." McMaster and Stone 87.

3. It is not clear whether this is a quotation or only set off for emphasis; but no source has been found.

4. Farrand III, 565–66; see Republican Federalist 4.13.10 n. 6.

5. Pelatiah Webster made a lengthy and well-reasoned reply to this criticism, in which he defended a separation of powers as promoting mature deliberation. McMaster and Stone 95–99.

6. Again, it is not clear whether this is a quotation or only set off for emphasis; but no source has been found.

Essays of An Old Whig

(PHILADELPHIA) INDEPENDENT GAZETTER
October 1787–February 1788

The essays of An Old Whig appeared in the Philadelphia *Independent Gazetteer* mainly during October and November 1787. They are not in the first rank of Anti-Federalist writings, but they are moderate and reasonably well argued and were reprinted rather widely in Pennsylvania, New York, and Massachusetts. The author is not known. A sketch of the essays follows.

Essay I. Once the Constitution is adopted, amendment will be extremely difficult, because the provisions for amendment are complex and require a high degree of agreement, because the states will have been reduced to "forms and shadows," because the great and powerful will not desire amendments, and because the press may be restrained on the principle that the people should not trouble themselves with government. We ought therefore not to hasten to a conclusion.

Essay II. James Wilson's argument that the Constitution reserves to the people all powers not explicitly granted is not tenable: (1) there is no such provision; (2) the powers actually granted, and particularly the necessary and proper clause, are unlimited; (3) there is no bill of rights under which the people could appeal to the courts; and (4) the supremacy clause is the capstone of this system of national legislative supremacy. We are left entirely dependent on the wisdom and virtue of the members of Congress.

Essay III. The treaty power is dangerous in its scope and implication. It is said that the power will not be abused, but the study of patriots is to restrain power so as to prevent abuse. The provisions of state bills of rights are no protection against, e.g., congressional restraint of the liberty of the press. The provision for trial by jury in criminal cases is not a sufficient protection against governmental oppression, for the government can tyrannize by way of civil suits for penalties, forfeitures, and demand for public debts as well as criminal prosecutions. There is no reason why the trial by jury in civil cases could not have been guaranteed.

Essay IV. Our chief danger is overhasty action in response to admitted difficulties; a second convention ought to be called. The proposed Constitu-

tion will annihilate separate state governments; no republic ever existed over so large an area. We ought to form a plan of confederation that will support continental union, while at the same time maintaining the rights of the separate states and liberties of the subjects. We are in a favorable period for establishing a good constitution, but it will require a careful attention to a bill of rights. A bill of rights not only protects the individual but strengthens government by strengthening the attachment of the people.

Essay V. Discussion of need for a bill of rights continued, with special reference to the need to protect liberty of conscience against the enthusiasm for uniformity of opinion that is always ready to extinguish dissent. Turning to the *form* of government, the President is clothed with dangerous powers and is in fact an elected king. It would be better to adopt a hereditary monarchy immediately if this is what is wanted. The office must be "either reduced to a lower pitch of power or made perpetual and hereditary" (3.3.31).

Essay VI. An efficient federal government, which is needed, could be secured by giving Congress power to regulate trade and lay and collect duties on impost. The proposed unlimited taxing power could be used to negate any state tax or regulation. The proponents say that direct taxes will not be necessary, but they will be used if granted, and if they are not needed why grant the power? The true distinction is between internal and external taxes; the maintenance of the federal system, and thus of republican government, depends on maintaining this distinction.

Essay VII. If the choice were between the proposed Constitution and no continental government, An Old Whig would choose the former, but the situation is not so deplorable. Some say that the common people should leave the matter to their superiors, but this is not the language of the Revolution. An Old Whig proposes that the Constitution be neither adopted nor rejected but that (1) new state conventions be called to suggest objections and amendments (about which there will be much agreement) and (2) a second federal convention be called to revise the proposal and with a prior agreement to abide by its decision.

Essay VIII. In this epilogue (which followed the main series after a period of two months), An Old Whig returns to the theme of his first essay. The time for amendments is before rather than after the Constitution is adopted. Both the tendency of rulers to keep all the power they can and the difficulty of the amendment procedure make it likely that no substantial changes will be made once the Constitution is adopted.

I

Mr. Printer,

3.3.1 I am one of those who have long wished for a federal government, which

should have power to protect our trade and provide for the general security of the United States. Accordingly, when the constitution proposed by the late convention made its appearance, I was disposed to embrace it almost without examination; I was determined not to be offended with trifles or to scan it too critically. "We want something: let us try this; experience is the best teacher: if it does not answer our purpose we can alter it: at all events it will serve for a beginning." Such were my reasonings;—but, upon further reflection, I may say that I am shaken with very considerable doubts and scruples. I want a federal constitution; and yet I am afraid to concur in giving my consent to the establishment of that which is proposed. At the same time I really wish to have my doubts removed, if they are not well founded. I shall therefore take the liberty of laying some of them before the public, through the channel of your paper.

In the first place, it appears to me that I was mistaken in supposing that 3.3.2
we could so very easily make trial of this constitution and again change it at our pleasure. The conventions of the several states cannot propose any alterations—they are only to give their *assent* and *ratification*. And after the constitution is once ratified, it must remain fixed until two thirds of both the houses of Congress shall deem it necessary to propose amendments; or the legislatures of two thirds of the several states shall make application to Congress for the calling a convention for proposing amendments, which amendments shall not be valid till they are ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by Congress.—This appears to me to be only a cunning way of saying that no alteration shall ever be made; so that whether it is a good constitution or a bad constitution, it will remain forever unamended. Lycurgus, when he promulgated his laws to the Spartans, made them swear that they would make no alterations in them until he should return from a journey which he was then about to undertake.—He chose never to return, and therefore no alterations could be made in his laws. The people were made to believe that they could make trial of his laws for a few months or years, during his absence, and as soon as he returned they could continue to observe them or reject at pleasure. Thus this celebrated Republic was in reality established by a trick. In like manner the proposed constitution holds out a prospect of being subject to be changed if it be found necessary or convenient to change it; but the conditions upon which an alteration can take place, are such as in all probability will never exist. The consequence will be that, when the constitution is once established, it never can be altered or amended without some violent convulsion or civil war.[1]

The conditions, I say, upon which any alterations can take place, appear 3.3.3
to me to be such as never will exist—two thirds of both houses of Congress or the legislatures of two thirds of the states, must agree in desiring a convention to be called. This will probably never happen; but if it should happen, then the convention may agree to the amendments or not as they

think right; and after all, three fourths of the states must ratify the amendments.—Before all this labyrinth can be traced to a conclusion, ages will revolve, and perhaps the great principles upon which our late glorious revolution was founded, will be totally forgotten. If the principles of liberty are not firmly fixed and established in the present constitution, in vain may we hope for retrieving them hereafter. People once possessed of power are always loth to part with it; and we shall never find two thirds of a Congress voting or proposing any thing which shall derogate from their own authority and importance, or agreeing to give back to the people any part of those privileges which they have once parted with—so far from it[,] that the greatest occasion there may be for a reformation, the less likelihood will there be of accomplishing it. The greater the abuse of power, the more obstinately is it always persisted in. As to any expectation of two thirds of the legislatures concurring in such a request, it is if possible, still more remote. The legislatures of the states will be but forms and shadows, and it will be the height of arrogance and presumption in them, to turn their thoughts to such high subjects. After this constitution is once established, it is too evident that we shall be obliged to fill up the offices of assemblymen and councillors, as we do those of constables, by appointing men to serve whether they will or not, and fining them if they refuse. The members thus appointed, as soon as they can hurry through a law or two for repairing highways or impounding cattle, will conclude the business of their sessions as suddenly as possible; that they may return to their own business.—Their heads will not be perplexed with the great affairs of state—We need not expect two thirds of them ever to interfere in so momentous a question as that of calling a Continental convention.—The different legislatures will have no communication with one another from the time of the new constitution being ratified, to the end of the world. Congress will be the great focus of power as well as the great and only medium of communication from one state to another. The great, and the wise, and the mighty will be in possession of places and offices; they will oppose all changes in favor of liberty; they will steadily pursue the acquisition of more and more power to themselves and their adherents.[2] The cause of liberty, if it be now forgotten, will be forgotten forever.—Even the press which has so long been employed in the cause of liberty, and to which perhaps the greatest part of the liberty which exists in the world is owing at this moment;—the press may possibly be restrained of its freedom, and our children may possibly not be suffered to enjoy this most invaluable blessing of a free communication of each others sentiments on political subjects—Such at least appear to be some men's fears, and I cannot find in the proposed constitution any thing expressly calculated to obviate these fears; so that they may or may not be realized according to the principles and dispositions of the men who may happen to govern us hereafter. One thing however is calculated to alarm our fears on this head;—I mean the fashionable language which now prevails so

much and is so frequent in the mouths of some who formerly held very different opinions;—THAT COMMON PEOPLE HAVE NO BUSINESS TO TROUBLE THEMSELVES ABOUT GOVERNMENT.[3] If this principle is just the consequence is plain that the common people need no information on the subject of politics. Newspapers, pamphlets and essays are calculated only to mislead and inflame them by holding forth to them doctrines which they have no business or right to meddle with, which they ought to leave to their superiors. Should the freedom of the press be restrained on the subject of politics, there is no doubt it will soon after be restrained on all other subjects, religious as well as civil. And if the freedom of the press shall be restrained, it will be another reason to despair of any amendments being made in favor of liberty, after the proposed constitution shall be once established. Add to this, that under the proposed constitution, it will be in the power of the Congress to raise and maintain a standing army for their support, and when they are supported by an army, it will depend on themselves to say whether any amendments shall be made in favor of liberty.

If these reflections are just it becomes us to pause, and reflect previously 3.3.4
before we establish a system of government which cannot be amended; which will entail happiness or misery on ourselves and our children. We ought I say to reflect carefully, we ought not by any means to be in haste; but rather to suffer a little temporary inconvenience, than by any precipitation to establish a constitution without knowing whether it is right or wrong, and which if wrong, no length of time will ever mend. Scarce any people ever deliberately gave up their liberties; but many instances occur in history of their losing them forever by a rash and sudden act, to avoid a pressing inconvenience or gratify some violent passion of revenge or fear. It was a celebrated observation of one of our Assemblies before the revolution, during their struggles with the proprietaries, that "those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."[4]

For the present I shall conclude with recommending to my countrymen 3.3.5
not to be in haste, to consider carefully what we are doing. It is our own concern; it is our own business; let us give ourselves a little time at least to read the proposed constitution and know what it contains; for I fear that many, even of those who talk most about it have not even read it, and many others, who are as much concerned as any of us, have had no opportunity to read it. And it is certainly a suspicious circumstance that some people who are presumed to know most about the new constitution, seem bent upo forcing it on their countrymen without giving them time to know what they are doing.

Hereafter I may trouble you further on some other parts of this important subject; but I fear this letter is already too long.

Yours.
An Old Whig.

II

Mr. Printer,

3.3.6 Since writing my last, in which I stated some doubts respecting the new federal constitution and expressed a wish that those doubts might be removed, I have met with the printed speech of *James Wilson,* Esquire.—This speech I find was made for the express purpose of removing objections from the minds of those who doubted, like myself, and wished to be satisfied; and except one or two hard names that have escaped the speaker, it bears the marks of more candor than is to be found in most of the production, which have been ushered into the world in support of the same measure. This speech also deserves the more attention as coming from a man of abilities fresh from "*the impressions of four months constant attention to the subject.*"[5] The subject however is one of those which it imports us all very carefully to examine. I have therefore paid very considerable attention to his arguments, at the same time that I have examined with some care the foundation upon which they are built. Still I remain unsatisfied; and the more unsatisfied, as I have been disappointed in my hope of conviction, from a quarter, from which so much was to be expected—You will give me leave therefore to state shortly in your paper, some of those difficulties which still remain with me.

3.3.7 The first principle which the gentleman endeavours to establish in his speech is a very important one, if true; and lays a sure foundation to reason upon, in answer to the objection which is made to the new constitution, from the want of a bill of rights. The principle is this: that "in *delegating federal powers,* the congressional authority is to be collected, *not from tacit implication,* but from *the positive grant* expressed in the instrument of union," "*that every thing which is not given is reserved.*"[6] *If this* be a just representation of the matter, the authority of the several states will be sufficient to protect our liberties from the encroachments of Congress, without any continental bill of rights; *unless* the powers which are *expressly given* to Congress are *too large*.

3.3.8 Without examining particularly at present, whether the powers *expressly* given to Congress are too large or too small, I shall beg leave to consider, whether the author of this speech is sufficiently accurate in his statement of the proposition above referred to.—To strip it of unnecessary words, the position may be reduced to this short sentence, "that every thing which is not *expressly* given to Congress is reserved";[7] or in other words "that Congress cannot exercise any power or authority that is not in express words delegated to them."—This certainly is the case under the first articles of confederation which hitherto have been the rule and standard of the powers of Congress; for in the second of those articles "each state retains its sovereignty[,] freedom and independence and every power, jurisdiction

and right which is not by this confederation *expressly* delegated to the United States in Congress assembled." It was the misfortune of these articles of confederation that they did not by express words give to Congress power sufficient for the purposes of the union; for Congress could not go beyond those powers so expressly given. The position of the speech, therefore is strictly true if applied to the first articles of confederation; "that every thing which is not expressly given is reserved." We are not however to suppose that the speaker meant insidiously to argue from an article in the old confederation in favor of the new constitution, unless the same thing was also in the new constitution. Let us then fairly examine whether in the proposed new constitution there be any thing from which the gentleman can be justified in this opinion, "that every thing which is not expressly given to Congress is reserved."

3.3.9 In the first place then it is most certain that we find no such clause or article in the new constitution. There is nothing in the new constitution which either in form or substance bears the least resemblance to the second article of the confederation. It might nevertheless be a fair argument to insist upon from the nature of delegated powers, that no more power is given in such cases than is expressly given. Whether or not this ground of argument would be such as we might safely rest our liberties upon; or whether it would be more prudent to stipulate expressly as is done in the present confederation for the reservation of all such powers as are not expressly given, it is hardly necessary to determine at present. It strikes me that by the proposed constitution, so far from the reservation of all powers that are not expressly given, *the future Congress will be fully authorised to assume all such powers as they in their wisdom or wickedness, according as the one or the other may happen to prevail, shall from time to time think proper to assume.*

3.3.10 Let us weigh this matter carefully; for it is certainly of the utmost importance, and, if I am right in my opinion, the new constitution vests Congress with such unlimited powers as ought never to be entrusted to any men or body of men. It is justly observed that the possession of sovereign power is a temptation too great for human nature to resist; and although we have read in history of one or two illustrious characters who have refused to enslave their country when it was in their power;—although we have seen one illustrious character in our own times resisting the possession of power when set in competition with his duty to his country, yet these instances are so very rare, that it would be worse than madness to trust to the chance of their being often repeated.

3.3.11 To proceed then with the enquiry, whether the future Congress will be restricted to those powers which are expressly given to them. I would observe that in the opinion of *Montesquieu*, and of most other writers, ancient as well as modern, the legislature is the sovereign power.[8] It is certainly the most important. If any one doubts this, let him reflect upon the

frequent inroads which the legislature of Pennsylvania has made upon the other branches of government: Inroads which it is much to be feared, if the powers of government in Pennsylvania should ever in time to come be an object worth contending about, no council of censors will ever be able to check or restrain.[9] Let us then see what are the powers expressly given to the legislature of Congress, and what checks are interposed in the way of the continental legislature's assuming what further power they shall think proper to assume.

3.3.12 To this end let us look to the first article of the proposed new constitution, which treats of the legislative powers of Congress; and to the eighth section which *pretends* to define those powers. We find here that the congress, in its legislative capacity, shall have the power "to lay and collect taxes, duties and excises; to borrow money; to regulate commerce; to fix the rule for naturalization and the laws of bankruptcy; to coin money; to punish counterfeiters; [to] establish post offices and post roads; to secure copy rights to authors; to constitute tribunals; to define and punish piracies; to declare war; to raise and support armies; to provide and support a navy; to make rules for the army and navy; to call forth the militia; to organize, arm and discipline the militia; to exercise absolute power[10] over a district of ten miles square, independant of all the state legislatures, and to be alike absolute over all forts, magazines, arsenals, dockyards and other needful buildings thereunto belonging." This is a short abstract of the powers expressly given to Congress. These powers are very extensive, but I shall not stay at present to inquire whether these *express* powers were necessary to be given to Congress? whether they are too great or too small? My object is to consider that *undefined, unbounded and immense power* which is comprised in the following clause;—"And, to make all laws which shall be necessary and proper for carrying into execution the *foregoing powers and all other powers* vested by this constitution in the government of the United States; or in any department or offices [officer] thereof."[11] Under such a clause as this can any thing be said to be reserved and kept back from Congress? Can it be said that the Congress have no power but what *is expressed?* "To make all laws which shall be necessary and proper" is in other words to make all such laws which *the Congress shall think necessary and proper,*—for who shall judge for the legislature what is necessary and proper?—Who shall set themselves above the sovereign?—What inferior legislature shall set itself above the supreme legislature?—To me it appears that no other power on earth can dictate to them or controul them, unless by force; and force either internal or external is one of those calamities which every good man would wish his country at all times to be delivered from.—This generation in America have seen enough of war and its usual concomitants to prevent all of us from wishing to see any more of it;—all except those who make a trade of war. But to the question;—without force what

can restrain the Congress from making such laws as they please? What limits are there to their authority?—I fear none at all; for surely it cannot justly be said that they have no power but what is expressly given to them, where by the very terms of their creation they are vested with the powers of making laws in all cases necessary and proper; when from the nature of their power they must necessarily be the judges, what laws are necessary and proper. The British act of Parliament, declaring the power of Parliament to make laws to bind America in all cases whatsoever,[12] was not more extensive; for it is as true as a maxim, that even the British Parliament neither could nor would pass any law in any case in which they did not either deem it necessary and proper to make such law or pretend to deem it so. And in such cases it is not of a farthing consequence whether they really are of opinion that the law is necessary and proper, or only *pretend to think so;* for who can overrule their pretensions?—No one; unless we had a bill of rights to which we might appeal, and under which we might contend against any assumption of undue power and appeal to the judicial branch of the government to protect us by their judgements. This reasoning I fear Mr. Printer is but too just; and yet, if any man should doubt the truth of it; let me ask him one other question, what is the meaning of the latter part of the clause which vests the Congress with the authority of making all laws which shall be necessary and proper for carrying into execution ALL OTHER POWERS;—besides the foregoing powers vested, &c. &c. Was it thought that the foregoing powers might perhaps admit of some restraint in *their* construction as to what was necessary and proper to carry them into execution? Or was it deemed right to add still further that they should not be restrained to the powers already named?—besides the powers already mentioned, other powers may be assumed hereafter as contained by implication in this constitution. The Congress shall judge of what is necessary and proper in all these cases and in all other cases;—in short in all cases whatsoever.

Where then is the restraint? How are Congress bound down to the powers expressly given? what is reserved or can be reserved? 3.3.13

Yet even this is not all—as if it were determined that no doubt should remain, by the sixth article of the constitution it is declared that, "this constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, *any thing in the constitutions or laws of any state to the contrary notwithstanding.*" The Congress are therefore vested with the supreme legislative power, without controul. In giving such immense, such unlimited powers, was there no necessity of a bill of rights to secure to the people their liberties? Is it not evident that we are left wholly dependent on the wisdom and virtue of the men who shall from time to time be the members of Congress? and who shall be able to say

seven years hence, the members of Congress will be wise and good men, or of the contrary character.

As I mean to pursue this subject in some other letters, I shall conclude for the present; and am,

Yours,
An Old Whig.

III

Mr. Printer,

3.3.14 "Great men are not always wise,"[13] they have their seasons of inattention, and their moments of frailty and error, in which it is too evident, they are not wholly exempted from the infirmity of human nature. We ought not therefore implicitly to approve and admire, without examination, every act that proceeds even from the best and wisest of mankind. The proposed new plan of federal government, is undoubtedly the work of some of the ablest and best men in this country; but yet we are not, for that reason only, to believe that it is free from imperfection. The convention themselves inform us that the constitution which they offer to us, is the effect of mutual accommodations and concessions, in which mode it is certain that the best and wisest propositions are not always those which are adopted. Indeed it appears to me that, after all the time which has been spent in this business, the convention at the close of their session have been glad to lay hold of any system in which a majority could possibly concur, so as not to separate without doing any thing; and that the model of government now before us, is at least the work of haste and inattention. To be convinced of this, let us turn again to the sixth article, which I have referred to in the close of my last letter. By this article, not only the "proposed constitution and laws of the United States, which shall be made in pursuance thereof"; but also "*all treaties* made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitutions or laws of any state to the contrary notwithstanding."—The power of making treaties is vested in the president, with the concurrence of two thirds of the senators present; so that the president and two thirds of the senate have power to make laws in the form of treaties, independent of the legislature itself. If Great Britain, for instance, were willing to enter into a treaty with us, upon terms which would be inconsistent with the liberties of the people and destructive of the very being of a Republic, the consent of our president for the time being, and of two thirds of the senators present, even though the senators present should be but a very small part of the senate, will give such a treaty the validity of a

law. What power will there be anywhere to prevent this?—None.—Where all power legislative and executive is vested in one man or one body of men, treaties are made by the same authority which makes the laws; but where the legislature is extinct [distinct?] from the executive, the approbation of the legislature ought to be had, before a treaty should have the force of a law; and even in England the parliament is constantly applied to for their sanction to every treaty which tends to introduce an innovation or the slightest alteration in the laws in being, the law there is not altered by the treaty itself; but by an act of parliament which confirms the treaty, and alters the law so as to accommodate it to the treaty. The King in council has no such power. The only answer which can be made to this objection, which is so obvious, to the power given by the proposed constitution to the executive of making treaties, which shall be the "supreme law of the land," is, that it is not to be supposed they will abuse such power.—But yet we find that men in all ages have abused power, and that it has been the study of patriots and virtuous legislators at all times to restrain power, so as to prevent the abuse of it.—What then ought to be done, it may be asked.—Are treaties to be sent to all the different state legislatures for their approbation? By no means. But no treaty ought to be suffered to alter the law of the land, without the consent of the continental legislatures; the powers of the continental legislatures ought to be exactly defined; and there ought to be a bill of rights firmly established, which neither treaties nor acts of the legislature can alter.

Let us however give fair play to the answer which has been attempted to 3.3.15
be given to this Objection. The author of the speech tells us, that a bill of rights would have been superfluous and absurd; because "no powers are given to Congress but what are expressly given";[14] and "that we shall still enjoy those privileges of which we are not divested either by the intention or the act that brought that body into existence.—For instance, the liberty of the press.—What controul can proceed from the federal government to shackle or destroy that sacred palladium of national freedom?"[15]—What controul!—Suppose that an act of the continental legislature should be passed to restrain the liberty of the press;—to appoint licensers of the press in every town in America;—to limit the number of printers;—and to compel them to give security for their good behaviour, from year to year, as the licenses are renewed: If such a law should be once passed, what is there to prevent the execution of it?—By the sixth article of the proposed constitution, this act of the continental legislature is "the supreme law of the land; and the judges in every state shall be bound thereby, ANY THING IN THE CONSTITUTION OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING."—Suppose a printer should be found hardy enough to contravene such a law when made, and to contest the validity of it.—He is prosecuted we will suppose, in this state—he pleads in his defence, that by the constitution of Pennsylvania, it is declared "that the freedom of the

press ought not to be restrained."—What will this avail him? The judge will be obliged to declare that *"notwithstanding the constitution of any state,"* this act of the continental legislature which restrains the freedom of the press, is "the supreme law; and we must punish you—The bill of rights of Pennsylvania is nothing here. That bill of rights indeed is binding upon the legislature of Pennsylvania, but it is not binding upon the legislature of the continent." Such must be the language and conduct of courts, as soon as the proposed continental constitution shall be adopted.

3.3.16 As to the trial by jury, the question may be decided in a few words. Any future Congress sitting under the authority of the proposed new constitution, may, if they chuse, enact that there shall be no more trial by jury, in any of the United States; except in the trial of crimes; and this "SUPREME LAW" will at once annul the trial by jury, in all other cases. The author of the speech supposes that no danger "can possibly ensue, since the proceedings of the supreme court are to be regulated by the Congress, which is a faithful representation of the people; and the oppression of government is effectually barred; by declaring that in all criminal cases the trial by jury shall be preserved."[16] Let us examine the last clause of this sentence first.—I know that an affected indifference to the trial by jury has been expressed, by some persons high in the confidence of the present ruling party in some of the states;[17]—and yet for my own part I cannot change the opinion I had early formed of the excellence of this mode of trial even in civil causes. On the other hand I have no doubt that whenever a settled plan shall be formed for the extirpation of liberty, the banishment of jury trials will be one of the means adopted for the purpose.—But how is it that "the oppression of government is effectually barred by declaring that in all criminal cases the trial by jury shall be preserved?"—Are there not a thousand civil cases in which the government is a party?—In all actions for penalties, forfeitures and public debts, as well as many others, the government is a party and the whole weight of government is thrown into the scale of the prosecution[,] yet these are all of them civil causes.—These penalties, forfeitures and demands of public debts may be multiplied at the will and pleasure of government.—These modes of harrassing the subject have perhaps been more effectual than direct criminal prosecutions.—In the reign of Henry the Seventh of England, Empson and Dudley acquired an infamous immortality by these prosecutions for penalties and forfeitures.[18]—Yet all these prosecutions were in the form of civil actions; they are undoubtedly objects highly alluring to a government.—They fill the public coffers and enable government to reward its minions at a cheap rate.—They are a profitable kind of revenge and gratify the officers about a court, who study their own interests more than corporal punishment.—Perhaps they have at all times been more eagerly pursued than mere criminal prosectuions.—Shall trial by jury be taken away in all these cases and shall we still be told that

"we are effectually secured against the oppressions of government?" At this rate Judges may sit in the United States, as they did in some instances before the war, without a jury to condemn people's property and extract money from their pockets, to be put into the pockets of the judges themselves who condemn them; and we shall be told that we are safe from the oppression of government.—No, Mr. Printer, we ought not to part with the trial by jury; we ought to guard this and many other privileges by a bill of rights, which cannot be invaded. The reason that is pretended in the speech why such a declaration[,] as a bill of rights requires, cannot be made for the protection of the trial by jury;—"that we cannot with any propriety say 'that the trial by jury shall be as heretofore' in the case of a federal system of jurisprudence,["—][19] is almost too contemptible to merit notice.—Is this the only form of words that language could afford on such an important occasion? Or if it were [,] to what did these words refer when adopted in the constitutions of the states?—Plainly sir, to the trial by juries as established by the common law of England in the state of its purity;—That common law for which we contended so eagerly at the time of the revolution, and which now after the interval of a very few years, by the proposed new constitution we seem ready to abandon forever; at least in that article which is the most invaluable part of it; the trial by jury.

Still however the great answer to all the objections that are made or can be made to the proposed constitution is this;—that there is no danger in trusting the Congress with any power: They will not abuse it. I shall conclude this letter with asking such as are willing to satisfy themselves with this answer only to look back for ten or twelve years and recollect what a mighty change has taken place in the political opinions of many people since that time. If they have forgotten let me beg of them to read over the publications of the years, 1774, 1775, 1776 and 1777. What was the spirit, what was the complaints of those times from Congress down to the smallest meeting of the people? Our present language will be found to give the lie to our former professions; and we have sinned egregiously in wading thro' such an ocean of blood, if we were not well founded in the pretensions upon which we encountered the horrors of a civil war in establishing the revolution.—If such has been the change, as a very short examination will convince any man[,] that has taken place in a few years past, what right have we to trust to the existence of such pure and immaculate virtue in time to come, that we should tamely and implicitly surrender our liberties at discretion into the hands of a government whose constituent members are totally unknown to us. Solomon has told us that no man knows whether a fool or a wise man is to inherit his estate;[20] neither do we know whether honest and virtuous men or knaves and tyrants are to regulate our future councils. Let us then guard ourselves, as far as we can, against the possibility of being enslaved by wicked men, whilst the power of guarding ourselves is in our own hands. I

3.3.17

know that the country is distressed; but it is not distressed beyond the power of remedy.—Let us take care that we do not involve ourselves in slavery, from the distresses of which we can never redeem ourselves.

Your's, &c.
An Old Whig.

IV[21]

Mr. Printer,

3.3.18 This is certainly a very important crisis to the people of America; experience seems to have convinced every one, that the articles of confederation, under which Congress have hitherto attempted to regulate the affairs of the United States, are insufficient for the purposes intended; that we are a ruined people unless some alteration can be effected. The public mind has therefore been raised to the highest pitch of expectation, and the evident need of relief from the many distresses, public and private, in which we are involved has reduced us to such a state, that we can hardly endure a disappointment. Scarcely any thing that could be proposed by the convention, in this state of people's minds, would fail of being eagerly embraced. Like a person in the agonies of a violent disease, who is willing to swallow any medicine, that gives the faintest hope of relief; the people stood ready to receive the new constitution, in almost any form in which it could be presented to them. The zealous supporters of the proposed constitution, seem to be not unwilling to avail themselves of this disposition: and therefore it is strongly inculcated, that if we do not adopt this constitution, we shall not be able to establish another, but be left to our present weakness, confusion and distress. If I was pursuaded that this is really the case, I hardly know whether I should vote for rejecting any government however unfriendly to the liberties of the people, which promised to give vigour to the councils of this country; for any government is better than none. However, I do not see that it is by any means impracticable, for us yet to correct such errors and imperfections, as appear to exist in the proposed constitution; and whilst there is a possibility of procuring a better constitution, it is the duty of every good man to accomplish it.

3.3.19 By the proposed constitution, every law, before it passes, is to undergo repeated revisions; and the constitution[s] of every state in the union provide, for the reversion [revision?] of the most trifling laws, either by their passing through different houses of assembly and senate, or by requiring them to be published for the consideration of the people. Why then is a constitution which affects all the inhabitants of the United States, which is to be the foundation of all laws and the source of misery or happiness to one

quarter of the globe; why is this to be so hastily adopted or rejected, that it cannot admit of a revision?—If a law to regulate highways, requires to be leisurely considered and undergo the examination of different bodies of men, one after another, before it be passed, why is it that the framing of a constitution for the government of a great people; a work which has been justly considered as the greatest effort of human genius, and which, from the beginning of the world has so often baffled the skill of the wisest men in every age, shall be considered as a thing to be thrown out, in the first shape which it may happen to assume? Where is the impracticability of a revision? Cannot the same power which called the late convention, call another? Are not the people still their own masters? If, when the several state conventions come to consider this constitution, they should not approve of it, in its present form, they may easily apply to Congress and state their objections. Congress may as easily direct the calling another convention, as they did the calling the last. The plan may then be reconsidered, deliberately received and corrected; so as to meet the approbation of every friend to his country. A few months only will be necessary for this purpose; and if we consider the magnitude of the object, we shall deem it well worth a little time and attention—It is much better to pause and reflect beforehand, than to repent when it is too late; when no peaceable remedy will be left us, and unanimity will be forever banished. The struggles of the people against a bad government, when it is once fixed, afford but a gloomy picture in the annals of mankind. They are often unfortunate, they are always destructive of public and private happiness; but the peaceable consent of a people to establish a free and effective government, is one of the most glorious objects that is ever exhibited in the theatre of human affairs. Some I know, have objected, that another convention will not be likely to agree upon any thing—I am far however from being of that opinion. The public voice cries so loudly for a new constitution, that I have no doubt we shall have one of some sort.—My only fear is, that the impatience of the people will lead them to accept the first that is offered them, without examining whether it is right or wrong; and after all, if a new convention cannot agree upon any amendments in the constitution, which is at present proposed, we can still adopt this in its present form; and all further opposition being vain, it is to be hoped we shall be unanimous in endeavouring to make the best of it. The experiment is at least worth trying, and I shall be much astonished, if a new convention called together for the purpose of revising the proposed constitution, do not greatly reform it.

I find that a number of pens are employed, in pointing out the defects in the proposed constitution—Without descending therefore, into minute particulars, I shall confine the remainder of my observations in this letter, to one or two of the most important considerations. 3.3.20

It is beyond a doubt that the new federal constitution, if adopted, will in a great measure destroy, if it do not totally annihilate, the separate govern-

ments of the several states. We shall, in effect, become one great Republic.—Every measure of any importance, will be Continental.—What will be the consequence of this? One thing is evident—that no Republic of so great a magnitude, ever did, or ever can exist. But a few years elapsed, from the time in which ancient Rome extended her dominions beyond the bounds of Italy, until the downfal of her Republic; and all political writers agree, that a Republican government can exist only in a narrow territory: but a confederacy of different Republics has, in many instances, existed and flourished for a long time together—The celebrated *Helvetian* league, which exists at this moment in full vigor, and with unimpaired strength, whilst its origin may be traced to the confines of antiquity, is one, among many examples on this head; and at the same time furnishes an eminent proof of how much less importance it is, that the constituent parts of a confederacy of Republics may be rightly framed than it is, that the confederacy itself should be rightly organized;—for hardly any two of the Swiss cantons have the same form of government, and they are almost equally divided in their religious principles, which have so often rent asunder the firmest establishments.[22] A confederacy of Republics must be the establishment in America, or we must cease altogether to retain the Republican form of government. From the moment we become one great Republic, either in form or substance, the period is very shortly removed, when we shall sink first into monarchy, and then into despotism.—If there were no other fault in the proposed constitution, it must sink by its own weight. The continent of North-America can no more be governed by one Republic, than the fabled Atlas could support the heavens. Is it not worthy a few months labour, to attempt the rescuing this country from the despotism, which at this moment holds the best and fairest regions of the earth in thraldom and wretchedness?—To attempt the forming a plan of confederation, which may may enable us at once to support our continental union with vigor and efficacy, and to maintain the rights of the separate states and the invaluable liberty of the subject? These ideas of political felicity, to some people, may seem like the visions of an Utopian fancy; and I am persuaded that some amongst us have as little disposition to realize them, as they have to recollect the principles, which inspired us in our revolt from Great-Britain. But there is at least, this consolation in aiming at excellence, that, if we do not obtain our object, we can make considerable progress towards it.—The science of politics has very seldom had fair play. So much of passion, interest and temporary prospects of gain are mixed in the pursuit, that a government has been much oftener established[,] with a view to the particular advantages or necessities of a few individuals, than to the permanent good of society. If the men, who, at different times, have been entrusted to form plans of government for the world, had been really actuated by no other views than a regard to the public good, the condition of human nature in all ages would have been widely different, from that which has been

exhibited to us in history. In this country perhaps we are possessed of more than our share of political virtue. If we will exercise a little patience, and bestow our best endeavours on the business, I do not think it impossible, that we may yet form a federal constitution, much superior to any form of government, which has ever existed in the world;—but, whenever this important work shall be accomplished, I venture to pronounce, that it will not be done without a *careful attention to the framing of a bill of rights.*

3.3.21 Much has been said and written, on the subject of a bill of rights;—possibly without sufficient attention to the necessity of conveying distinct and precise ideas of the true meaning of a bill or rights. Your readers, I hope, will excuse me, if I conclude this letter with an attempt to throw some light on this subject.

3.3.22 Men when they enter into society, yield up a part of their natural liberty, for the sake of being protected by government. If they yield up all their natural rights they are absolute slaves to their governors. If they yield up less than is necessary, the government is so feeble, that it cannot protect them.—To yield up so much, as is necessary for the purposes of government; and to retain all beyond what is necessary, is the great point, which ought, if possible, to be attained in the formation of a constitution. At the same time that by these means, the liberty of the subject is secured, the government is really strengthened; because wherever the subject is convinced that nothing more is required from him, than what is necessary for the good of the community, he yields a chearful obedience, which is more useful than the constrained service of slaves.—To define what portion of his natural liberty, the subject shall at all times be entitled to retain, is one great end of a bill of rights. To these may be added in a bill of rights some particular engagements of protection, on the part of government[;] without such a bill of rights, firmly securing the privileges of the subject, the government is always in danger of degenerating into tyranny; for it is certainly true, that "in establishing the powers of government, the rulers are invested with every right and authority, which is not in explicit terms reserved."[23]—Hence it is, that we find the rulers so often lording over the people at their will and pleasure. Hence it is that we find the patriots, in all ages of the world, so very solicitous to obtain explicit engagements from their rulers, stipulating, expressly, for the preservation of particular rights and privileges.

3.3.23 In different nations, we find different grants or reservations of privileges appealed to in the struggles between the rulers and the people, many of which in the different nations of Europe, have long since been swallowed up and lost by time, or destroyed by the arbitrary hand of power. In England we find the people, with the Barons at their head, exacting a solemn resignation of their rights from king John, in their celebrated *magna charta,* which was many times renewed in Parliament, during the reigns of his successors. The *petition of rights* was afterwards consented to by Charles

the first, and contained a declaration of the liberties of the people. The *habeas corpus act*, after the restoration of Charles the Second, *the bill of rights*, which was obtained from the Prince and Princess of Orange on their accession to the throne[,] and the act of settlement, at the accession of the Hanover family, are other instances to shew the care and watchfulness of that nation, to improve every opportunity, of the reign of a weak prince, or the revolution in their government, to obtain the most explicit declarations in favor of their liberties. In like manner the people of the country, at the revolution, having all power in their own hands, in forming the constitutions of the several states, took care to secure themselves by bills of rights, so as to prevent, as far as possible, the encroachments of their future rulers upon the rights of the people. Some of these rights are said to be *unalienable*, such as the rights of conscience: yet even these have been often invaded, where they have not been carefully secured by express and solemn bills and declarations in their favor.

3.3.24 Before we establish a government, whose acts will be THE SUPREME LAW OF THE LAND, and whose power will extend to almost every case without exception, we ought carefully to guard ourselves by a BILL OF RIGHTS, against the invasion of those liberties which it is essential for us to retain, which it is of no real use to government to strip us of; but which in the course of human events have been too often insulted with all the wantonness of an idle barbarity.

Your's,
An Old Whig.

V[24]

Mr. Printer,

3.3.25 In order that people may be sufficiently impressed, with the necessity of establishing a BILL OF RIGHTS in the forming of a new constitution, it is very proper to take a short view of some of those liberties, which it is of the greatest importance for Freemen to retain to themselves, when they surrender up a part of their natural rights for the good of society.

3.3.26 The first of these, which it is of the utmost importance for the people to retain to themselves, which indeed they have not even the right to surrender, and which at the same time it is of no kind of advantage[25] to government to strip them of, is the LIBERTY OF CONSCIENCE. I know that a ready answer is at hand, to any objections upon this head. We shall be told that in this enlightened age, the rights of conscience are perfectly secure: There is no necessity of guarding them; for no man has the remotest thoughts of

invading them. If this be the case, I beg leave to reply that now is the very time to secure them.—Wise and prudent men always take care to guard against danger beforehand, and to make themselves safe whilst it is yet in their power to do it without inconvenience or risk.—[W]ho shall answer for the ebbings and flowings of opinion, or be able to say what will be the fashionable frenzy of the next generation? It would have been treated as a very ridiculous supposition, a year ago, that the charge of witchcraft would cost a person her life in the city of Philadelphia; yet the fate of the unhappy old woman called *Corbmaker,* who was beaten—repeatedly wounded with knives—mangled and at last killed in our streets, in obedience to the commandment which requires "that we shall not suffer a witch to live," without a possibility of punishing or even of detecting the authors of this inhuman folly, should be an example to warn us how little we ought to trust to the unrestrained discretion of human nature.

Uniformity of opinion in science, morality, politics or religion, is undoubtedly a very great happiness to mankind; and there have not been wanting zealous champions in every age, to promote the means of securing so invaluable a blessing. If in America we have not lighted up fires to consume Heretics in religion, if we have not persecuted unbelievers to promote the unity of the faith, in matters which pertain to our final salvation in a future world, I think we have all of us been witness to something very like the same spirit, in matters which are supposed to regard our political salvation in this world. In Boston it seems at this very moment, that no man is permitted to publish a doubt of the infalibility of the late convention, without giving up his name to the people, that he may be delivered over to speedy destruction; and it is but a short time since the case was little better in this city.[26] Now this is a portion of the very same spirit, which has so often kindled the fires of the inquisition: and the same Zealot who would hunt a man down for a difference of opinion upon a political question which is the subject of public enquiry, if he should happen to be fired with zeal for a particular species of religion, would be equally intolerant. The fact is, that human nature is still the same that ever it was: the fashion indeed changes; but the seeds of superstition, bigotry and enthusiasm, are too deeply implanted in our minds, ever to be eradicated; and fifty years hence, the French may renew the persecution of the Huguenots, whilst the Spaniards in their turn may become indifferent to their forms of religion. They are idiots who trust their future security to the whim of the present hour. One extreme is always apt to produce the contrary, and those countries, which are now the most lax in their religious notions, may in a few years become the most rigid, just as the people of this country from not being able to bear any continental government at all, are now flying into the opposite extreme of surrendering up all the powers of the different states, to one continental government. 3.3.27

The more I reflect upon the history of mankind, the more I am disposed to 3.3.28

think that it is our duty to secure the essential rights of the people, by every precaution; for not an avenue has been left unguarded, through which oppression could possibly enter in any government[,] without some enemy of the public peace and happiness improving the opportunity to break in upon the liberties of the people; and none have been more frequently successful in the attempt, than those who have covered their ambitious designs under the garb of a fiery zeal for religious orthodoxy. What has happened in other countries and in other ages, may very possibly happen again in our own country, and for aught we know, before the present generation quits the stage of life. We ought therefore in a *bill of rights* to secure, in the first place, by the most express stipulations, the sacred rights of conscience. Has this been done in the constitution, which is now proposed for the consideration of the people of this country?—Not a word on this subject has been mentioned in any part of it; but we are left in this important article, as well as many others, entirely to the mercy of our future rulers.

3.3.29 But supposing our future rulers to be wicked enough to attempt to invade the rights of conscience; I may be asked how will they be able to effect so horrible a design? I will tell you my friends—*The unlimited power of taxation* will give them the command of all the treasures of the continent; *a standing army* will be wholly at their devotion, and the authority which is given them over the *militia*, by virtue of which they may, if they please, change all the officers of the militia on the continent in one day, and put in new officers whom they can better trust; by which they can subject all the militia to strict military laws, and punish the disobedient with death, or otherwise, as they shall think right: by which they can march the militia back and forward from one end of the continent to the other, at their discretion; these powers, if they should ever fall into bad hands, may be abused to the worst of purposes. Let us instance one thing arising from this right of organizing and governing the militia. Suppose a man alledges that he is conscientiously scrupulous of bearing Arms.—By the bill of rights of Pennsylvania he is bound only to pay an equivalent for his personal service.[27]—What is there in the new proposed constitution to prevent his being dragged like a Prussian soldier to the camp and there compelled to bear arms?—This will depend wholly upon the wisdom and discretion of the future legislature of the continent in the framing their militia laws; and I have lived long enough to hear the practice *of commuting personal service for a paltry fine* in time of war and foreign invasion most severely reprobated by some persons who ought to have judged more rightly on the subject—Such flagrant oppressions as these I dare say will not happen at the beginning of the new government; probably not till the powers of government shall be firmly fixed; but it is a duty we owe to ourselves and our posterity if possible to prevent their ever happening. I hope and trust that there are few persons at present hardy enough to entertain thoughts of creating any religious establishment for this country; although I have lately

read a piece in the newspaper, which speaks of *religious* as well as civil and military *offices*, as being hereafter to be disposed of by the new government;[28] but if a majority of the continental legislature should at any time think fit to establish a form of religion, for the good people of this continent, with all the pains and penalties which in other countries are annexed to the establishment of a national church, what is there in the proposed constitution to hinder their doing so? Nothing; for we have no bill of rights, and every thing therefore is in their power and at their discretion. And at whose discretion? We know not any more than we know the fates of those generations which are yet unborn.

3.3.30 It is needless to repeat the necessity of securing other personal rights in the forming a new government. The same argument which proves the necessity of securing one of them shews also the necessity of securing others. Without a bill of rights we are totally insecure in all of them; and no man can promise himself with any degree of certainty that his posterity will enjoy the inestimable blessings of liberty of conscience, of freedom of speech and of writing and publishing their thoughts on public matters, of trial by jury, of holding themselves, their houses and papers free from seizure and search upon general suspicion or general warrants; or in short that they will be secured in the enjoyment of life, liberty and property without depending on the will and pleasure of their rulers.

3.3.31 If we pass over the consideration of this subject so essential to the preservation of our liberties, and turn our eyes to the *form* of the government which the Convention have proposed to us, I apprehend that changing the prospect will not wholly alleviate our fears.—A few words on this head, will close the present letter. In the first place the office of President of the United States appears to me to be clothed with such powers as are dangerous. To be the fountain of all honors in the United States, commander in chief of the army, navy and milita, with the power of making treaties and of granting pardons, and to be vested with an authority to put a negative upon all laws, unless two thirds of both houses shall persist in enacting it, and put their names down upon calling the yeas and nays for that purpose, is in reality to be a KING as much *a King as the King of Great-Britain*, and a King too of the worst kind;—an elective King.[29]—If such powers as these are to be trusted in the hands of any man, they ought for the sake of preserving the peace of the community at once to be made hereditary.—Much as I abhor kingly government, yet I venture to pronounce where kings are admitted to rule they should most certainly be vested with hereditary power. The election of a King whether it be in America or Poland, will be a scene of horror and confusion; and I am perfectly serious when I declare that, as a friend to my country, I shall despair of any happiness in the United States until his office is either reduced to a lower pitch of power or made perpetual and hereditary.—When I say that our future President will be as much a king as the king of Great-Britain, I only ask of my readers to look into the constitu-

tion of that country, and then tell me what important prerogative the King of Great-Britain is entitled to, which does not also belong to the President during his continuance in office.—The King of Great-Britain it is true can create nobility which our President cannot; but our President will have the power of making all the *great men,* which comes to the same thing.—All the difference is that we shall be embroiled in contention about the choice of the man, whilst they are at peace under the security of an hereditary succession.—To be tumbled headlong from the pinnacle of greatness and be reduced to a shadow of departed royalty is a shock almost too great for human nature to endure.[30] It will cost a man many struggles to resign such eminent powers, and ere long, we shall find, some one who will be very unwilling to part with them.—Let us suppose this man to be a favorite with his army, and that they are unwilling to part with their beloved commander in chief; or to make the thing familiar, let us suppose, a future President and commander in chief adored by his army and the militia to as great a degree as our late illustrious commander in chief; and we have only to suppose one thing more, that this man is without the virtue, the moderation and love of liberty which possessed the mind of our late general, and this country will be involved at once in war and tyranny. So far is it from its being improbable that the man who shall hereafter be in a situation to make the attempt to perpetuate his own power, should want the virtues of General Washington; that it is perhaps a chance of one hundred millions to one that the next age will not furnish an example of so disinterested a use of great power. We may also suppose, without trespassing upon the bounds of probability, that this man may not have the means of supporting in private life the dignity of his former station; that like Caesar, he may be at once ambitious and poor, and deeply involved in debt.—Such a man would die a thousand deaths rather than sink from the heights of splendor and power into obscurity and wretchedness. We are certainly about giving our president too much or too little; and in the course of less than twenty years we shall find that we have given him enough to enable him to take all. It would be infinitely more prudent to give him at once as much as would content him, so that we might be able to retain the rest in peace; for if once power is seized by violence not the least fragment of liberty will survive the shock. I would therefore advise my countrymen seriously to ask themselves this question;—Whether they are prepared TO RECEIVE A KING? If they are[,] to say so at once, and make the kingly office hereditary; to frame a constitution that should set bounds to his power, and, as far as possible secure the liberty of the subject. If we are not prepared to *receive a king,* let us call another convention to revise the proposed constitution, and form it anew on the principles of confederacy of free republics; but by no means, under pretence of a republic, to lay the foundation for a military government, which is the worst of all tyrannies.

Yours, &c.
An Old Whig.

VI

Mr. Printer,

I think it is an observation of Dean Swift, that, in political matters, all men 3.3.32
can feel, though all cannot see.[31] Agreeably to this doctrine we find, that the necessity of giving additional powers to Congress is at length *felt* by all men, though it was not foreseen by a great number of the people. As the states, individually could not protect our trade, foreign nations, friends as well as enemies, have combined against it; and at the same time that our trade is more beneficial to any nation in Europe, than the trade of any nation in Europe is to us, because we export provisions and raw materials and receive manufactures in return: we are not suffered to be the carriers of our own produce—foreign bottoms engross the whole of our carrying trade, and we are obliged to pay them for doing that which it is the interest of every people to do for themselves. Our shipwrights are starved, our seamen driven abroad for want of employ, our timber left useless on our hands, our iron-works, once a very profitable branch of business, now almost reduced to nothing, and our money banished from the country. These with the train of concomitant evils which always attend the loss of trade, or a state of trade which is unprofitable, have justly alarmed us all; and I am firmly pursuaded that scarcely a man of common sense can be found, that does not wish for an efficient federal government, and lament that it has been delayed so long. Yet at the same time it is a matter of immense consequence, in establishing a government which is to last for ages, and which, if it be suffered to depart from the principles of liberty in the beginning, will in all probability, never return to them, that we consider carefully what sort of government we are about to form. Power is very easily encreased; indeed it naturally grows in every government; but it hardly ever lessens.

The misfortunes under which we have for some time laboured, and which 3.3.33
still press us severely, would be in a great measure alleviated, if not wholly removed, by devolving upon Congress the power of regulating trade and laying and collecting duties and imposts. If these powers were once fully vested in Congress, trade would immediately assume a new face, money and people would flow in upon us, and the vast tracts of ungranted lands would be a mine of wealth for many years to come. I am pursuaded, that with this addition to the powers of Congress, we should soon find them sufficient for every purpose; and it is very certain that if we did not find them sufficient, we could easily encrease them. But instead of being contented with this, the late convention by their proposed constitution, seem to have resolved to give the new continental government every kind of power whatsoever, throughout the United States. This power I have already attempted to shew, is not limited by any stipulations in favour of the liberty of the subject, and it is easy to shew, that it will be equally unchecked by any

restraint from the individual states. The treasure of the whole continent will be entirely at their command. "The Congress shall have power to levy and collect taxes, duties, imposts and excises." And what are the individual states to do, or how are they to subsist? may they also lay and collect taxes, duties, imposts and excises? If they should, the miserable subject will be like sheep twice shorne; the skin must follow the fleece. But the fact is, that no individual state can collect a penny, unless by the permission of Congress; for the "laws of the United States shall be the supreme law of the land, any thing in the constitution or laws of any state to the contrary, notwithstanding."[32] The laws of the individual states, will be only *Leges sub graviore Lege:* for the power of enacting laws necessarily implies the power of repealing laws; and therefore Congress, being the supreme legislatures, may annul or repeal the laws of the individual states, whenever they please. Not a single source of revenue will remain to any state, which Congress may not stop at their sovereign will and pleasure; for if any state attempt to impose a tax or levy a duty, contrary to the inclination of Congress, they have only to exert their supreme legislative power and the law imposing such tax or duty, is done away in a moment. For instance, it will very soon be found inconvenient to have two sets of excise officers in each town or county in every state, they will be in danger of clashing with each other, it will then be found "necessary and proper for carrying into execution the powers vested by the constitution in the government of the United States, or in some department or officer thereof," to forbid the individual states to levy any more excise. Congress may chuse to impose a stamp-duty. It will be very inconvenient for people to run back and forward to different offices, to procure double stamps, and therefore it will be thought "necessary and proper" to forbid any state to meddle with stamp-duties. The same will be the case with many other taxes. They will be in danger of clashing with each other, if Congress and the several states should happen to lay taxes on the same article. The States therefore individually, will be restrained from imposing any taxes upon such articles as Congress shall think proper to tax. They must then try to find out other articles for taxation, which Congress have not thought proper to touch. This I fear will be a difficult task: for the expensive court to be maintained by the great president, the pay of the standing army and the numerous crouds of hungry expectants, who have lost their all, and it will be said, have lost it by their zeal for the new constitution, must necessarily employ the sharpest wits among their ablest financiers, to devise every possible mode of taxation; and besides, if an individual state should hit upon a new tax that should happen to be productive, there is no doubt but it would soon be taken from it and appropriated to the use of the United States. The inhabitants of the TEN MILE SQUARE, would find ways and means to dispose of all the money that could possibly be raised in every part of the United States. What then will become of the separate governments? They will be annihilated; absolutely

annihilated; for no man will ever submit to the wretchedness and contempt of holding any office under them.

3.3.34 The advocates of the proposed constitution, seem to be aware of the difficulty I have hinted at, and therefore it is, I presume, that in conversation as well as in their publications, we are told that under the proposed constitution,"direct taxation will be unnecessary"; that "it is probable the principal branch of revenue will be duties on imports."[33] Some of those who have used such language in public and private, I believe to be very honest men; and I would therefore ask of them, what security they can give us, that the future government of the continent will in any measure confine themselves to the duties upon imports, or that the utmost penny will not be exacted which can possibly be collected either by direct or indirect taxation? How can they answer for the conduct of our future rulers? We have heard enough of these fair promises for the good behaviour of men in office, to learn to doubt of their fulfilment[;] unless we guard ourselves by much better security, there will be no bounds to the new government. They will not have as much to spare for the separate states to collect as Lazarus picked up of the fragments from the rich man's table. There are mouths at this moment gaping in the United States for all that can possibly be collected;—a confederacy is already formed for dividing the public cake to the last crum; and I wish they may not quarrel for more.

3.3.35 But if I were mistaken in this opinion; if in the language of these gentlemen, "it is probable that the principal branch of the public revenue will be duties on imports";—if it is probable that these with the back lands and the post-office will be sufficient, where was the necessity of being in such haste to grant more;—to grant all without limits or restrictions? Men do not usually give up their whole purse where they can pay with part. Why might we not try at least how far the customs and back lands would go before we give all away from the separate states, without reserving any thing for their support.

3.3.36 The true line of distinction which should have been drawn in describing the powers of Congress, and those of the several states, should have been that between internal and external taxation.[34] I am persuaded that the existence of the several states in their separate capacities, and of the United States in their collective capacity, depends upon the maintaining such distinction. Without the power of imposing duties on foreign commerce and regulating trade, the United States will be weak and contemptible, and, indeed, their union must be speedily dissolved: And on the other hand, if the Legislature of the United States shall possess the powers of internal as well as external taxation, the individual states in their separate capacities, will be less than the shadows of a name.

3.3.37 I observe that the late delegates of Connecticut, in their letter to the Governor, speak of the power of direct taxation as an authority which need not be exercised if each state will "furnish the quota."[35] Yet there is no

doubt but they may exercise this power if they choose to do it; and they alone will have the right of judging what quotas the several states shall be required to furnish. They may ask as much as they please, and if the states do not furnish all they ask, they may tax at their pleasure; under these circumstances the power of internal taxation will undoubtedly by exercised by the Continental Legislature. If it be said that it is to be expected that the Congress will exercise this power with moderation, I venture to pronounce that those who indulge such hopes, are not acquainted with the principles of human nature. Independent of the multitudinous expectations which the followers of the proposed Constitution entertain in their own favor, which alone, if gratified, would consume the treasures of two such continents as this; there is a spirit of rivalship in power, which will not suffer two suns to shine in the same firmament, one will speedily darken the other, and the individual states will be as totally eclipsed, as the stars in the meridian blaze of the sun. We have seen too much of this spirit in the several states, under the present loose and futile confederation. A jealousy of the powers of Congress in the separate states, which is founded in the same rivalship of power, and which, however contemptible it may appear, was alike founded in the principles of human nature, may furnish us an exemplary lesson upon this head: And when we verge to the other extreme by vesting all power in Congress, we shall find them equally jealous of any power in the individual states, and equally possessed of the same spirit of rivalship, which heretofore denied the necessary supplies from the states to Congress.—We shall never be able to support the collective powers of the United States in Congress, and the powers of the individual states in their separate capacities, without drawing the line fairly between them. If we leave the states individually to the mercy of the Continental Government, they will be stript of the last penny which is necessary for their support; if we give all powers to one, there will be nothing left for the others. The lust of dominion, where it is indulged, will swallow up the whole.

3.3.38 But I shall be told that if Congress are left to depend upon requisitions from the individual states for any part of the necessary supplies, the same difficulty will remain which has hitherto existed; and I may be asked, what shall we do if the supplies should fall short? I answer that although nothing but a very serious necessity of money for continental purposes will ever procure supplies upon requisition from the separate states, yet when that necessity exists in any degree that is really alarming to the whole community, I do not think that such supplies are to be dispaired of. We have seen many instances of aid being furnished, even voluntarily upon pressing occasions, which should teach us to rely on the exertions of the states upon occasions of real and not mere imaginary necessity. One thing will certainly follow from the Continental Government being restrained to external taxation;—that it will be under the necessity of exercising more oeconomy than it has done, especially during the late war. We have been witnesses of

such a profuse expenditure of public money at some periods, as these states could never support. This profusion ought to convince us that if all the treasures of the continent are intrusted to the power of Congress, there is too much reason to fear that the whole will be consumed by them, and nothing left to the individual states; and judging from past experience we may venture to presage that the people will be fleeced without mercy, if no check is maintained upon the power of Congress in the articles of taxation.

We ought to be very fully convinced of an absolute necessity existing 3.3.39
before we entrust the whole power of taxation to the hands of Congress; and the moment we do so, we ought by consent to annihilate the individual states; for the powers of the individual states will be as effectually swallowed as a drop of water in the ocean; and the next consequence will be a speedy dissolution of our republican form of government.

Yours, &c.
An Old Whig.

VII

Mr. Printer,

Many people seem to be convinced that the proposed constitution is liable 3.3.40
to a number of important objections; that there are defects in it which ought to be supplied, and errors which ought to be amended; but they apprehend that we must either receive this constitution in its present form, or be left without any continental government whatsoever. To be sure, if this were the case, it would be most prudent for us, like a man who is wedded to a bad wife, to submit to our misfortune with patience, and make the best of a bad bargain. But if we will summon up resolution sufficient to examine into our true circumstances, we shall find that we are not in so deplorable a situation as people have been taught to believe, from the suggestions of interested men, who wish to force down the proposed plan of government without delay, for the purpose of providing offices for themselves and their friends. We shall find, that, with a little wisdom and patience, we have it yet in our power, not only to establish a federal constitution, but to establish a good one.

It is true that the continental convention has directed their proposed 3.3.41
constitution to be laid before a convention of delegates to be chosen in each state, "for their assent and ratification," which seems to preclude the idea of any power in the several conventions, of proposing any alterations, or indeed of even rejecting the plan proposed, if they should disapprove of it. Still, however, the question recurs, what authority the late convention had to bind the people of the United States, to any particular form of govern-

ment, or to forbid them to adopt such form of government as they should think fit. I know it is a language frequent in the mouths of some heaven-born PHAETONS amongst us, who like the son of Apollo, think themselves entitled to guide the chariot of the sun; that common people have no right to judge of the affairs of government; that they are not fit for it; that they should leave these matters to their superiors.[36] This however, is not the language of men of real understanding, even among the advocates for the proposed constitution; but these still recognize the authority of the people, and will admit, at least in words, that the people have a right to be consulted. Then I ask, if the people in the different states have a right to be consulted, in the new form of continental government, what authority could the late convention have to preclude them from proposing amendments to the plan they should offer? Had the convention any right to bind the people to the form of government they should propose? Let us consider this matter.

3.3.42 The late convention were chosen by the general assembly of each state; they had the sanction of Congress;—for what? To consider what alterations were necessary to be made in the articles of confederation. What have they done? They have made a new constitution for the United States. I will not say, that in doing so, they have exceeded their authority; but on the other hand, I trust that no man of understanding amongst them will pretend to say, that any thing they did or could do, was of the least avail to lessen the rights of the people to judge for themselves in the last resort. This right, is perhaps, unalienable, but at all events, there is no pretence for saying that this right was ever meant to be surrendered up into the hands of the late continental convention.

3.3.43 The people have an undoubted right to judge of every part of the government which is offered to them: No power on earth has a right to preclude them; and they may exercise this choice either by themselves or their delegates legally chosen to represent them in the State-Convention.—I venture to say that no man, reasoning upon *revolution* principles, can possibly controvert this right.

3.3.44 Indeed very few go so far as to controvert the right of the people to propose amendments; but we are told that the thing is impracticable; that if we begin to propose amendments there will be no end to them; that the several states will never agree in their amendments; that we shall never unite in any plan; that if we reject this we shall either have a worse or none at all; that we ought therefore to adopt this *at once*, without alteration or amendment.—Now these are very kind gentlemen, who insist upon doing so much good for us, whether we will or not. Idiots and maniacs ought certainly to be restrained from doing themselves mischief, and should be compelled to that which is for their own good. Whether the people of America are to be considered in this light, and treated accordingly, is a question which deserves, perhaps, more consideration than it has yet received. A contest between the patients and their doctors, which are mad or which are

fools, might possibly be a very unhappy one. I hope at least that we shall be able to settle this important business without so preposterous a dispute. What then would you have us do, it may be asked? Would you have us adopt the proposed Constitution or reject it? I answer that I would neither wish the one nor the other. Though I would be far from pretending to dictate to the representatives of the people what steps ought to be pursued, yet a method seems to present itself so simple, so perfectly calculated to obviate all difficulties, to reconcile us with one another, and establish unanimity and harmony among the people of this country, that I cannot forbear to suggest it. I hope that most of my readers have already anticipated me in what I am about to propose. Whether they have or not, I shall venture to state it, in the humble expectations that it may have some tendency to reconcile honest men of all parties with one another.

The method I would propose is this— 3.3.45

1st. Let the Conventions of each state, as they meet, after considering the proposed Constitution, state their objections and propose their amendments.

So far from these objections and amendments clashing with each other in irreconcileable discord, as it has been too often suggested they would do, it appears that from what has been hitherto published in the different states in opposition to the proposed Constitution, we have a right to expect that they will harmonize in a very great degree. The reason I say so, is, that about the same time, in very different parts of the continent, the very same objections have been made, and the very same alterations proposed by different writers, who I verily believe, know nothing at all of each other, and were very far from acting a premeditated concert, and that others who have not appeared as writers in the newspapers, in the different states, have appeared to act and speak in perfect unison with those objections and amendments, particularly in the article of a Bill of Rights. That in short, the very same sentiments seem to have been echoed from the different parts of the continent by the opposers of the proposed Constitution; and these sentiments have been very little contradicted by its friends, otherwise than by suggesting their fears, that by opposing the Constitution at present proposed, we might be disappointed of any federal government or receive a worse one than the present.—It would be a most delightful surprize to find ourselves all of one opinion at last; and I cannot forbear hoping that when we come fairly to compare our sentiments, we shall find ourselves much more nearly agreed than in the hurry and surprize in which we have been involved on this subject, we ever suffered ourselves to imagine.[37]

2d. When the Conventions have stated these objections and amendments, 3.3.46
let them transmit them to Congress and adjourn, praying that Congress will direct another Convention to be called from the different states, to consider of these objections and amendments, and pledging themselves to abide by whatever decision shall be made by such future Convention on the subject;

whether it be to amend the proposed Constitution or to reject any alteration and ratify it as it stands.

3.3.47 3d. If a new Convention of the United States should meet, and revise the proposed Constitution, let us agree to abide by their decision.—It is past a doubt that every good citizen of America pants for an efficient federal government—I have no doubt we shall concur at last in some plan of continental government, even if many people could imagine exceptions to it; but if the exceptions which are made at present, shall be maturely considered and even be pronounced by our future representatives as of no importance; (which I trust they will not) even in that case, I have no doubt that almost every man, will give up his own private opinion and concur in that decision.

3.3.48 4th. If by any means another Continental Convention should fail to meet, then let the Conventions of the several states again assemble and at last decide the great solemn question whether we shall adopt the Constitution now proposed, or reject it? And, whenever it becomes necessary to decide upon this point, one at least who from the beginning has been invariably anxious for the liberty and independence of his country, will concur in adopting and supporting this Constitution, rather than none;—though I confess I could easily imagine, some other form of confederation, which I should think better entitled to my hearty approbation;—and indeed I am not afraid of a worse.

I am, &c.
An Old Whig.

VIII[38]

Mr. Printer,

3.3.49 It is the fate of political controversies to begin with argument and end with abuse; and hence we find, in many instances, that a subject which for a time, has engaged the most earnest attention of the people, is at length quitted with horror and disgust. The question, however, concerning the total adoption of the plan of government, proposed by the late federal convention, is too important for good men to suffer themselves to be diverted from giving it a full consideration by the bounding of squibs or the whizzing of political firebrands. I therefore persuade myself that a few candid observations on this subject will yet be heard with attention.

3.3.50 The real question is this;—Whether the people of this country ought to adopt the proposed constitution in its present form, without limitation or alteration, or whether we ought to insist upon amendments being made previous to its adoption.

Most men seem to agree that amendments ought to be made in the proposed plan in some stage of the business; and all seem agreed that an efficient form of continental government ought to be established. Shall we then first adopt the constitution and afterwards amend it; or shall we first amend it and afterwards adopt it? Let us for a moment consider the propriety of adopting it first, and trusting to its being afterwards amended. These necessary amendments, after the constitution is adopted, can only be made in one of two ways;—either by our future rulers in the continental legislature by their own act—or in the way provided for in the fifth article, by a convention to be called for proposing amendments, whenever two-thirds of both houses shall deem it necessary, or whenever the legislatures of two-thirds of the states shall make application for that purpose, such amendments afterwards to be valid if ratified by the legislatures of three-fourths of the states, or by conventions in three-fourths thereof, if Congress should think proper to call them. This latter mode is so intricate, that an attempt to investigate it is like endeavouring to trace the windings of a labyrinth, and I have therefore observed that people willingly turn aside from the subject, as confused and disgusting. Some former observations on this article[39] I found were very little attended to: However I will attempt once more to find a clue to its mazes, after I shall first have considered that more inviting ground of expectation to which most of those who assume the name of federalists turn their eyes with so much confidence.

First then, the general expectation seems to be that our future rulers will rectify all that is amiss. If a bill of rights is wanting, they will frame a bill of rights. If too much power is vested in them, they will not abuse it; nay, they will divest themselves of it. The very first thing they will do, will be to establish the liberties of the people by good and wholesome ordinances, on so solid a foundation as to baffle all future encroachments from themselves or their successors. Much good no doubt might be done in this way; if Congress should possess the most virtuous inclinations, yet there are some things which it will not be in their power to rectify. For instance; *the appellate jurisdiction both as to law and fact,* which is given to the supreme court of the continent, and which annihilates the trial by jury in all civil causes, the Congress can only modify:—They cannot extinguish this power, so destructive to the principles of real liberty. It would not by any means be extravagant to say, that a new continental convention ought to be called, if it were only for the sake of preserving that sacred palladium—THE INESTIMABLE RIGHT OF TRIAL BY JURY.—But even if we were to delude ourselves so far as to believe that it would be entirely in the power of the future legislature to set every thing right, to build up our liberties against all invasions, and to protect us from every political calamity, still we ought not to repose all our liberty and all our happiness in the virtue of our future rulers. I speak not with reference to any particular set of men. I pretend not to know who will be our rulers one year hence. In the state of Pennsylvania I have seen

3.3.51

the administration of our constitution in the hands of its bitterest enemies, during near one half of its existence; and I shall not be at all surprized to find that if the new continental government shall be set a-going, that the jockies who at present have vaulted into the saddle, should be the first to be thrown into the dirt and trampled upon; nor, on the other hand, that some of those who are foremost in contending for a permanent security to the rights of the people, should be in the first rank of oppressors. These things have frequently happened; and the only safe way of reasoning on political subjects is, to consider men, abstractly as men, with like passions and infirmities throughout the world, in every age, and every country; and to believe that the same guards and checks against arbitrary power, which were necessary two thousand years ago, are equally necessary at present, and will be so two thousand years hence. Idolatry is the parent of errors in politics as well as religion;—and an implicit confidence in our rulers now, will be abused as much as implicit confidence in priests ever was in the days of superstition. I know well that instances of political moderation may be found, and a tyrant has before now descended from the plenitude of power, satiated with dominion, or worn out with care; but there is not one instance on record in all history of a number of men voluntarily abandoning the powers of an aristocracy. Look at the Decemviri, look at the thirty tyrants of Athens, look at all the lordly aristocracies that ever existed, and shew me one instance—such an instance cannot be shewn. Nay farther, a single monarch has many times used his power with moderation; but a number of men combined in an aristocracy, never knew what moderation meant. They are all struggling to be most powerful, all aiming to enrich themselves and provide for their friends, and all of them plundering the people. And shall we foolishly, after so many thousand examples, trust to the virtue and moderation of our future rulers, to divest themselves of those powers which may be abused to our prejudice, and are no way useful to our protection? Not to insist upon Swift's ludicrous tale of Jack's hanging himself at the instigation of Humphry Hocus, on the promise of being cut down before he should be dead, and when he had hanged himself, of being left to kick his heels in the air,[40] the moral of which, by the bye, is strictly founded in human nature;—let us attend to a more serious fable.—"A man, says Aesop, coming into a wood, begged the trees to grant him the favor of a handle to his axe. The whole forest consented; upon which he provided himself with a strong handle; which he had no sooner done, than he began to fell the trees without number, then the trees, though too late, repented of their weakness, and an universal groan was heard throughout the forest. At length, when the man came to cut down the tree which had furnished him with the handle, the trunk fell to the ground uttering these words: Fool that I was! I have been the cause of my own destruction."[41] If we perish in America, we shall have no better comfort than the same mortifying reflection, that we have been the cause of our own destruction.

I have said that many of the liberties which, by the proposed constitution, 3.3.52
are to be surrendered up into the hands of our rulers, will be of no use towards the protection of the people; and a little reflection will convince us, that it is certainly the case. If, indeed, government were really strengthened by such surrender, if the body of the people were made more secure, or more happy by the means, we ought to make the sacrifice. An individual ought to submit to be tossed about, imprisoned and treated injuriously, if the good of his country should require it; and every individual in the community ought to strip himself of some convenience for the sake of the public good.

I know it is an error not uncommon to believe, that a government is the 3.3.53
more powerful in proportion as it is more tyrannical; but this is not the case: so far from it, that it has always been found, that free countries have been able to exert powers far superior to those in which a more absolute government prevailed. For instance, a senate which is master of its own elections, without any or with very little dependence on the people, would not be able to exert as much force as a senate which is freely elected by the people; because the cheerful support which would be yielded in the latter case, would far exceed that which could be exacted by the mere force of authority. Again; how could the stripping people of the right of trial by jury conduce to the strength of the state? Do we find the government in England at all weakened by the people retaining the right of trial by jury? Far from it. Yet these things which merely tend to oppress the people, without conducing at all to the strength of the state, are the last which aristocratic rulers would consent to restore to the people; because they encrease the personal power and importance of the rulers. Judges, unincumbered by juries, have been ever found much better friends to government than to the people. Such judges will always be more desireable than juries to a self-created senate, upon the same principle that a large standing army, and the entire command of the militia and of the purse, is ever desireable to those who wish to enslave the people, and upon the same principle that a bill of rights is their aversion.

In like manner, if we should trace the several branches of the proposed 3.3.54
constitution, which are obnoxious to the liberties of the people, we shall find them to consist of such articles as are rather fitted to encrease the powers of the rulers, than the strength of the nation. Union is the great source of strength to a nation, not vassalage. To an aristocratic government vassalage is the great object even at the expence of union among the people. We ought not, therefore, by any means to rely upon the virtue of our future rulers for a reformation of those things which at present are amiss in the proposed constitution. The president and senate will ever be grasping at more and more power until they are completely masters of the people, and the president at last master of all.

Let us then turn to the article in the proposed constitution, which pro- 3.3.55
vides for the making alterations at some future period; and let us figure to

ourselves the time when two-thirds of both houses of Congress shall think it necessary to call a convention, or two-thirds of the legislatures of the individual states shall apply for the calling of a convention, and when a continental convention shall agree upon amendments, and when the legislatures of three-fourths of the states, or three-fourths of the conventions to be called in the several states, if Congress shall prefer that mode of proceeding, shall ratify such amendments; and again, after all these strainings, and filtrings, and refinings, of the hopes and expectations of the people through the channels of power, when the amendments so asked for, proposed, digested, twistificated, altered, and at last ratified, will be of any essential importance. For my part I would full as soon sit down and take my chance of winning an important privilege to the people, by the casting of the dice 'till I could throw sixes an hundred times in succession.—There is no doubt but the thing has been purposely contrived to make alterations extremely difficult; and so it certainly ought to be if the proposed constitution were a good one. I do not therefore so much blame the late federal convention for making their constitution very difficult of alteration, as I insist upon it as an argument in favor of making our amendments beforehand. A machine which cannot be taken to pieces after it is once set a-going, ought to be very well finished at first.

3.3.56 Yet this is not all the difficulty. Inveterate power is at all times very hard to be controuled. Habits, connexions, dependence, and a thousand circumstances in course of time, rivet the chains of slavery 'till we grow either callous to their galling, or too feeble to shake them off, or too listless to resist. Ask the beaten Turk to resume his liberty, or the tired horse to resume his pristine freedom.—As well might you ask the galled sons of America, a few years hence, to assert the native rights of men, if the proposed constitution be once fixed upon us. It will be extremely difficult to change it for the better even in the beginning; but in a little time it will become utterly impossible.

3.3.57 A little prudence, a little patience, and a little serious reflection, would lead us to concur in calling a new convention, to revise the constitution proposed to us. That convention, I have no doubt, if fully, freely, and deliberately chosen, would concur in some essential amendments; and we might yet be a united and a happy people.

Yours, &c.
An Old Whig.

1. On the general problem of founding and the differences between ancient examples, including that of Lycurgus, and this new American founding, see *The Federalist* no. 38, 239–41; on amendments, see no. 80, 590–94; and Poplicola's reply to this essay in the *Massachusetts Centinel* 31 October 1787.

2. Poplicola argues that another principle will operate: "It is always to be remembered that the members of this body are under the instructions of their constituents, and it cannot be forgotten, that the love of popularity, next to the love of

interest, is the strongest principle of the human heart—Ambition will find its object, as much in the applause of the world, as in the continuance and extension of any official acquirement, supposing honour and integrity to have no influence." Ibid.

3. See Lowndes 5.12.1. Such language was in fact very rare, although the Federalists did argue that very great reliance ought to be placed on the wise and patriotic men who drafted the Constitution. (See Federal Republican 3.6.5 n. 4). A week after this essay was published, however, Caesar confessed that he considered the multitude "in general as very ill qualified to judge for themselves what government will best suit their peculiar situations; nor is this to be wondered at. The science of government is not easily understood." Ford, *Essays* 287; see also Cato II, 2.6.8 n. 6, Centinel I, 2.7.3. Publius' argument in *The Federalist* no. 49 is considerably more subtle.

4. *Votes and Proceedings of the House of Representatives of the Province of Pennsylvania* (Philadelphia 1752–76) IV, 501. Cf. *The Federalist* no. 8, 45: "Safety from external danger is the most powerful director of national conduct. Even the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war—the continual effort and alarm attendant on a state of continual danger, will compel nations the most attached to liberty, to resort for repose and security, to institutions, which have a tendency to destroy their civil and political rights. To be more safe they, at length, become willing to run the risk of being less free."

5. McMaster and Stone 143. This is Wilson's speech of 6 October 1787, commented on in detail in Centinel II. See Centinel II, 2.7.35.

6. Ibid.

7. Wilson does not use the term "expressly." See *The Federalist* no. 44, 303–4.

8. Montesquieu does not say this. See *The Spirit of Laws* II, ch. 2; XI, ch. 6. The writer may have been thinking of someone like Locke (*The Second Treatise of Civil Government* XI) or Blackstone (*Commentaries* I, 46, 49, 52).

9. An Old Whig apparently does not follow the Pennsylvania Constitutionalist party in his view of the Pennsylvania constitution, suggesting perhaps that he is from out of state or an individual not active in Pennsylvania politics. See Centinel IX, 2.7.128–34.

10. The constitutional phrase is "exclusive legislation in all cases whatsoever."

11. For argument in rebuttal to the following remarks on the "necessary and proper" and "supremacy" clauses, see *The Federalist* nos. 33 and 34. See Brutus I, 2.9.8–9 and n. 7.

12. The Declaratory Act, 1766.

13. Job 32:9.

14. See above, n. 7.

15. McMaster and Stone 143–44.

16. Ibid. 145.

17. Federalist expressions of anything like indifference to trial by jury are rare. See, however, the reservations expressed by Noah Webster, writing as "America" in the New York *Daily Advertiser* 31 December 1787 (reprinted in Webster's *Collection of Essays* [1790] 146–47). See also Alfredus in the New Hampshire *Freeman's Oracle* 18 January 1788, quoted by A [New Hampshire] Farmer 4.17.16. The Federalists did argue that juries were often not used and were not proper in admiralty and chancery jurisdictions (for references, see Federal Farmer II, 2.8.19 n. 16); that practice regarding use of juries in civil cases varied widely among the states (see Wilson, McMaster and Stone 353); that trial by jury of the vicinage was no longer important (Ford, *Pamphlets* 53 [A Citizen of America]); and that juries might be biased (Elliot IV, 295 [Barnwell]). See Plebeian 6.11.15 n. 13.

18. See Henry Hallam, *The Constitutional History of England* (New York 1886) I, 30.

19. McMaster and Stone 145 (a close paraphrase).

20. Ecclesiastes 2:18–19.

21. This paper was also printed as a broadside (Evans, *Early American Imprints* no. 20379).

22. Cf. *The Federalist* no. 19, 122–23; Newport Man 4.25.3; [Maryland] Farmer III, 5.1.52–53; Henry 5.16.8.

23. Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone 143 (a close paraphrase, but Wilson writes "representatives" not "rulers"). See Federal Farmer IV, 2.8.50 nn. 38–40.

24. This paper was also printed as a broadside (Evans, *Early American Imprints* no. 20380).

25. The original reads "advantages."

26. See Philadelphiensis I, 3.9.2.

27. Constitution of Pennsylvania, 1776, Declaration of Rights, sec. 8.

28. I have not found this piece.

29. Publius compares the proposed presidency with the British monarchy in *The Federalist* no. 69; see also Philadelphiensis XII, 3.9.96 n. 37.

30. Publius sees the problem but finds the solution in the President's eligibility for reelection. "Would it promote the peace of the community, or the stability of the government, to have half a dozen men who had had credit enough to be raised to the seat of the supreme magistracy, wandering among the people like discontented ghosts, and sighing for a place which they were destined never more to possess?" *The Federalist* no. 72, 438.

31. The source of this comment has not been found.

32. Cf. *The Federalist* nos. 32–34; Federal Farmer III, 2.8.39 n. 29.

33. The latter quotation is from the letter of Sherman and Ellsworth to the Governor of Connecticut; see below, note 35. Sherman elaborated this argument in his Letters from A Citizen of New Hampshire, Ford, *Essays* 239. On the question of the need for direct taxation, see above, Centinel II, 2.7.52 n. 30.

34. Cf. *The Federalist* no. 30, 190; Brutus V, 2.9.63.

35. Letter from the Hon. Roger Sherman and the Hon. Oliver Ellsworth, Esqs., delegates from the State of Connecticut, in the late federal convention, to His Excellency, the Governor of Said State, 26 September 1787, Elliot I, 491–92; cf. Federal Farmer III, 2.8.39 n. 28.

36. See above, note 3.

37. The original reads, "than in the hurry . . . than we ever suffered. . . ."

38. This essay is numbered VII in the newspaper.

39. See above, I, 3.3.1–5.

40. John Arbuthnot, *An Appendix to John Bull Still in His Senses* or *Law Is a Bottomless Pit* (London 1712) ch. 3, 14–20.

41. Benjamin Cole, ed., *Select Tales and Fables with Prudential Maxims in Prose and Verse* (London 1746), fable 10, "The Clown and the Word."

Essay by Montezuma

(PHILADELPHIA) INDEPENDENT GAZETTEER
17 October 1787

Irony was not a strong point in Anti-Federalist writing. This essay by Montezuma is in the form of a Federalist explanation of the Constitution and of its underlying anti-democratic intentions. It is described by Main as "the most unequivocal printed criticism of the Constitution from the democratic point of view. . . ."[1] However, despite his inclusion in both the Borden and the Kenyon collections, Montezuma is a good deal less penetrating than, for example, Aristocrotis, whose essay is similar in type and general argument.[2] But he does present a view of the illicit designs of the "well born" and "better kind" of people that must have been shared by many (though no one knows how many). His argument concerning the jurisdiction of the federal courts is interesting and substantial; and his description of the workings of the system of representation presents the underside, as it were, of the arguments on representation put forward by writers like The Federal Farmer and Melancton Smith.

1. Main, *Antifederalists* 173.
2. Borden, *The Antifederalist Papers* 20–30; Kenyon, *The Antifederalists* 61–67; see Aristocrotis 3.16.

Mr. Oswald.

That the enclosed defence may be laid open to the general scrutiny of my fellow citizens, I request a place for it in your paper.

Lycurgus.

We the Aristicratic party of the United States, lamenting the many inconveniencies to which the late confederation subjected the *well-born*, the *better kind* of people bringing them down to the level of the *rabble*, and holding in utter detestation, that frontispiece to every bill of rights—"that all men are born equal," beg leave (for the purpose of drawing a line be- 3.4.1

tween such as we think were *ordained* to govern, and such as were *made* to bear the weight of government without having any share in its administration) to submit to *our friends* in the first class for their inspection, the following defence of our *monarchical, aristocratical democracy.*

3.4.2 1st. As a majority of all societies consist of men who (though totally incapable of thinking or acting in governmental matters) are more readily led than driven, we have thought meet to indulge them in something like a democracy in the new constitution, which part we have designated by the popular name of the House of Representatives; but to guard against every possible danger from this *lower house,* we have subjected every bill they bring forward, to the double negative of our *upper house* and president—nor have we allowed the *populace* the right to elect their representatives annually, as usual, lest this body should be too much under the influence and controul of their constituents, and thereby prove the "weatherboard of our grand edefice, to shew the shiftings of every fashionable gale,"[1] for we have not yet to learn that little else is wanting, to aristocratize the most democratical representative than to make him somewhat independent of his *political creators*—We have taken away that rotation of appointment which has so long perplexed us—that *grand engine* of popular influence; every man is eligible into our government, from time to time for life—this will have a two-fold good effect; first it prevents the representatives from mixing with the *lower class,* and imbibing their foolish sentiments, with which they would have come charged on re-election.

3.4.3 2d. They will from the perpetuality of office be under *our* eye, and in a short time will think and act like *us,* independently of popular whims and prejudices; for the assertion "that evil communications corrupt good manners,"[2] is not more true than its reverse. We have allowed this house the power to impeach, but we have tenaciously reserved the right to try. We hope gentlemen, you will see the policy of this clause—for what matters it who accuses, if the accused is tried by this friends—In fine, this *plebian house* will have little power, and that little be rightly shaped by our house of *gentlemen,* who will have a very extensive influence, from their being chosen out of the *genteeler class,* and their appointment being almost a life, one as seven years is the calculation on a man's life, and they are chosen for six: It is true, every third senatorial seat is to be vacated duennually, but two-thirds of this influential body will remain in office, and be ready to direct or (if necessary) bring over to the good old way, the young members, if the old ones should not be returned; and whereas many of our brethren, from a laudable desire to support their rank in life above the commonality, have not only deranged their finances, but subjected their persons to indecent treatment (as being arrested for debt, etc.) we have framed a privilege clause, by which they may laugh at the fools who trusted them; but we have given out that this clause was provided, only that the members might be able without interruption, to deliberate on the important business of their country.

We have frequently endeavoured to effect in our respective states, the happy discrimination which pervades this system, but finding we could not bring the states into it individually, we have determined, and in this our general plan we have taken pains to leave the legislature of each *free and independent* state, as they now call themselves, in such a situation that they will eventually be absorbed by our *grand continental vortex*, or dwindle into petty corporations, and have power over little else than *yoaking hogs* or determining the width of *cart wheels*—but (aware that an intention to annihilate state legislatures, would be objected to our favorite scheme) we have made their existence (as a *board of electors*) necessary to ours; this furnishes us and our advocates with a fine answer to any clamours that may be raised on this subject, viz.—We have so interwoven continental and state legislatures that they cannot exist separately; whereas we in truth, only leave them the power of electing us, for what can a provincial legislature do when we possess "the exclusive regulation of external and internal commerce, excise, duties, imposts, post-offices and roads["]; when we and we alone, have the power to wage war, make peace, coin money (if we can get bullion) if not, borrow money, organize the militia and call them forth to execute our decrees, and crush insurrections assisted by a noble body of veterans subject to our nod, which we have the power of raising and keeping even in the time of peace. What have we to fear from state legislatures or even from states, when we are armed with such powers, with a president at our head? (a name we thought proper to adopt in conformity to the prejudices of a silly people who are so foolishly fond of a Republican government, that we were obliged to accommodate in names and forms to them, in order more effectually to secure the substance of our proposed plan, but we all know that Cromwell was a King, with the title of protector.) I repeat it, what have we to fear armed with such powers, with a president at our head who is captain-general of the army, navy and militia of the United States, who can make and unmake treaties, appoint and commission ambassadors and other ministers, who can grant or refuse reprieves or pardons, who can make judges of the supreme and other continental courts, in short who will be the source, the fountain of honor, profit and power, whose influence like the rays of the sun, will diffuse itself far and wide, will exhale all *democratical vapours* and break the *clouds of popular insurrection?* But again gentlemen, our judicial power is a strong work, a masked battery, few people see the guns we can and will ere long play off from it; for the judicial power embraces every question which can arise in law or equity, under this constitution and under the laws of "the United States"[3]—(which laws will be you know, the supreme laws of the land)—This power extends to all cases, affecting ambassadors or other public ministers, and "consuls to all cases of admiralty and maratime jurisdiction—to controversies to which the United States are a party, to controversies between two or more states, between a state and citizens of another state, between citizens of different

3.4.4

states, between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof and foreign states, citizens or subjects."

3.4.5 Now, can a question arise in the colonial courts, which the ingenuity or sophistry of an able lawyer may not bring within one or other of the above cases? Certainly not. Then our court will have original or appellate jurisdiction in all cases—and if so how fallen are state judicatures—and must not every provincial law yield to our supreme fiat? Our constitution answers yes—then how insignificant will the makers of these laws be—it is in the nature of power to create influence—and finally we shall entrench ourselves so as to laugh at the cabals of the commonalty—a few regiments will to at first, it must be spread abroad that they are absolutely necessary to defend the frontiers. Now a regiment and then a legion must be added quietly, bye and bye a frigate or two must be built, still taking care to intimate that they are essential to the support of our revenue laws and to prevent smuggling. We have said nothing about a bill of rights, for we viewed it as an eternal clog upon our designs—as a lock chain to the wheels of government—though by the way as we have not insisted on rotation in our offices, the simile of a wheel is ill. We have for some time, considered the freedom of the press as a great evil—it spreads information, and begets a licentiousness in the people which needs the rein more than the spur; besides a daring printer may expose the plans of government and lessen the consequence of our president and senate; for these and many other reasons we have said nothing with respect to the "right of the people to speak and publish their sentiments," or about their "palladiums of liberty," and such stuff. We do not much like that sturdy privilege of the people—the right to demand the writ of *habeas corpus*—we have therefore reserved the power of refusing it in cases of rebellion, and you know we are the judges of what is rebellion. Things as yet are well—Our friends we find have been assiduous in representing our federal calamities, until at length the people at large frightened by the gloomy picture on one side, and allured by the prophecies of some of our fanciful and visionary adherents on the other, are ready to accept and confirm our proposed government without the delay or forms of examination, which was the more to be wished as they are wholly unfit to investigate the principles or pronounce on the merit of so exquisite a system. Impressed with a conviction that this constitution is calculated to restrain the influence and power of the LOWER CLASS—to draw that *discrimination* we have so long sought after, to secure to our friends *privileges and offices,* which were not to be valued on under the former government, because they were in common—to take the burthen of *legislation and attendance on public business* off the commonalty, who will be much better able thereby to prosecute with effect their private business, to destroy that *political thirteen headed monster* the state sovereignties, to check the *licentiousness* of the people by

making it dangerous to *speak or publish* daring or tumultuary sentiments, to enforce obedience to laws by a *strong executive*, aided by *military pensioners*, and finally to promote the public and private interests of the *better kind* of people. We submit it to your judgement to take such measure for its adoption as you in your wisdom may think fit.

Signed by unanimous order of the lords
spiritual and temporal
Montezuma, President.

1. The source of this quotation has not been found.
2. 1 Corinthians 15:33.
3. See Crosskey, *Politics and the Constitution* I, ch. 21.

Essay of A Democratic Federalist

PENNSYLVANIA HERALD
17 October 1787

Like many other Anti-Federalists, A Democratic Federalist treats James Wilson's discussion of a bill of rights, the federal judiciary, and a standing army. Only with respect to the second (3.5.3–9) does he add significantly to the Anti-Federalist argument; and in a technical but pointed and well-informed discussion of the need for a trial by jury in civil cases he supplements the discussion of The Federal Farmer and others. He investigates the implications of an appellate jurisdiction as to both law and fact, which is both contrary to common law principles and undesirable on broader ground. The essay first appeared in the *Pennsylvania Herald* 17 October 1787, from which it is taken here.[1] While the author is unknown, he may well have been Richard Henry Lee if, as seems probable, A Democratic Federalist was also Cincinnatus, (see below, 6.1), whose essays continued at length the argument against Wilson.

1. The essay was reprinted in the *Pennsylvania Packet* 23 October 1787, from which it is taken by McMaster and Stone 150–57.

3.5.1 The arguments of the Honorable Mr. Wilson, expressed in the speech he made at the state-house on the Saturday preceding the general election (as stated in the Pennsylvania Herald,)[1] although extremely *ingenious* and the best that could be adduced in support of so bad a cause, are yet extremely *futile*, and will not stand the test of investigation.

3.5.2 In the first place, Mr. Wilson pretends to point out a leading discrimination between the State Constitutions, and the Constitution of the United States.—In the former, he says, every power which is not *reserved* is *given*, and in the latter, every power which is not *given* is *reserved:* And this may furnish an answer, he adds, to those who object, that a bill of rights has not been introduced in the proposed Federal Constitution.[2] If this doctrine is true, and since it is the only security that we are to have for our natural rights, it ought at least to have been clearly expressed in the plan of govern-

ment. The 2d. section of the present articles of confederation says: *Each State retains its sovereignty, freedom and independance*, AND EVERY POWER, JURISDICTION AND RIGHT WHICH IS NOT BY THIS CONFEDERATION EXPRESSLY DELEGATED TO THE UNITED STATES IN CONGRESS ASSEMBLED.—This declaration (for what purpose I know not) is entirely omitted in the proposed Constitution. And yet there is a material difference between this Constitution and the present confederation, for Congress in the latter are merely an executive body; it has no power to raise money, it has no *judicial jurisdiction*. In the other, on the contrary, the federal rulers are vested with each of the three essential powers of government—their laws are to be *paramount* to the laws of the different States, what then will there be to oppose to their encroachments? Should they ever pretend to tyrannize over the people, their *standing army*, will silence every popular effort, it will be theirs to explain the powers which have been granted to them; Mr. Wilson's distinction will be forgot, denied or explained away, and the liberty of the people will be no more.

It is said in the 2d. section of the 3d. article of the Federal Plan: "The judicial power shall extend to ALL CASES in *law* and *equity*, arising under this constitution." It is very clear that under this clause, the tribunal of the United States, may claim a right to the cognizance of all offences against the *general government*, and *libels* will not probably be excluded. Nay, those offences may be by them construed, or by law declared, *misprision of treason*, an offence which comes literally under their express jurisdiction.—Where is then the safety of our boasted liberty of the press? And in case of a *conflict of jurisdiction* between the courts of the United States, and those of the several Commonwealths, is it not easy to foresee which of the two will obtain the advantage? 3.5.3

Under the enormous power of the new confederation, which extends to the *individuals* as well as to the *States* of America, a thousand means may be devised to destroy effectually the liberty of the press—There is no knowing what corrupt and wicked judges may do in process of time, when they are not restrained by express laws. The case of *John Peter Zenger* of New-York, ought still to be present to our minds, to convince us how displeasing the liberty of the press is to men in high power[3]—At any rate, I lay it down as a general rule, that wherever the powers of a government extend to the lives, the persons, and properties of the subject, all their rights ought to be clearly and expressly defined—otherwise they have but a poor security for their liberties. 3.5.4

The second and most important objection to the federal plan, which Mr. Wilson pretends to be made *in a disingenuous form*, is the entire *abolition of the trial by jury in civil cases*.[4] It seems to me that Mr. Wilson's pretended answer, is much more *disingenuous* than the objection itself, which I maintain to be strictly founded in fact. He says "that the cases open to trial by jury differing in the different States, it was therefore impracticable to have 3.5.5

made a general rule." This answer is extremely futile, because a reference might easily have been made to the *common law of England,* which obtains through every State, and cases in the maritime and civil law courts would of course have been excepted. I must also directly contradict Mr. Wilson when he asserts that there is no trial by jury in the courts of chancery—It cannot be unknown to a man of his high professional learning, that whenever a difference arises about a matter of fact in the courts of equity in America or England, the fact is sent down to the courts of common law to be tried by a jury, and it is what the lawyers call a *feigned issue*.[5] This method will be impracticable under the proposed form of judicial jurisdiction for the United States.

3.5.6 But setting aside the equivocal answers of Mr. Wilson, I have it in my power to prove that under the proposed Federal Constitution, *the trial of facts in civil cases by a jury of the Vicinage* is entirely and effectually abolished, and will be absolutely impracticable. I wish the learned gentleman had explained to us what is meant by the *appellate* jurisdiction as to law and *fact* which is vested in the superior court of the United States?[6] As he has not thought proper to do it, I shall endeavour to explain it to my fellow citizens, regretting at the same time that it has not been done by a man whose abilities are so much superior to mine. The word *appeal,* if I understand it right, in its proper legal signification includes the *fact* as well as the *law,* and precludes every idea of a trial by jury—It is a word of *foreign growth,* and is only known in England and America in those courts which are governed by the civil or ecclesiastical law of the *Romans*. Those courts have always been considered in England as a grievance, and have all been established by the usurpations of the *ecclesiastical* over the *civil* power. It is well known that the courts of chancery in England were formerly entirely in the hands of *ecclesiastics,* who took advantage of the strict forms of the common law, to introduce a foreign mode of jurisprudence under the specious name of *Equity*. Pennsylvania, the freest of the American States has wisely rejected this establishment, and knows not even the name of a court of chancery—And in fact, there can not be any thing more absurd than a distinction between LAW and EQUITY. It might perhaps have suited those barbarous times when the law of England, like almost every other science, was perplexed with quibbles and *Aristotelian* distinctions, but it would be shameful to keep it up in these more enlightened days. At any rate, it seems to me that there is much more *equity* in a trial by jury, than in an appellate jurisdiction from the fact.

3.5.7 An *appeal* therefore is a thing unknown to the common law. Instead of an appeal from facts, it admits of a second, or even third trial by different juries, and mistakes in points of *law,* are rectified by superior courts in the form of a *writ of error*—and to a mere common lawyer, unskilled in the forms of the *civil law* courts, the words *appeal from law and fact,* are mere nonsense, and unintelligible absurdity.

But even supposing that the superior court of the United States had the authority to try facts by *juries of the vicinage,* it would be impossible for them to carry it into execution. It is well known that the supreme courts of the different states, at stated times in every year, go round the different counties of their respective states to try issues of fact, which is called *riding the circuits.* Now, how is it possible that the supreme continental court, which we will suppose to consist at most of five or six judges, can travel at least twice in every year, through the different counties of America, from New Hampshire to Kentuckey and from Kentuckey to Georgia, to try facts by juries of the vicinage. Common sense will not admit of such a supposition. I am therefore right in my assertion, that *trial by jury in civil cases, is, by the proposed constitution entirely done away, and effectually abolished.* 3.5.8

Let us now attend to the consequences of this enormous innovation, and daring encroachment, on the liberties of the citizens. Setting aside the oppression, injustice, and partiality that may take place in the trial of questions of property between man and man, we will attend to one single case, which is well worth our consideration. Let us remember that all cases arising under the new constitution, and all matters between *citizens of different states,* are to be submitted to the new jurisdiction. Suppose therefore, that the military officers of congress, by a wanton abuse of power, imprison the free citizens of America, suppose the excise or revenue officers (as we find in Clayton's Reports, page 44 Ward's case)[7]—that a constable, having a warrant to search for stolen goods, pulled down the clothes of a bed in which there was a woman, and searched under her shift,—suppose, I say, that they commit similar, or greater indignities, in such cases a trial by jury would be our safest resource, heavy damages would at once punish the offender, and deter others from committing the same: but what satisfaction can we expect from a lordly court of justice, always ready to protect the officers of government against the weak and helpless citizen, and who will perhaps sit at the distance of many hundred miles from the place where the outrage was committed?—What refuge shall we then have to shelter us from the iron hand of arbitrary power?—O! my fellow citizens, think of this while it is yet time, and never consent to part with the glorious privilege of trial by jury, but with your lives. 3.5.9

But Mr. Wilson has not stopped here—he has told us that a STANDING ARMY, that *great support of tyrants,* not only was not dangerous, but that it was *absolutely necessary.*[8]—O! my much respected fellow citizens! and are you then reduced to such a degree of insensibility, that assertions like these will not rouse your warmest resentment and indignation? Are we then, after the experience of past ages, and the result of the enquiries of the best and most celebrated patriots have taught us to dread a standing army above all earthly evils, are we then to go over all the thread-bare common place arguments that have been used without success by the advocates of tyranny, and which have been for a long time past so gloriously refuted! 3.5.10

Read the excellent *Burgh* in his political disquisitions, on this hackneyed subject, and then say, whether you think that a standing army is necessary in a free country? Even Mr. Hume, an *aristocratical* writer, has candidly confessed, that *an army is a mortal distemper in a government, of which it must at last inevitably perish* (2d Burgh 349)[9] and the Earl of Oxford (*Oxford* the friend of France, and the *pretender*, the attainted *Oxford*) said in the British parliament, in a speech on the mutiny bill; that "while he had breath, he would speak for the liberties of his country, and against courts martial and a standing army in peace as dangerous to the constitution," (*Ibid* page 455 [356]). Such were the speeches even of the enemies to liberty, when Britain had yet a right to be called free. But, says Mr. Wilson, "It is necessary to maintain the appearance of strength even in times of the most profound tranquillity." And what is this more than a thread-bare hackneyed argument, which has been answered over and over in different ages, and does not deserve even the smallest consideration?—Had we a standing army, when the British invaded our peaceful shores? Was it a standing army that gained the battles of Lexington, and Bunker's Hill, and took the ill fated Burgoyne? Is not a well regulated *militia* sufficient for every purpose of internal defence? And which of you, my fellow citizens, is afraid of any invasion from foreign powers, that our brave militia would not be able immediately to repel?

3.5.11 Mr. Wilson says that *he does not know of any nation in the world which has not found it necessary to maintain the appearance of strength in a season of the most profound tranquility;* if by this *equivocal* assertion, he has meant to say that there is no nation in the world without *a standing army in time of peace,* he has been mistaken. I need only adduce the example of Switzerland, which, like us, is a *republic,* whose *thirteen* cantons, like our thirteen States, are under a *federal government,* and which besides is surrounded by the most powerful nations in Europe, all jealous of its liberty and prosperity: And yet that nation has preserved its freedom for many ages, with the sole help of a militia, and has never been known to have a standing army, except when in actual war.—Why should we not follow so glorious an example, and are we less able to defend our liberty without an army, than that brave but small nation, which with its militia alone has hitherto defied all Europe?

3.5.12 It is said likewise, that *a standing army is not a new thing in America—Congress even at this moment have a standing army on foot.*—I answer, that *precedent* is not *principle*—Congress have no right to keep up a standing army in time of peace:—If they do, it is an infringement of the liberties of the people—*wrong* can never be justified by *wrong*—but it is well known that the assertion is groundless, the few troops that are on the banks of the Ohio, were sent for the express purpose of repelling the invasion of the savages, and protecting the inhabitants of the frontiers.—It is our misfortune that we are never at peace with those inhuman butchers of their species, and while

they remain in our neighbourhood, we are always, with respect to them, in a state of war—as soon as the danger is over, there is no doubt but Congress will disband their handful of soldiers:—it is therefore not true, that Congress keep up a standing army in a time of peace and profound security.

The objection to the enormous powers of the President and Senate is not the least important of all, but it requires a full discussion and ample investigation—I shall take another opportunity of laying before the public my observations upon this subject, as well as upon every other part of the new constitution.[10] At present I shall only observe, that it is an established principle in America, which pervades every one of our State Constitutions, that *the legislative and executive powers ought to be kept forever separate and distinct from each other*, and yet in this new constitution we find there are TWO EXECUTIVE BRANCHES, each of which has *more or less controul over the proceedings of the legislature*. This is an innovation of the most dangerous kind upon every known principle of government, and it will be easy for me to convince my fellow citizens that it will, in the first place, create a *Venetian* aristocracy, and, in the end, produce an *absolute monarchy*. 3.5.13

Thus I have endeavoured to answer to the best of my abilities, the principal arguments of Mr. Wilson—I have written this in haste, in a short interval of leisure from my usual avocations. I have only traced the outlines of the subject, and I hope some abler hand will second my honest endeavours.

A Democratic Federalist.

1. This is Wilson's widely discussed "Address to the Citizens of Philadelphia" of 6 October 1787, McMaster and Stone 143–49. The pamphlet version is reprinted (less accurately) in Ford, *Pamphlets* 155–61. For further information on this speech see Centinel II, 2.7.35 n. 14.

2. McMaster and Stone 143–44. See above, Federal Farmer IV, 2.8.50 n. 39; below, [New Hampshire] Farmer 4.17.2 nn. 1, 2.

3. See Livingston Rutherford, *John Peter Zenger, His Press, His Trial, and a Bibliography of Zenger Imprints; also A Reprint of the First Edition of the Trial* (New York 1904).

4. McMaster and Stone 144–45.

5. Cf. *The Federalist* no. 83, 565.

6. Many Anti-Federalists objected that the appellate jurisdiction given to the Supreme Court would enable that Court to review the decisions of juries in matters of fact, thus reducing the trial by jury to a mere form. See Martin 2.4.92–93; Centinel II, 2.7.41; Federal Farmer XV, 2.8.189; Brutus XIV, 2.9.170; Pennsylvania Convention Minority 3.11.38–39; Symmes 4.5.2 (13); Impartial Examiner 5.14.9; Cincinnatus I, 6.1.7. Noah Webster suggested that appeals of questions of fact would be decided by a second jury (Ford, *Pamphlets* 53); and the Anti-Federalist [New Hampshire] Farmer proposed a jury to sit with the federal Supreme Court (4.17.3). The intention of the framers seems, however, to have been to provide for the customary appellate review of the facts by courts of equity and admiralty and maritime jurisdiction. There was unquestionably some basis for Anti-Federalist concern. The objections were laid to rest in the 7th Amendment, providing not only that civil suits should be tried by jury but also that no fact decided by a jury should be reexamined by any court of the United States except according to the rules of the common law. The matter is dis-

cussed by Joseph Story, *Commentaries on the Constitution of the United States* 2d ed., II, sec. 1762–72, which also includes the pertinent passages from *The Federalist* nos. 81, 83, and from the leading Supreme Court case, *Parsons* v. *Bedford*, 3 Peters 413, 446 (1830). See also James Wilson's explanation, Elliot II, 493–94, 518.

7. John Clayton, *Reports of and Pleas of Assises at Yorke: 1631–1650* (London 1651).

8. McMaster and Stone 145–46.

9. James Burgh, *Political Disquisitions* (London 1774–75) II, bk. 3, ch. 1, p. 349.

10. No further essays appear to have been published, but see below, Cincinnatus IV and V, 6.1.25–43.

A Review of the Constitution Proposed by the Late Convention by A Federal Republican

1787

The initials at the end of this essay, "V.P.," seem to stand for Veritas Politica, the pseudonymous author of a short piece published in the *Pennsylvania Herald* on 27 October, which is in its main parts substantially identical with parts of the pamphlet of A Federal Republican.[1] The pamphlet, which is reprinted here, is dated 28 October, the day after the publication of the short newspaper essay, and is therefore presumably an extension and elaboration of the author's preliminary observations. The original essay is improved and extended to such an extent, however, that it would not be surprising if a second writer had somehow been involved in the pamphlet. An outline of this modest Anti-Federalist piece follows.

I. Introduction (3.6.1–9).
   Articles of Confederation are defective and need remedy; framers are good and wise men, but they can err and be affected by interest; published defences of Constitution are inadequate.
II. Legislature (3.6.10–22).
   A. Organization.
      1. Division of legislature is sound because of importance of preventing bad laws (3.6.10).
      2. Representation of the states.
         a. Representation is too small (3.6.11).
         b. More important, the states are unequally represented, contrary to the basic principles of confederation (3.6.12–14).
      3. The power of Congress over the times, places, and manner of choosing legislators is dangerous (3.6.15–16).
   B. Powers of legislature are excessive.
      1. Unlimited character of general welfare/taxing clause (3.6.17–19).

2. Standing army—extreme danger, especially to manners and virtue of people (3.6.20–21). (Important discussion of connection between virtue and maintenance of freedom.)
3. Power to prohibit importation of slaves leaves slavery intact (3.6.22).

III. Judicial powers are too comprehensive, too mixed with other departments (3.6.23).

IV. The proposed Constitution will tend to reduce the dignity and importance of states (3.6.25–38).
The guarantee of a republican form of government is empty (3.6.25).
Representation is inadequate (3.6.26).
State judicial power will sink to nothing (3.6.29).
States are deprived of necessary ways and means (3.6.30).
Powers of federal government are not in fact confined to general purposes (3.6.31–35).
No provision for freedom of press, which Congress may abridge (3.6.36).
State participation in elections is not enough to maintain states (3.6.37–38).

V. The executive is "too pointedly supreme"; there should be a sovereign executive council instead of a single executive magistrate (3.6.39–42).

VI. Mode of laying taxes (3.6.43–45). Taxes should be distributed by extent (or value) of land rather than by number of inhabitants (a major argument).

VII. Lack of a Bill of Rights (3.6.46–51). At least there should be a declared reservation of power in states.

VIII. Conclusion (3.6.52–56). Constitution conceived in wisdom but at present wears face of tyranny and should be reconsidered.

1. *A Review of the Constitution Proposed by the Late Convention Held at Philadelphia, 1787. By A Federal Republican.* Printed in Philadelphia, 1787, by Robert Smith and James Prange, "below the Drawbridge the third door below Spruce-Street, in Front and Water-Street."

Sed omnes omnium Charitates Patria una complexa est.
Cic. offic.[1]

Yet not the ties that kindred bosoms bind,
Not all in friendship's holy wreathes entwin'd
Are half so dear, so potent to controul
The gen'rous workings of the Patriot's soul.[2]

To the Freemen of the United States, the following critical remarks upon the

Constitution recommended by the late federal Convention, are most humbly inscribed

by their very obedient
humble servant,
the Author.

Philadelphia, Oct. 28, 1787[3]

Friends and Fellow-Countrymen;

When any nation is about to make a change in its political character, it highly behoves it to summon the experience of ages that have past, to collect the wisdom of the present day, and ascertain clearly those just principles of equal government, that are adapted to secure inviolably the lives, the liberties, and the property of the people. In such a situation are these United States at the present moment.—They are now called to announce the *Alpha* or the *Omega* of their political existence, to lay a deep foundation for their national character, and to leave a legacy of happiness or misery to their children's children.—The Constitution recommended to the consideration of the United States, is a subject of general discussion; and, while it involves in its fate the interest of so extensive a country, every sentiment that can be offered upon it, deserves its proportion of the public attention.—It is worth our while, before we make any observations on the Constitution, as it stands recommended, to recur to the motives which gave rise to the calling of a Convention. We were taught by sad experience, the defect of the present articles of confederation, and wisely determined to alter and amend them. 3.6.1

At the framing of the present confederation, the bond of union among the States, which arose from a community of danger, in some measure superseded the necessity of wisdom. A common interest excited us to unite our exertions for the public good. 3.6.2

At such a time a system of government conceived in perfect wisdom, and adopted with deliberation, was not expected; and as soon as those common principles which supplied its defects, ceased to operate, the inconveniences which arose from them, were very sensibly felt. Since that time the seeds of civil dissention have been gradually ripening, and political confusion hath pervaded the States. Commerce hath been declining, our credit suffering, and our respectability, as a nation, hath almost vanished. In such circumstances it was thought proper to collect the patriotic wisdom of the States for the purpose of amending the articles of confederation, which were found to be inadequate to the security of national prosperity and happiness; and of making such additions to supreme power, as our situation testified, were wanted. Necessity, therefore, gave birth to the Convention, and the glaring defects of the late system of confederation, were the objects of its amend- 3.6.3

ment. But was it a total subversion of the confederation, that was intended by Congress or expected by the people? Any one, tolerably acquainted with human nature, can easily discern, that people involved in difficulty, would embrace any change, even if it were evidently and designedly for the worse. But this circumstance ought not to preclude examination. Did we experience any disadvantage from every part of the present confederation? And why alter that which experience itself hath taught us to be good? Was it not expected that some necessary additions to the powers of Congress, together with a few alterations of a smaller nature would constitute the whole of their business? To frame a Constitution entirely new therefore was out of their province. This is not offered as an argument against the Constitution itself, but it would certainly have been wisdom to have reserved that which was known to be good, and to have amended that only which was found defective from experience. But notwithstanding that, if the proposed constitution can be made to appear to be excellent in itself, and properly adapted to secure inviolably the rights and privileges of the peoples; it is the part of every honest man to wish its establishment.

But that upon examination it will be found to be otherwise, I am fully persuaded.

3.6.4 We shall proceed to offer some sentiments on the Constitution proposed for the acceptance of the United States. In doing this, we shall endeavour to state most of the objections which have been made, and collect their force into one point of view.

3.6.5 It may be proper to take notice of an opinion that has been offered to the public. It is said by some, that after having delegated the best and wisest men in our country for the purpose of framing a Constitution for the United States, it would be only presumption to offer any objections to it.[4] This doctrine holds up to view an excess of humility. Any errors which we may imagine to exist in the Constitution, we are to resolve into our own incapacity to fathom them. It is true that we ought to rely much upon the wisdom of those patriots who composed the late Convention; but surely the people for whom they acted have an undoubted right to offer such objections as they may suppose to exist, and that for the purpose of having them accurately solved by more enlightened understandings. It is the part of the doubtful to enquire, and of the wise to answer and instruct. It is from this principle, and this only, that I now offer my thoughts on the subject. Besides the nature and importance of the thing shew the propriety of impartial discussion.

3.6.6 If it be true also, that no public deliberative assembly, however wise, is perfectly uninfluenced by secular interest; but that all are in some degree subject to those temporary relapses from prudence, which passion occasions, we may very naturally suppose that some parts of this Constitution are tinctured with correspondent partiality and weakness. Nature is seldom

over-awed by wisdom, and she often times draws her own picture in opposition to the constraint of education. We may without derogating from the characters of the members of Convention, expect to find defects in the Constitution which they have framed; and if the scrutiny of the public eye, viewing it in an infinite variety of lights can discern them, the motives must be dishonorable that prevent the communication of them.

3.6.7 On this subject much hath been published. Most of those pieces, however, which are said to be in favour of the Constitution, are only panegyrics, on those parts which are good, and to which no objections have been made. Mr. Wilson's speech does not come under this description.[5] It was composed in a masterly manner with strength and judgment. In it he has endeavoured to obviate some objections that have been offered to the public. It may be that the force of his arguments is not fully felt: but I think it will appear to any one whose understanding is not immoderately refined, that the writer who stiles himself the Democratic Federalist, is more than equal to him.[6] The Centinel has ably proposed many objections which have not been yet satisfactorily refuted.[7] Probably some of them exist beyond contradiction. The author of a pamphlet, stiled, Remarks on the Address of the Sixteen Members of the Assembly of Pennsylvania, has indeed touched upon many objections, and then *dismissed them*.[8] His whole performance is coloured with the ridiculous. He is no doubt a friend to Shaftsbury's position, and feels that it is easier to *laugh* than to *reason*. There is another pamphlet written by a citizen of America in favour of the Constitution.[9] The author of this deserves much for his style and plausibility of expression. He has made many excellent and wise remarks upon the Constitution. He has *instituted* a comparison between it and that of Rome and England. He points out several defects in the system of policy amongst the old Romans and modern Britons, and shews with some judgment the superior excellence of the proposed Constitution in its correspondent parts. But this is by no means proving that there are no errors in it. Some objections he has indeed *partially* considered, but the chief of the piece, which is good in itself, consists in encomiums on those parts which are unexceptionable. His mode of comparison is not just. Wealth and extent of territory have an immediate relation to government. The manners and customs of the people are closely connected with their government. Experience testifies that the manners and habits of the people in their several graduations to refinement have ever controuled their policy.

3.6.8 The excellent Montesquieu himself observes, that "the manners and customs of the people have an intimate connection with their laws."[10] In a comparison therefore, all these things ought to be considered. The same system of policy that might have been excellent in the governments of antiquity, would not probably do at the present day. The question which should be agitated is not whether the proposed constitution be better or

worse than those that have from time to time existed; but whether it be in every respect adapted to secure our liberty and happiness at the *present stage* of the world.

3.6.9 There is one circumstance in the sitting of the late Convention, which bears upon its face the colour of suspicion. It adds one to the many examples of the truth of the common adage (which is founded in a propensity of human nature) that all who have power are fond of exerting it. They had power to controul the manner of their convening, and they did it indeed in a very suspicious way. They excluded themselves as it were from the view of the public, and an injunction of secrecy was imposed on the members. This might have been done to blunt the natural jealousy of the people; but it was depriving them of a guard to their liberties, which they should ever possess. Whatever were the[ir] intentions in shutting out their proceedings from the public ear, it carried in it a suspicious appearance.

But this is a matter small in itself, and for the honor and respect which we profess to entertain for the members of Convention, we are bound to believe that their motives in this particular were honorable, decent and wise.

3.6.10 In reviewing the proposed Constitution, the first thing that strikes us is the division of the legislative authority into two branches. I think that after mature deliberation, this will be acknowledged to be prudent and wise. Yet what some writers have observed upon it is not perfectly true. They have deduced their advantages from improper positions. In the division of the legislative power, [few?] bad bills will probably be passed, but more good ones will be opposed. In forming a just *nexus imperii,* this ought always to take place. It is better that many good bills should be destroyed than that a single bad one should be permitted to pass. Were it not for this circumstance, there would be little advantage. For although the passion of the one might sometimes be controuled by the coolness of the other; yet the passion of the latter might sometimes counteract the wisdom of the former. Experience however shows it to be wise to divide the legislative power between two distinct bodies.

3.6.11 The next thing that presents itself to view, is the representation of the states.

In the second section of the first article it is said, that representations and direct taxes shall be apportioned among the several states, which may be included in this union according to their *respective numbers,* which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the *United States;* and within every subsequent term of ten years in such a manner as they shall by law direct. The number of representatives shall not exceed *one* for every *thirty thousand;* but each state shall have at least one representative; and until such enumeration shall be made, the state of New-Hampshire shall be

entitled to chuse *three*, Massachusetts *eight*, Rhode-Island and Providence Plantations *one*, Connecticut *five*, New-York *six*, New-Jersey *four*, Pennsylvania *eight*, Delaware *one*, Maryland *six*, Virginia *ten*, North-Carolina *five*, South-Carolina *five*, and Georgia *three*. Here it is evident the representation is too scanty. There is a certain corrective balance to be preserved, not only between different houses, but also between the members that compose the same house. This is often times of very great use. It tends to keep alive a spirit of more accurate discussion. But with such a *paucity* of members, this advantage can never be experienced. Besides what thirty thousand men would be willing to have *one* man represent them. It borders indeed upon injustice. Among thirty thousand people there must of necessity be a variety of classes, each having distinct and separate concerns, to which some respect would most certainly be due. Among such a number of men there will naturally be so many different ratios of interest to which their feelings are alive, and with which their happiness is intimately connected, that they should by all means be regarded. It would indeed be frivolous to attend to the most minute circumstantial divisions of interest; but in such a number as thirty thousands there must be *divisions* of a larger and more important nature, which are entitled to respect.[11]

3.6.12 But in the clause before-mentioned, there is a more material error; an error which essentially affects the rights of some states. It is the inequality of representation in the lower house. This particular has not yet been agitated.

In forming a *confederation* of *independent* republican states, it hath always been esteemed a fundamental law, that each state should have an equal representation. In forming the present confederation of the United States, this point was warmly urged by several learned gentlemen, and carried in Congress. Here is a change of which the citizens of the United States, who are less governed by principles of private interest, than those of true and impartial justice[,] should beware. The articles of the present confederation in this particular, are much more near akin to justice. They are not so highly coloured with *lawful oppression*. In the fifth article it is said, that, "in determining questions of the United-States in Congress assembled, *each state shall have one vote*." This is founded in reason, and its propriety is evinced by experience, from both of which it is very easy to prove, that representation among separate independent states should be equal. What is oftentimes observed upon this subject has very little meaning or force.

3.6.13 What, shall one state that is wealthier than another, that exceeds it in extent of territory, and has a far greater interest in national decisions, have no more weight in them? Shall (for instance) the state of Delaware or Rhode-Island have an equal voice with that of Virginia or Massachusetts? Here is an apparent, though a very superficial difficulty. The superior weight of large states does not, and ought not to consist in a greater number of representatives. There is an unavoidable influence arising from circum-

stances, which of itself forms the superiority. It is evident that a larger and richer state must of necessity have its influence over a smaller in a due proportion. But the establishing of a superiority by law in the inequality of representatives among the states, is a kind of a constitutional reduction to slavery. Its superior influence exists in nature, and therefore it is unnecessary, and indeed abusive to establish it by law. The representation of *separate independent* states is exactly similar to the votes of individuals. Rich citizens, who have large and valuable possessions are much more affected by public decisions than those of little or no fortune. Yet is a rich citizen entitled to a greater number of votes than one who is poor? No, because in the very nature of things he is known to influence many poor men. Influence will generally be in proportion to abilities and wealth. The same principle may be applied to states with equal propriety. The larger and wealthier have a necessary and unavoidable influence over the smaller and less wealthy. Examples to verify this assertion are numerous, and among the number there is one the more striking from its bearing so great a resemblance to the American states.

3.6.14 The United Netherlands, or States of Holland, form a glaring example. Every state in the union has an equal voice, and yet is it not evident that Holland is as superior in influence as she is in wealth and extent? This arises from the nature of the thing. Although an equal voice is decreed by the constitution to each state, yet that of Holland has swallowed up the wealth, the power, and even the name.[12] Many more instances might be adduced, but the general system of things teaches us the propriety of admitting each state to an equal representation. It is said, however, that the small states will eagerly adopt the constitution proposed by the Convention. This I am inclined to doubt, but taking it for granted we can easily account for it. Their present situation is so bad, and their importance so inconsiderable, that of two evils they would willingly chuse that which is apparently the least. But let them have *time* to discuss and consider the matter, and recollect the probable perpetuity of it, and they will not so hastily embrace it. There are many reasons why small states would rather adopt this constitution, than run the risque of having none at all. In the former case, their importance would at least be nominal, in the latter it would dwindle away to nothing. It may be urged that the danger arising from the inequality of representation in the lower house, is sufficiently guarded against by the equality in the senate. Be that as it may, the thing is essentially wrong in itself. There is a mutual dependence between the two houses, and each has its proportion of influence. No circumstance can alter the intrinsic injustice of the thing. The more such inequality takes place, the more direct is the avenue to tyranny.

The other grand defect in the foregoing clause, we shall defer for the present, and treat it in the sequel.

3.6.15 In the third section of the first article it is said, that "the senate of the

United States shall be composed of two senators from each state, chosen by the *legislature* thereof for *six* years."

Then follows a mode of division amongst them into three classes, of which the first is to resign its place at the expiration of the second year, the second the fourth year, and the third the sixth year. This may in itself be an excellent thing, and well adapted to preserve a proper degree of experiental wisdom in the senate at all times. That class which retains its seat for six years, will in many respects have a superiority.

This being the case, the manner of determining the classes should have been stated; otherwise the jealousy of the states may rouse the animosity of party division to such a pitch as to endanger the springs of government. If a proper mode of dividing were pointed out, the division itself might be of great use.

The fourth section of the first article says, that "the times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress *may* at any time *make* or alter such regulations except as to the *place* of chusing *senators*."* Here the mode of expression seems to be designedly ambiguous. It carries in it, however, a controuling power to be vested in Congress over the states in those matters that do not at all concern the nation at large. The power is limited—"except as to the place of chusing *senators*"—This I suppose was excepted because the senators are to be chosen by the *legislature* of each state. Indeed it would be an odd affair to have the legislatures of the several states collected together for the purpose of chusing senators in any place that Congress should appoint. But why is not the same provision made in the case of representatives? They are to be chosen by the people at large in each state—but is it an easier matter to draw the body of the people in any state into one place than their legislative body only? There may be some hidden propriety in this distinction, which it requires political vision very much refined to discern. I could wish to see it clearly pointed out. This refers, however, only to place—but what is meant by the manner of holding elections? If we are to understand by it the *mode of electing*, to give Congress power to controul it, is infringing upon one of those privileges upon which freedom itself is suspended. The manner of electing is clearly pointed out by the excellent *Montesquieu*, and he considers it as a fundamental law in every republican state.[14] While the people of the several states, who are

3.6.16

*To give a circumstantial proof of the absurdity of this, we shall mention a [scene] that lately took place. A gentleman who was in company with a member [of] convention, with whom he was acquainted, and who had signed the constitution, was mentioning some of the most common objections to it. Among others was this: the member of convention replied, That there was no such [clause] in it. Did this arise from his ignorance or a consciousness that it was [unjust] and absurd? Justitia sese non condemnat.[13]

alone concerned in it, have the free exercise of their will, they will adhere to this law; but to oblige them to resign it to a power whom it very little interests, is almost to oblige them to sell their birth right. A writer upon this subject, who signs himself an *American Citizen*, considers this matter very strangely; he supposes it to be a guard against the possibility of obstinacy in any state—as in the case of Rhode-Island.[15] This then is designed for a political antidote, in case of refusal in any one state to elect at all. But this is a very absurd supposition—for it is very evident that where there is no election, there can be neither *time*, *place* nor *manner* of holding it. The clause in the constitution takes for granted some election, but his construction supposes none at all.

3.6.17 The eighth section of the first article appears upon consideration to be big with unnecessary danger.

It seems to reduce humanity to too great a test. It bloats Congress with too much power, and leaves them without a guard to prevent the eruptions of human depravity. The very first clause contains every species of power that they could possibly be vested with. In it power is given them "to *lay* and *collect* taxes, duties, imposts and excises, to pay debts, and to provide for the common defence and *general welfare* of the United States; but all duties, imposts and excises shall be uniform throughout the United States." This power may, if exerted in its extent, reduce the several states to poverty and nothing. We would willingly pay a compliment to human nature by supposing the best, if experience did not rise up against us. The wisdom of many nations hath induced them to enlarge voluntarily the powers of their rulers: but we have no instances of such self-denial in governors as hath led them to restrain their own power and abridge their own authority. It was wisdom in this country to appoint a convention for the purpose of enlarging the powers of Congress; but it will be superior wisdom to give them no more power than is sufficient. Our situation taught us the necessity of enlarging the powers of Congress for certain national purposes, where the deficiency was experienced. Had these and these only been added, experience itself would have been an advocate for the measure. But in the proposed constitution there is an extent of power in Congress, of which I fear neither theory nor practice will evince the propriety or advantage. The power of internal taxation given to Congress in the foregoing clause, is a very unjust and improper one. It has been hinted in some publication, that impost will defray all our national expences.[16] This is a proposition perfectly absurd. Will not the support of a standing army, a navy, etc. be a prodigious addition to national expence? To say that this government will not be an additional expence to the country, is an assertion to which common sense would never assent. Let it be remembered, that this constitution, if adopted, will create a vast number of expensive offices. Most of them will be of the national character, and must be supported with a superior degree of dignity and credit; without regarding the enormous expence which Congress may incur

if *they please*. The many places that will and must be created and paid for, will add much to the burden of our debts. In the legislative, executive, and particularly the *judiciary* department, there will be a multiplicity of officers hitherto unknown, and the salaries annexed to them must be very considerable. Besides, if the states are [to] retain even a *shadow* of sovreignty, the expence thence arising must also be defrayed. This combination will cause a greater demand than can easily be answered. The gentleman who remarks upon the address of the sixteen members, answers this objection with uncommon sagacity. "The first objection is, (says he) that the government proposed will be too expensive. I answer that, if the appointment of offices *are* not more, and the compensation or emoluments of office *not* greater than *is* necessary, the expence will be by no means burdensome, and this must be left to the prudence of Congress: for I know no way *to controul* supreme power *from* extravagancies in this respect."[17]

3.6.18 What does all this amount to, but an oblique confession, that Congress may, if they please, load us with many needless expences?

The taxation of the particular states for their own support will be overruled by Congress, or else it will be obliged to embrace a measure perhaps the most odius in the world, viz. excessive taxation. This would be widely different from the opinion of the ablest politicians. I am persuaded that if this constitution were to be adopted, Congress would be reduced to this alternative, either to oppress the people in the manner just hinted, or commit upon them a violent injury by depriving them of their rights.

3.6.19 Congress will be the judges of what is necessary for the *general welfare* of the United States, and this will open the door to any extravagant expence which they shall be pleased to incur. For this reason their power should have been accurately defined. Baron Montesquieu (B. 13, C.I) observes that "the real wants of the people ought never to give way to the imaginary wants of the state. Imaginary wants are those which flow from passion, and from the weakness of the governors, from the charms of an extraordinary project, from a distempered desire of vain glory, and from a certain impotency of mind that renders it incapable of withstanding the attacks of fancy. Often times has it happened, that ministers of restless dispositions have imagined that the wants of the state were those of their own little and ignoble souls." That this may happen here, we have a right, and indeed ought to suppose. Any man who carefully attends to that part of the constitution quoted above, must judge that the powers granted by it, are too indefinite. Indeed as it stands there expressed, it includes every other power afterwards mentioned.

3.6.20 We come now to speak of a standing army. By this constitution, the Congress have power to "declare war," as also to "raise and support armies; but no appropriation of money for that purpose shall be for a longer term than two years." We are to suppose that Congress is a representation of the people of the United States at large, if so, the *nexus imperii* even of

the English constitution is lost. There the king has only the power of declaring war, and the house of parliament, that of raising money for the support of it. So that it seems to be wrong to give Congress this combined power independent of a check from a majority of the state legislatures. "No appropriation of money for this purpose shall be for a longer term than two years." This is not very moderate. The space of time is only as *long again* as that permitted in England, for the same purpose.

3.6.21 But a standing army in time of peace is strongly to be objected to. It always hath been and always will be the grand machine made use of to subvert the liberties of free states. *Pisistratus and Caesar* are not forgotten. It ought to be laid down as a principle that free states should never keep a standing army for the support of its laws. "They ought (as *Brutus* says) to depend for their support upon the citizens. And when a government is to receive its support from the aid of the citizens, it ought to be so constructed as to have the confidence, respect and affection of the people. Men who upon the call of the magistrate, offer themselves to execute the laws, are influenced to do it from affection for the government or from fear; when a *standing army* is at hand to punish offenders, every man is actuated by the latter principle, and therefore, when the magistrate calls, will obey." Fear however is a contracting principle of obedience. "But when this is not the case, the government must rest for its support upon the confidence and respect which the people have for their government and laws."[18] If therefore the government of the United States be just and equal, and the states are to retain their seperate powers, a standing army is useless and dangerous. It will inevitably sow the seeds of corruption and depravity of manners. Indolence will increase, and with it crimes cannot but increase. The springs of honesty will gradually grow lax, and chaste and severe manners be succeeded by those that are dissolute and vicious. Where a standing army is kept up, virtue never thrives. In this particular experience will abundantly testify what the nature of the thing would suggest. Whatever the refinement of modern politics may inculcate, it still is certain that some degree of virtue must exist, or freedom cannot live. Unless Mandervill's position be embraced, "that private vices are public benefits":[19] a standing army will work the destruction of these states. Virtue and simplicity of manners in an extensive country by their innate energy and vigour, create a healthy constitution, and command prosperity to accompany it; but *vice* like a sickly air, debilitates the nerves of the political body, and withers all its bloom. A standing army will increase *vice*, and that a disunion of interest and affections. It is this that weakens the force, and destroys the harmony of free states. These evils in process of time will be derived from a standing army, and when we shall have outlived our *virtue*, every effort to recover it, will be vain and abortive. The propriety and advantage of a standing army can be but poorly vindicated.

My fellow citizens, beware of such pretences, and while this tyrannical

monster of depravity exists in the plan, do not adopt it, unless you are willing to entail upon your children the miseries of vice, and leave to posterity the corrupted relics of a shattered government.

3.6.22 The next thing which we proceed to, is the importation of slaves, contained in the ninth section of the first article. It says, that "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year 1808, but a tax or duty may be imposed upon such importation, not exceeding ten dollars for each person." ["]The truth is, (says a citizen of America) Congress cannot prohibit the importation of slaves during that period; but the laws against the importation of them into any particular state stand unrepealed. An immediate abolition of slavery would be ruin upon the whites and misery upon the blacks in the southern states. The constitution therefore hath wisely left each state to pursue its own measures with respect to this article of legislation during the period of twenty one years."[20] That the importation of slaves shall not be forbidden till that time may be very wise—but what hath that to do with the abolition of slavery? To prohibit the importation of slaves is not to abolish slavery. For all that is contained in this constitution, this country may remain degraded by this impious custom till the end of time.

3.6.23 The next thing that strikes our attention in a review of the constitution, is the disposition of the judicial powers. The first section of the third article says; that "the judicial powers of the United States shall be vested in one supreme court, and in such inferior courts as Congress *shall* from time to time establish. The judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office." This is certainly too indefinitely comprehensive. What *inferior courts* Congress shall be pleased to establish, is not known, nor can be imagined Montesquieu is of opinion, that where the judicial power is not kept perfectly distinct from the legislative and executive, liberty is endangered.[21] The *Centinel* quotes a clause from Blackstone, much to the purpose,[22] which says, "that if the power of judging were entirely trusted with the magistrates, or any select body of men, *named by executive authority*, the[ir] decisions in spite of their own natural integrity would have a bias towards those of their own rank and dignity; for it is not to be expected, that the *few* will be attentive to the rights of the *many*.

3.6.24 ["]This therefore preserves in the hands of the people, that power which they ought to have in the administration of justice, and prevents the encroachments of the most powerful and wealthy citizens." If this be true, what may not the judiciary come to under this constitution? It may gradually grow corrupted, till the very power of judging become the readiest tool in the work of tyranny. *Drowsy* justice may e'er long sit *nodding* on her rotten bench, and a *collective despot* smile upon the *harpies* of ravenous *ambition*.

Such a despot must indeed have many friends, whose injustice in their way to glory, would readily be connived at.

3.6.25 It is worth our while to enquire how far the proposed constitution will tend to reduce the dignity and importance of the states. The several states are by this constitution, to have a republican government guaranteed to them; but where is the use of such a position, when the powers granted to Congress must inevitably make it void? That the republican form here decreed to each state will indeed be only *form,* human nature as well as experience will evince. Let us attend to the three first articles in the constitution of Poland. 1. "The crown of Poland shall be forever elective, and all order of succession provided; any person who shall endeavour to break this law, shall be declared an enemy to his country, and liable to be punished accordingly. 2. Foreign candidates to the throne, being the frequent cause of troubles and divisions shall be excluded; and it shall be enacted, that for the future, no person can be chosen king of Poland, and great duke of Lithuania, excepting a native Pole, of *noble* origin, and possessing land within the kingdom. A son or grandson of a king of Poland, cannot be elected immediately after the death of their father or grandfather; and are not eligible excepting after an interval of two reigns. 3. The government of Poland shall be forever *free, independent,* and of a *republican form.*"[23] What frenzy to talk of freedom and independence after the two first articles. The height and extent of this freedom and *independence,* experience has shown and will show.

3.6.26 After a candid examination into the disposition of the legislative, executive and judicial authority of the United States, it will appear that the several states will have very little or no seperate internal policy, but will be all pressed into one compact system of government, of which they will only be parts. The want of responsibility to the people among the representatives in this constitution, would furnish matter for ample discussion, but we pass over it in silence, only observing that it is a grand and indeed a *daring* fault, and one that sanctions with security the most tyrannic edicts of a despotic voice. Here, my fellow citizens, is a wide avenue to corruption, of which time will evince the danger. "Which circumstance taking place, every species of venality must spread through the land with rapid progress. The contagion will not be confined to the higher classes; it will extend its baneful influence over all ranks and degrees of men.

3.6.27 ["]Thenceforward the security of property will be unhinged, and our most valuable rights will be held upon a precarious tenure.

["]The judges of our property are named by the supreme, and his favour will be confined on those persons who lend their support perhaps to tyrannical measures.

["]Hence the contagion of venal[i]ty will pervade the seats of justice. It will be kept alive by gainful prospects; and every occasion of solicitation in favour of a son or a brother, or any relation or friend, will be a fresh

incitement to preserve the venal system in strength and vigor.

["]It will not escape notice, that the determination of our property in the *last resort,* will, by the power decreed to the supreme, by this constitution, be lodged with persons, whom, if corrupted, no dependence on the people will oblige to be just."[24]

The ministers of justice of all others should not be beyond the reach of the people. 3.6.28

The same thing is true of political as of other machines. The utility of them does not increase with the complication of their parts. But provided the effect be the same, the more simple the better.

The organization of this is evidently so complex that it will require much strength to put it in motion: and great care must be taken in the use of it, that the smaller parts be not broken to pieces.

But I fear that no care can prevent the extinction of independence among the several states. The judicial power proposed to be granted by this constitution, goes far to produce this effect. The powers of the supreme courts and of such inferior courts, as Congress shall *be pleased* to ordain, are exceedingly comprehensive. It comprises all civil cases, except those which arise between citizens of the same state. That the judicial power of each state will sink into nothing, will easily be seen. Suppose, for instance that Congress be pleased to ordain or establish one of these inferior federal courts in each state. The consequence will be that the others will be nullified. The courts are to be under the sanction of the *United States of America,* not of a particular state. They must be supported with dignity, and their judges and other necessary officers will have their salaries stated by *Congress* which will be paid out of the treasury of the *United States.* In this situation, we can easily foresee that in the common and unavoidable course of things, the courts established by subordinate power supported with less splendor and dignity, will at length dwindle into nothing. 3.6.29

Another circumstance should be attended to: The States will be exceedingly strained to support them. 3.6.30

Most of the *ways and means* as they are called are entirely shut out from the State governments.

The tenth section of the first article says, "No state shall, without the consent of Congress lay any imposts or duties on imports or exports, etc. etc. the net produce of all such imposts and duties laid by any state on imports or exports, shall be for the use of the treasury of the United States, and all *such laws* shall be subjected to the revision and *controul* of Congress." What then is to be the mode of raising money for defraying the expences of the state? It is reducing them to the necessity of laying direct taxes, which is egregiously abusive. Most of the states are already groaning under their taxes. Here the *very idea* of state is entirely done away. But on the other hand, the government of the *United States* has an enormous power of raising money in every way as well as that of contracting debts at *plea-* 3.6.31

sure. To give them the power of laying *taxes, duties, imposts* and *exise*, by way of providing for the *welfare* of the United States, and then constitute them judges of what is necessary for these purposes, is giving them power to satisfy at the expence of the states, any whim which ambition or the love of ostentation might suggest to them. But yet every law thus made will be binding; for they have an additional power expressly granted them, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all the powers vested by this constitution in the government of the *United States*, or in any *department* or office thereof."

3.6.32 This may from the mode of expression be construed into a *tyrannical* grant to enforce *tyranny* itself. Have the states in this predicament any kind of consequence or power, or are they not rather reduced to inactive *parts* of the same *grand empire?* But the very last clause but one in the constitution proves clearly that the whole country is to be comprised into one large system of lordly government. A tight system indeed. They say that "this constitution and the laws of the *United States*, which shall be made in *pursuance thereof*, and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound by them or any thing in the constitution or laws of any state to the contrary notwithstanding." Here is at once created a fruitful source of contention and error. What end will there be to the confusion that will arise from the many laws or ordinances of Congress with respect to revenue, viz. *taxes, duties, imposts, etc. when those of the seperate states are to be controulled by them?* But what judges are to be bound by them in all cases whatever, notwithstanding any laws to the contrary, that may have been promulgated by any particular state? The judges not only of those inferior *federal* courts which Congress may from time to time establish in any or all the states; but also the judges of the courts immediately dependent on the states themselves. They are to be over-ruled by the *laws* of Congress in "every state," and the laws of every state must be prejudiced in *their* favor.

3.6.33 Can any state, or the citizens of any state think themselves secure when they are conscious that their own laws will not avail them in competition with *those* of Congress? Suppose Congress in making its provision for the *general welfare* of the *United States*, and framing those laws which shall be deemed necessary and *proper* for carrying into execution all their powers, should, in the complex body of them, oppose the general system of state policy, what must be the consequence? It must be laid prostrate in the dust, and yield to the ordinances of Congress, and that according to their own mode of construing them. If this does not open the door to violent oppression, it at least pours upon us a load of inconveniencies. I know it is said that all the powers of Congress must be exercised for the *general welfare*, and have for their object *general* concerns only. But what are these general

concerns? May they not without difficulty be construed to the prejudice of *particular concerns?*

Such a construction will certainly follow from the present indefinite mode 3.6.34
of expression in this constitution. There is a writer upon the subject who attempts to explain the intentions of the convention in constituting the powers of Congress.[25] He says that, "the first object of the constitution is to *unite* the states into one *compact* society for the purpose of government. If such union must exist or the states be exposed to foreign invasion, internal discord, reciprocal encroachments on each other's property—to weakness and infamy, which no person will deny—what powers must be collected and lodged in the supreme head or legislature of these states? The answer is easy. The legislature must have exclusive jurisdiction in all matters where the states have a mutual interest. There are some regulations in which all the states are equally concerned—there are others which in their operations are limited to one state. The former belong to Congress, the latter to the respective legislatures. No one state has a right to supreme controul in any affair in which the other states have an interest; nor should Congress interfere in any affair which respects one state only. This is the general line of division which the convention have endeavoured to draw between the powers of Congress and the rights of individual states.["] The states in their seperate capacity cannot provide for their common defence, nay, in case of a civil war, one state cannot secure its existence. The only question therefore is, whether it is necessary to unite and provide for the general *welfare?*

For this question being once answered in the affirmative, leaves no room 3.6.35
to doubt the propriety of constituting a power over the United States, adequate to these *general purposes*. This was spending time in vain, for it is known, and are invincibly acknowledged that the power of Congress should extend to every case where the interests of the United States are clearly found to be mutual. But pray cannot Congress, after having ascertained this union of interests, and constituted proper powers in all cases to which it applies, proceed one step farther and from an over-ruled system of government in the country, in this compact situation? Is there not a wide difference between just constituting powers adequate to general purposes, and proceeding regularly beyond it to the establishing of a supreme authority over the states in this collective view? The distinction is wide and apparent. Upon a candid examination it will be found that the combination of them both exists in the constitution.

It hath been said that the objection with respect to the freedom of the 3.6.36
Press is not valid, because the power of controuling that is lodged with the several states.

A little consideration will show that this, though perhaps just in itself, is but a specious pretext. Congress have power to lay all duties of whatever kind, and although they could not *perhaps* directly bar the freedom of the Press, yet they can do it in the exercise of the powers that are expressly

decreed to them. Remember there are such things as *stamp duties* and that these will as effectually abolish the freedom of the press as any express declaration.

3.6.37 It is said however, that the legislatures of the several states will not dwindle away, because they have the sole right of electing the senate. This indeed is all, and such as it is, it will not last long. "Ladislaus of Poland, who was elected emperor after the temporary reign of Sigismund, having relinquished the right of imposing taxes, called an assembly of prelates, barons, and military gentlemen, in their respective provinces, in order to obtain an additional tribute. The *provincial assemblies* gave birth to the dietines; which now no *longer retain the power of raising money in their several districts, but only elect the nuncios or representatives for the diet.*"[26] And is it expected that when the *legislatures* of the states are reduced to mere *boards of electors,* they will long continue so? No, this last dreg of power will at length vanish. Nominal power is always a disgrace unsupported by reality.

3.6.38 That our boasted republic will ere long wear the face of an aristocracy may easily be seen. The foundation of the Venetian aristocracy is well known. "The city was divided into six districts, called festiers. The council of forty proposed that each of these partitions should name two electors, amounting to twelve in all, who should have the power of choosing from the whole city four hundred and twenty, who should have the whole power of the general assembly, and be called the grand council. The people were amused with fine promises and order of regularity, and consoled with *assertions* that their right of election still continued, and that those who should not be chosen one year, might be the next, and not perceiving that this law would be fatal to *their* power, suffered that aristocracy to be thus founded, which exists to this hour. The next proposal was that a committee of eleven should be appointed to name the doge. Though the design of reducing the people to nothing might have been easily seen in these manoeuvres, yet the people wearied, irritated, and discouraged by eternal discords, agreed to both."[27] Thus easy may be the gradation of these states.

3.6.39 The proposed constitution is evidently not calculated to coalesce with human nature in another respect. The executive, as vested in the president is too pointedly supreme. The fears of the people will and ought easily to be agitated by such an extent of power in a single man; particularly, if the situation of that man be such as will easily permit any gratification of partiality or ambition.

3.6.40 Suppose we ask the question, whether it would not be better to substitute in the room of a *single* executive magistrate, a *sovereign executive council,* consisting of one counsellor chosen from each state by the executive thereof, with a president of such council, who should be only *primus inter pares* to be chosen from among themselves by the joint ballot of the council and senate, or the former only?

This council to have the appointment of all officers under the federal government, instead of the senate and president, the former of which should have no executive or other powers whatever in that department; but should act merely in a legislative capacity, in conjunction with the house of representatives. There is another idea to be suggested, that in just policy no money bill should be altered or amended in any way by the senate. 3.6.41

But the correction of one part is precluded by an error in another; for here the inequality of representation in the lower house rises into view, and prevents our observing any thing further.

Upon the whole, it is evident that this constitution carries in its figure the strongest features of political ambition, beneath the charming delusion of a fair complexion.

It hath been made an objection to this constitution, that the legislative and executive are not kept perfectly distinct and seperate. 3.6.42

This, I think, is not valid. The executive should have a check on the legislative for this simple reason—that the executive hath its own limits—but the legislative independent of it, would have none at all.

To make laws is unconfined and indefinite, but to execute them when made, is limited by their existence.

But from the executive's having an undue influence over the legislative, I must confess, I have a great aversion.

*The division among the senators is unintelligible,

The next thing that we come to speak of, is the mode of laying taxes. All direct taxes are to be apportioned among the several states according to their respective numbers. 3.6.43

This is a great and a fundamental error. Direct taxes should always be apportioned according to extent of territory. In framing the present confederation in 1778, this was held to be an essential point. Article 8th says, "all charges of war and other expences which shall be incurred for the common defence and general welfare, and allowed for by the United States in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several states in proportion to the value of land in each state, etc." The value of land in a country increases with its riches, and therefore forms a just criterion. There are many reasons which might be offered to show that the number of inhabitants in any state is an improper measure of apportioning taxes. The inhabitants of some states may be numerous and poor, and those of another, few and wealthy.

The truth is, the ratios both of inhabitants and wealth, conspire to shew that the extent of territory is the only proper measure in apportioning taxes 3.6.44

*What was observed on the division of the senate in page 13 [3.6.15] refers only to the four first years after the establishment of this constitution, if it should ever be ratified. But whether they are not the most important, and whether what in consequence of it begins ill, will not continue so, ought to be considered.

among the several states. Commerce creates wealth, but at the same time luxury and high life, and these again a decrease of inhabitants.

3.6.45 The luxury that is derived from commercial wealth always tends to stop population. From this it clearly appears that the apportioning of taxes according to numbers is not just. On the contrary, the state of agriculture is more favourable to population, but not to wealth. Indeed land must, in the nature of things, afford a just measure. It is true that the value of land is dependent on circumstances. But the richer the country grows, the more valuable the land. The extent of land in Massachusetts is small in proportion to its inhabitants, but yet it is more valuable—in Virginia it is very great in proportion to the inhabitants, but yet it is not so valuable.

Let direct taxes be apportioned according to the value of land in each state, and it must be just for this reason, that the value of land always increases in an exact proportion to the riches of the country.

3.6.46 Hitherto we have been considering the blemishes of the constitution as they statedly exist—other objects are derived from omission. Among these the grand one, upon which is indeed suspended every other, is the omission of a bill of rights.

The remarker upon the address of the sixteen members has answered their objection with much force. "I answer (says he) *this is not true*, it contains a declaration of many rights, and very important ones, i.e. that people shall be obliged to fulfil their contracts, and not avoid them by *tenders* of any thing less than the value stipulated—that no *ex post facto* laws shall be made, etc."[28]

3.6.47 The gentleman has here very wittily mistaken the sense of the two terms right and obligation.

They are correlative terms, and between two parties, whenever the former applies to the one, the latter of necessity applies to the other. Whatever any one has a *right* to expect from me, I am *obliged* to render him. He might as well have said that the constitution gave the people a *right* to submit to Congress in every thing, and that we have a *right* to pay the last farthing of compliance to their despotic whims.

What he mentions is the enforcing of *obligation* and not the declaring of *right*.

3.6.48 One of the learned members of the late convention—the honorable Mr. Wilson observes in his speech, that all powers which are not by the constitution given up to Congress, are reserved for the disposition of the several states.[29] This observation is wise and true, because properly speaking it should be so. In entering into the social compact, all rights which are not expressly given up to the governors are reserved to the people. That it is so from a just construction it is easy to discover.

3.6.49 But notwithstanding, if the people are jealous of their rights, where will be the harm in declaring them? If they be meant as they certainly are to be reserved to the people, what injury can arise from a positive declaration of

it? Although in reasoning it would appear to be unnecessary, yet if the people prefer having their rights state[d]ly defined, it is certainly reasonable, that it should be done. I am well acquainted with the logical reason, that is general[ly] given for it.

3.6.50 It is said that the insertion of a bill of rights, would be an argument against the present liberty of the people.

To have the rights of the people declared to them, would imply, that they had previously given them up, or were not in possession of them.[30]

This indeed is a distinction of which the votaries of scholastic philosophy might be proud—but in the political world, where reason is not cultivated independently of action and experience, such futile distinctions ought not to be agitated.

In fact, it does not exist, for I should think, it is as rational to declare the right of the people to what they already possess, as to decree to them any new rights. If the people do really possess them, there can be no harm in expressing what is meant to be understood.

A bill of rights should either be inserted, or a declaration made, that whatever is not decreed to Congress, is reserved to the several states for their own disposal.

3.6.51 In this particular, the articles of the present confederation have an evident advantage. The second article says, that "each state retains its *sovereignty, freedom and independence*, and every *power, jurisdiction, and right, which is not* by this confederation *expressly declared* to United States in Congress assembled."

This will appear the more proper, if we consider that these *are rights* in which all the states are concerned. It is thought proper to delegate to Congress supreme power on all occasions where the *natural* [mutual?] interests of the states are concerned, and why not for the same reason grant and declare to the states a bill of *those rights* which are also *mutual?*

At any rate it is certain that no injury can arise from it, and to do it, would be satisfactory and wise.

3.6.52 On the whole, my fellow-citizens, this constitution was *conceived* in wisdom; the thanks of the United States are justly due to the members of the late convention.

But let their productions pass again through the furnace.

Do not give them even the opportunity of depriving you of your rights and privileges, and that without breaking over any restraint imposed by the constitution.

Because this once granted they will be fully enabled in the present age to lay the gentle foundation of despotic power, and after a temporary interval of seeming humanity between you and succeeding generations, to rivet upon *them* the chains of slavery beyond the possibility of a rupture.

To guard against this, I could wish to see the proposed constitution revised and corrected.

3.6.53 If the States are not to be *confederated,* let them be reduced to one compact body.

And if a perfect consolidation of the States is to take place, if the people are to become the source of power, and if Congress is to represent them as the head of this grand body politic, in the name of all that is dear to freemen, permit not the veins through which the life of government itself is to flow from the *heart* to the *head,* be any way obstructed—let the passages be free and open that *vital* heat may *animate* every *limb.*

That if all the States were to offer their objections, the constitution would be reduced to nothing, is an ill founded idea.

3.6.54 The good natured simularity which the citizen of America discovered between this constitution and a piece of painting, is perfectly erroneous.[31]

All painting is addressed to the *sense* and relished by *taste* which is various and fluctuating—but this constitution is addressed to the *understanding,* and judged of by *reason* which is fixed and true.

The constitution is for the most part good, and perhaps many of the objections which have been made to it arise from our not being able to discern *clearly* the collective interest of the states.

Some of them however, in all probability exist beyond contradiction.

3.6.55 Let the convention of each State make its exceptions, then let a future and general one receive them all, and reconcile them with as much wisdom as possible.

This would certainly be some refinement.

It *could* do no *harm,* but *might* do much *good.*

3.6.56 To conclude, my friends and fellow-citizens, have the proposed constitution revised, corrected and amended—have every dubious expression be made plain and clear—have every power accurately defined and well understood, and your own rights and privileges clearly stated, or a declaration made that all powers that are not by this constitution delegated to Congress, are reserved for your own disposal.

Then and not till then, will impartial justice rule over our land, and America become the theatre of equity and wisdom, as she has already been the field of patriotism and bravery.

This once obtained, we shall be happy and free, and having enjoyed the blessings of peace and plenty under the ample shade of the tree of *liberty,* we shall deliver them down unimpaired by the corrosive influence of time to the latest posterity.

V. P.

Quod bonum, faustumque sit nobis patriaeque nostrae, sic enim nos perpetuam felicitatem Reipublicae, precari existimamus.[32]

1. Cicero, *De officiis* I.17.57.
2. The source of this epigraph has not been found.

3. The original pamphlet contained a list of errata, and the corrections have been incorporated into the text here.

4. "Would those malignant, ignorant, and short-sighted triflers, for a moment but compare the acknowledged abilities, and well-tried integrity of the late members of Convention, with their own characters, either for knowledge or political honesty, modesty alone (if they had any) would compel them to silence, and prevent their thus exposing the weakness of their heads, and the badness of their hearts. There is no doubt in Convention every possible objectionable clause was removed by the august body who had the management of the business, as far as was any way compatible with the good of the great whole, that being the leading object of all their deliberations." *Massachusetts Centinel* 17 October 1787 (One of the People).

This was a common Federalist theme, though it was seldom put quite so strongly. See for example the remarks of A Citizen of New York (John Jay) and A Citizen of America (Noah Webster): "Gentlemen out of doors therefore should not be hasty in condemning a system, which probably rests on more good reasons than they are aware of, especially when formed under such advantages, and recommended by so many men of distinguished worth and abilities." Ford, *Pamphlets* 75. ". . . [W]hen we reflect on these circumstances [of the distinguished men involved in the framing], it is impossible to resist impressions of respect, and we are almost impelled to suspect our own judgements, when we call in question any part of the system, which they have recommended for adoption. Not having the same means of information, we are more liable to mistake the nature and tendency of particular articles of the constitution, or the reasons on which they were admitted." Ford, *Pamphlets* 64. See also *The Federalist* no. 2, 10–12; no. 38; Ford, *Essays* 20–21 (Cassius), 288–89 (Caesar); *Maryland Journal and Baltimore Advertiser* 4 March 1788 (Aristides); *Virginia Independent Chronicle Extraordinary* 9 April 1788 (A Freeholder). Cf. Centinel I, 2.7.5 n. 2; Old Whig I, 3.3.3 n. 3.

5. Wilson's 6 October speech. See Centinel II, 2.7.35 n. 14.

6. See Democratic Federalist 3.5.

7. See Centinel 2.7.

8. A Citizen of Philadelphia [Pelatiah Webster], *Remarks on the Address of Sixteen Members of the Assembly of Pennsylvania to their Constituents, Dated September 29, 1787. With some Strictures on their Objections to the Constitution, Recommended by the Late Federal Convention* (Philadelphia 1787). Evans no. 20871. Reprinted in McMaster and Stone 89–106.

9. A Citizen of America [Noah Webster], *An Examination into the Leading Principles of the Federal Constitution proposed by the late Convention held at Philadelphia . . .* (Philadelphia 1787). Reprinted in Ford, *Pamphlets* 25–65.

10. *The Spirit of Laws* XIX, ch. 27. A Citizen of America (Noah Webster) is cognizant of the point; his discussion is important and fuller than A Federal Republican gives him credit for. Defining tyranny as "the exercise of some power over a man, which is not warranted by law, or necessary for the public safety," A Citizen of America contends that "a people can never be deprived of their liberties, while they retain in their own hands, a power sufficient to any other power in the state." In the United States, there is no basis for a tyranny based on patrician-controlled religion or on military force (the people being armed); the source of power lies in the people, and that power consists in property. Viewing briefly Roman and English history, the writer concludes:

"Wherever we cast our eyes, we see this truth, that *property* is the basis of *power;* and this, being established as a cardinal point, directs us to the means of preserving our freedom. Make laws, irrevocable laws in every state, destroying and barring entailments; leave real estates to revolve from hand to hand, as time and accident may direct; and no family influence can be acquired and established for a series of generations—no man can obtain dominion over a large territory—the laborious and saving, who are generally the best citizens, will possess each his share of property and power, and thus the balance of wealth and power will continue where it is, in the *body of the people.*

"*A general and tolerably equal distribution of landed property is the whole basis of*

national freedom: The system of the great Montesquieu will ever be erroneous, till the words *property or lands in fee simple* are substituted for *virtue*, throughout his *Spirit of Laws*.

"*Virtue*, patriotism, or love of country, never was and never will be, till men's natures are changed, a fixed, permanent principle and support of government. But in an agricultural country, a general possession of land in fee simple, may be rendered perpetual, and the inequalities introduced by commerce, are too fluctuating to endanger government. An equality of property, with a necessity of alienation, constantly operating to destroy combinations of powerful families, is the very *soul of a republic*—While this continues, the people will inevitably possess both *power* and *freedom;* when this is lost, power departs, liberty expires, and a commonwealth will inevitably assume some other form." Ford, *Pamphlets* 55, 59. On the connection between the law and the character of the people see Federal Farmer III, 2.8.25 n. 19; on the need for civic virtue, see 3.6.21 and n. 19.

11. On the representation of classes and individuals, see *The Federalist* nos. 35–36; Federal Farmer II, 2.8.15 n. 11.

12. Cf. *The Federalist* no. 20.

13. Brackets indicate doubtful readings due to cut page.

14. *The Spirit of Laws* II, ch. 2.

15. An American Citizen [Tench Coxe], "An Examination of the Constitution for the United States of America . . ." 1788; Ford, *Pamphlets* 151–52.

16. James Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone 148. See Centinel II, 2.7.52 n. 30.

17. McMaster and Stone 95.

18. See Brutus I, 2.9.18.

19. Bernard Mandeville, *The Fable of the Bees: or Private Vices, Publick Benefits* (1714). For other Anti-Federal discussions of the need for civic virtue see Alfred 3.10.6; Republican Federalist 4.13.10; Henry 5.16.8; Rowland, *The Life of George Mason* II, 105 (15 May 1787 letter from Lee to Mason). See also Turner 4.18.2 n. 2. Cf. Webster's important denial that virtue is the principle of a republic, above, n. 10; also *State Gazette of South Carolina* 10 December 1787 (Cato). The Federalists were likely to argue that civic virtue is as much a result as a cause of good government. See McMaster and Stone 298 (Yeates), 419–20 (Rush), 415–16 (Wilson); *New York Journal* 25 October 1787 (A Slave); Ford, *Pamphlets* 131 (A Citizen of Philadelphia).

20. Ford, *Pamphlets* 54. On the slave trade, see Martin 2.4.15 n. 24.

21. *The Spirit of Laws* XI, ch. 6.

22. See Centinel II, 2.7.44 n. 24 (Blackstone, *Commentaries* III, 379–80).

23. John Adams, *Defence* I, letter 22 (*Works* IV, 369–70).

24. The source of this quotation has not been found.

25. A Citizen of America, Ford, *Pamphlets* 45–46.

26. Adams, *Defence* I, letter 22 (*Works* IV, 363).

27. Ibid. letter 19 (Works IV, 349–50).

28. McMaster and Stone 101.

29. Ibid. 143.

30. See Federal Farmer XVI, 2.8.196 n. 116.

31. The Citizen of America described the painter who wished each spectator to mark the part that displeased him and soon found the whole piece defaced. Ford, *Pamphlets* 63.

32. Suetonius.

Address of John Humble

(PHILADELPHIA) INDEPENDENT GAZETTEER
29 October 1787

This crude satire charges that the new Constitution is an engine of the rich in their perennial struggle to enslave the poor. It does not purport to be a reasoned criticism of the Constitution but to display the feelings of the many, the largely inarticulate "John Humbles" of America.

The humble address of the *low born* of the United States of America, to their fellow slaves scattered throughout the world—greeting.

Whereas it hath been represented unto us that a most dreadful disease 3.7.1
hath for these five years last past infected, preyed upon, and almost ruined the government and people of this our country; and of this malady we ourselves have had perfect demonstration, not mentally, but bodily, through every one of the five senses: For although our sensations in regard to the mind be not just so nice as those of the *well born;* yet our feeling, through the medium of the plow, the hoe, and the grubbing axe, is as accute as any nobleman's in the world. And whereas a number of skilful physicians having met together at Philadelphia last summer, for the purpose of exploring, and if possible removing the cause of this direful desease, have, through the assistance of John Adams, Esquire, in the profundity of their great political knowledge, found out and discovered, that nothing but a new government consisting of three different branches, namely, *king, lords,* and *commons,* or in the American language, *president, senate,* and *representatives,* can save this our country from inevitable destruction.—And whereas it hath been reported that several of our *low-born* brethern have had the horrid audacity to think for themselves in regard to this new system of government, and, *dreadful thought!* have wickedly began to doubt concerning the perfection of this evangelical constitution, which our political doctors have declared to be a panacea, which (by inspiration) they know will infallibly heal every distemper in the confederation, and finally terminate in the salvation of America.

Now we the *low born,* that is, all the people of the United States except 3.7.2
600 or thereabouts, *well born,* do by this our humble address, declare, and

most solemnly engage, that we will allow and admit the said 600 *well born*, immediately to establish and confirm this most noble, most excellent and truely divine constitution: And we further declare that without any equivocation or mental reservation whatever we will support and maintain the same according to the best of our power, and after the manner and custom of all other slaves in foreign countries, namely by the sweat and toil of our body: Nor will we at any future period of time ever attempt to complain of this our *royal* government, let the consequences be what they may.—And although it appears to us that a *standing army*, composed of the purgings of the jails of Great Britain, Ireland and Germany, shall be employed in collecting the *revenue* of this our king and government; yet, we again in the most solemn manner declare, that we will abide by our present determination of non assistance and passive obedience; so that we shall not dare to molest or disturb those military gentlemen in the service of our royal government. And (which is not improbable,) should any one of those soldiers when employed on duty in collecting the *taxes*, strike off the arms (with his sword,) of one of our *fellow slaves*, we will conceive our case remarkably fortunate if he leaves the other arm on.—And moreover because we are aware that many of our fellow slaves shall be unable to pay their *taxes*, and this incapacity of theirs is a just cause of impeachment of treason; wherefore in such cases we will use our utmost endeavours, in conjunction with the *standing army*, to bring such attrocious offenders before our *federal judges*, who shall have power without *jury* or *trial*, to order the said miscreants for immediate execution; nor will we think their sentence severe unless after being hanged they are also to be both *beheaded* and *quartered*.—And finally we shall hence forth and forever, leave all *power*, *authority*, and *dominion* over our *persons* and *properties* in the hands of the *well born*, who were designed by Providence to *govern*. And in regard to the *liberty of the press* we renounce all claim to it forever more, Amen; and we shall in future be perfectly contented if our *tongues* be left us to lick the feet of our well born masters.

Done on behalf of three millions of
low born American slaves.
John Humble, Secretary.

Letter by An Officer of the Late Continental Army

(PHILADELPHIA) INDEPENDENT GAZETTEER
6 November 1787

This short essay was written, according to Paul Leicester Ford, by William Findley. It is taken here from its first publication, in the Philadelphia *Independent Gazetteer*, but it was widely reprinted in newspapers and was republished both as a broadside and as a short pamphlet.[1] The essay is not of major importance and lacks a sustained argument; but it does contain a list of twenty-three typical Anti-Federalist objections: that the government is not a confederation, which will lead either to violence or the swallowing up of the states in a universal aristocracy (nos. 1–5); that there is no Bill of Rights reserving the rights of individuals and estates and no provision for trial by jury and liberty of the press (nos. 6–9); that Congress is given power to keep up a standing army and to command the militia (nos. 10, 21); that the legislative and executive powers are not kept separate (nos. 11–12); that the executive power is in the hands of an elected king to whom, nevertheless, the people will turn in case the Senate is corrupted (nos. 15–16); that the representation in the national legislature is too small and responsibility insufficiently secured (nos. 13–14, 17–19); that the slave trade may not be abolished until 1808 and slavery will probably be reintroduced into Pennsylvania (no. 20); that the new government will be expensive, of a monarchial and aristocratic character, and destructive of liberty (nos. 22–23). In conclusion, the Officer strongly criticizes James Wilson as a self-serving aristocrat, contends that no adequate defense of the Constitution has been made, and urges that the people not be blinded by the splendor of the name put forward in its defense.

The essay was answered in detail by Plain Truth in the *Independent Gazetteer*, 10 November 1787.[2] The most interesting points in the reply are given in the notes below.

1. Paul Leicester Ford, *Bibliography and Reference List of the History and Literature Relating to the Adoption of the Constitution of the United States, 1787–1788* (Brooklyn, N.Y., 1896) nos. 79–80; Evans, *Early American Imprints* nos. 20357, 20358. On Findley see above, 3.1.intro. n. 3.
2. Plain Truth's essay is reprinted in McMaster and Stone 187–95.

Mr. Oswald,

By inserting the following in your impartial paper, you will oblige yours, etc.

To the Citizens of Philadelphia.

Friends, Countrymen, Brethren and Fellow Citizens,

3.8.1 The important day is drawing near when you are to elect delegates to represent you in a Convention, on the result of whose deliberations will depend, in a great measure, your future happiness.

This convention is to determine whether or not the commonwealth of Pennsylvania shall adopt the plan of government proposed by the late convention of delegates from the different states, which sat in this city.

With a heart full of anxiety for the preservation of your dearest rights, I presume to address you on this important occasion—In the name of sacred liberty, dearer to us than our property and our lives, I request your most earnest attention.

3.8.2 The proposed plan of continental government is now fully known to you. You have read it I trust with the attention it deserves—You have heard the objections that have been made to it—You have heard the answers to these objections.

If you have attended to the whole with candor and unbiassed minds, as becomes men that are possessed and deserving of freedom, you must have been alarmed at the result of your observations. Notwithstanding the splendor of names which has attended the publication of the new constitution, notwithstanding the sophistry and vain reasonings that have been urged to support its principles; alas! you must at least have concluded that great men are not always infallible, and that patriotism itself may be led into essential errors.

3.8.3 The objections that have been made to the new constitution, are these:

1. It is not merely (as it ought to be) a CONFEDERATION of STATES, but a GOVERNMENT of INDIVIDUALS.

2. The powers of Congress extend to the *lives*, the *liberties* and the *property* of every citizen.

3. The *sovereignty* of the different states is *ipso facto* destroyed in its most essential parts.

4. What remains of it will only tend to create violent dissentions between the state governments and the Congress, and terminate in the ruin of the one or the other.

5. The consequence must therefore be, either that the *union* of the states will be destroyed by a violent struggle, or that their sovereignty will be swallowed up by silent encroachments into a universal aristocracy; because it is clear, that if two different *sovereign powers* have a co-equal command

over the *purses* of the citizens, they will struggle for the spoils, and the weakest will be in the end obliged to yield to the efforts of the strongest.

6. Congress being possessed of these immense powers, the liberties of the states and of the people are not secured by a bill or DECLARATION OF RIGHTS.

7. The *sovereignty* of the states is not expressly reserved; the *form* only, and not the SUBSTANCE of their government, is guaranteed to them by express words.[1]

8. TRIAL BY JURY, that sacred bulwark of liberty, is ABOLISHED IN CIVIL CASES, and Mr. W[ilson], one of the convention, has told you, that not being able to agree as to the FORM of establishing this point, they have left you deprived of the SUBSTANCE. Here are his own words—*The subject was involved in difficulties. The convention found the task* TOO DIFFICULT *for them, and left the business as it stands.*[2]

9. THE LIBERTY OF THE PRESS is not secured, and the powers of congress are fully adequate to its destruction, as they are to have the trial of *libels*, or *pretended libels* against the United States, and may by a cursed abominable STAMP ACT (as the *Bowdoin administration* has done in Massachusetts) preclude you effectually from all means of information.[3] Mr. W[ilson] has given you no answer to these arguments.

10. Congress have the power of keeping up a STANDING ARMY in time of peace, and Mr. W[ilson] has told you THAT IT WAS NECESSARY.

11. The LEGISLATIVE and EXECUTIVE powers are not kept separate as every one of the American constitutions declares they ought to be; but they are mixed in a manner entirely novel and unknown, even to the constitution of Great Britain; because,

12. In England the king only, has a *nominal negative* over the proceedings of the legislature, which he has NEVER DARED TO EXERCISE since the days of *King William*, whereas by the new constitution, both the *president general* and the *senate* TWO EXECUTIVE BRANCHES OF GOVERNMENT, have that negative, and are intended to *support each other in the exercise of it*.

13. The representation of the lower house is too small, consisting only of 65 members.

14. That of the *senate* is so small that it renders its extensive powers extremely dangerous: it is to consist only of 26 members, two-thirds of whom must concur to conclude any *treaty or alliance* with foreign powers: Now we will suppose that five of them are absent, sick, dead, or unable to attend, *twenty-one* will remain, and eight of these (*one-third*, and *one* over) may prevent the conclusion of any treaty, even the most favorable to America. Here will be a fine field for the intrigues and even the *bribery* and *corruption* of European powers.

15. The most important branches of the EXECUTIVE DEPARTMENT are to be put into the hands of a *single magistrate*, who will be in fact an ELECTIVE

KING. The MILITARY, the land and naval forces are to be entirely at his disposal, and therefore:

16. Should the *senate*, by the intrigues of foreign powers, become devoted to foreign influence, as was the case of late in *Sweden*, the people will be obliged, as the *Swedes* have been, to seek their refuge in the arms of the *monarch* or PRESIDENT GENERAL.[4]

17. ROTATION, that noble prerogative of liberty, is entirely excluded from the new system of government, and great men may and probably will be continued in office during their lives.

18. ANNUAL ELECTIONS are abolished, and the people are not to reassume their rights until the expiration of *two*, *four* and *six* years.

19. Congress are to have the power of fixing the *time*, *place* and *manner* of holding elections, so as to keep them forever subjected to their influence.

20. The importation of slaves is not to be prohibited until the year 1808, and SLAVERY will probably resume its empire in Pennsylvania.

21. The MILITIA is to be under the immediate command of congress, and men *conscientiously scrupulous of bearing arms*, may be compelled to perform military duty.[5]

22. The new government will be EXPENSIVE beyond any we have ever experienced, the *judicial* department alone, with its concomitant train of *judges, justices, chancellors, clerks, sheriffs, coroners, escheators, state attornies and solicitors, constables, etc.* in every state and in every country [county?] in each state, will be a burden beyond the utmost abilities of the people to bear, and upon the whole.

23. A government partaking of MONARCHY and aristocracy will be fully and firmly established, and liberty will be but a name to adorn the *short* historic page of the halcyon days of America.

3.8.4 These, my countrymen, are the objections that have been made to the new proposed system of government; and if you read the system itself with attention, you will find them all to be founded in truth. But what have you been told in answer?

3.8.5 I pass over the sophistry of Mr. W[ilson], in his equivocal speech at the state house.[6] His pretended arguments have been echoed and re-echoed by every retailer of politics, and *victoriously* refuted by several patriotic pens. Indeed if you read this famous speech in a cool dispassionate moment, you will find it to contain no more than a train of pitiful sophistry and evasions, unworthy of the man who spoke them. I have taken notice of some of them in stating the objections, and they must, I am sure, have excited your *pity* and *indignation*. Mr. W[ilson] is a man of sense, learning and extensive information, unfortunately for him he has never sought the more solid fame of *patriotism*. During the late war he narrowly escaped the effects of popular rage, and the people seldom arm themselves against a citizen in vain. The whole tenor of his political conduct has always been strongly tainted with

the spirit of *high aristocracy*, he has never been known to join in a truly popular measure, and his talents have ever been devoted to the patrician interest. His lofty carriage indicates the lofty mind that animates him,[7] a mind able to conceive and perform great things, but which unfortunately can see nothing great out of the pale of power and worldly grandeur; despising what he calls the inferior order of the people, popular liberty and popular assemblies offer to his exalted imagination an idea of meanness and contemptibility which he hardly seeks to conceal—He sees at a distance the pomp and pageantry of courts, he sighs after those stately palaces and that apparatus of human greatness which his vivid fancy has taught him to consider as the supreme good. Men of sublime minds, he conceives, were born a different race from the rest of the sons of men, to them, and them only, he imagines, high heaven intended to commit the reins of earthly government, the remaining part of mankind he sees below at an immense distance, they, he thinks were born to serve, to administer food to the ambition of their superiors, and become the footstool of their power—Such is Mr. W[ilson], and fraught with these high ideas, it is no wonder that he should exert all his talents to support a form of government so admirably contrived to carry them into execution—But when the people, who possess collectively a mass of knowledge superior to his own, inquire into the principles of that government on the establishment or rejection of which depend their dearest concerns, when he is called upon by the voice of thousands to come and explain that favorite system which he holds forth as an object of their admiration, he comes—he attempts to support by reasoning what reason never dictated, and finding the attempt vain, his great mind, made for nobler purposes, is obliged to stoop to mean evasions and pitiful sophistry; himself not deceived, he strives to deceive the people, and the treasonable attempt delineates his true character, beyond the reach of the pencil of a *West* or *Peale*, or the pen of a *Valerius*.

3.8.6 And yet that speech, weak and insidious as it is, is the only attempt that has been made to support by argument that political monster THE PROPOSED CONSTITUTION. I have sought in vain amidst the immense heap of trash that has been published on the subject, an argument worthy of refutation, and I have not been able to find it. If you can bear the disgust which the reading of those pieces must naturally occasion, and which I have felt in the highest degree, read them, my fellow citizens, and say whether they contain the least shadow of logical reasoning, say (laying your hands upon your hearts) whether there is any thing in them that can impress unfeigned conviction upon your unprejudiced minds.

3.8.7 One of them only I shall take notice of, in which I find that argument is weakly attempted. This piece is signed "AN AMERICAN CITIZEN" and has appeared with great pomp in four succeeding numbers in several of our newspapers.[8] But if you read it attentively, you will find that it does not tell

us what the new constitution IS, but what it is NOT, and extolls it on the sole ground that it does not contain ALL the principles of tyranny with which the European governments are disgraced.

3.8.8 But where argument entirely failed, nothing remained for the supporters of the new constitution but to endeavor to inflame your passions—The attempt has been made and I am sorry to find not entirely without effect. The great names of WASHINGTON and FRANKLIN, have been taken in vain and shockingly prostituted to effect the most infamous purposes. What! because our august chieftain has subscribed his name in his capacity of president of the convention to the plan offered by them to the states, and because the venerable sage of Pennsylvania, has *testified* by his signature that *the majority of the delegates of this state* assented to the same plan, will any one infer from this that it has met with their entire approbation, and that they consider it as the master piece of human wisdom? I am apt to think the contrary, and I have good reasons to ground my opinion on.

3.8.9 In the first place we have found by the publication of *Charles Cotesworth Pinckney*, Esquire, one of the *signing* members of the convention, who has expressed the most pointed disapprobation of many important parts of the new plan of government, that all the members whose names appear at the bottom of this instrument of tyranny have not concurred in its adoption.[9] Many of them might conceive themselves bound by the opinion of the majority of their state, and leaving the people to their own judgment upon the form of government offered to them, might have conceived it impolitic by refusing to sign their names, to offer to the world the lamentable spectacle of the disunion of a body on the decisions of whom the people had rested all their hopes. We KNOW, and the long sitting of the convention tells us, that, (as it is endeavoured to persuade us) concord and unanimity did not reign exclusively among them. The thick veil of secrecy with which their proceedings have been covered, has left us entirely in the dark, as to the *debates* that took place, and the unaccountable SUPPRESSION OF THEIR JOURNALS, the highest insult that could be offered to the majesty of the people, shews clearly that the whole of the new plan was entirely the work of an *aristocratic majority*.

3.8.10 But let us suppose for a moment that the proposed government was the unanimous result of the deliberations of the convention—must it on that account preclude an investigation of its merits? Are the people to be dictated to without appeal by any set of men, however great, however dignified? Freedom spurns at the idea and rejects it with disdain—We appeal to the collective wisdom of a great nation, we appeal to their general sense which is easily to be obtained through the channel of a multitude of free presses, from the opinions of *thirty-nine* men, who secluded from the rest of the world, without the possibility of conferring with the rest of their fellow-citizens, have had no opportunity of rectifying the errors into which they may have been led by the *most designing* among them. We have seen names

not less illustrious than those of the members of the late convention, subscribed to the present *reprobated* articles of confederation, and if those patriots have erred, there is no reason to suppose that a succeeding set should be more free from error. Nay the very men, who advocate so strongly the new plan of government, and support it with the infallibility of Doctor Franklin, affect to despise the present constitution of Pennsylvania, which was dictated and avowed by that venerable patriot—They are conscious that he does not entirely approve of the new plan, whose principles are so different from those he has established in our ever-glorious constitution, and there is no doubt that it is the reason that has induced them to leave his respected name out of the *ticket* for the approaching election.

Now then my fellow-citizens, my brethren, my friends; if the sacred flame 3.8.11
of liberty be not extinguished in your breasts, if you have any regard for the happiness of yourselves, and your posterity, let me entreat you, earnestly entreat you by all that is dear and sacred to freemen, to consider well before you take an awful step which may involve in its consequences the ruin of millions yet unborn—You are on the brink of a dreadful precipice;—in the name therefore of holy liberty, for which I have fought and for which we have all suffered, I call upon you to make a solemn pause before you proceed. One step more, and perhaps the scene of freedom is closed forever in America. Let not a set of aspiring despots, *who make us* SLAVES and *tell us 'tis our* CHARTER, wrest from you those invaluable blessings, for which the most illustrious sons of America have bled and died—but exert yourselves, like men, like freemen and like Americans, to transmit unimpaired to your latest posterity those rights, those liberties, which have ever been so dear to you, and which it is yet in your power to preserve.

An Officer of the late Continental Army.

Philadelphia, November 3, 1787.

1. Plain Truth replied: "When man emerged from a state of nature, he surely did not reserve the natural right being the judge of his wrongs, and the executioner of the punishments he might think they deserved. A renunciation of such rights, is the price he paid for the blessings of good government; and for the same reason, state sovereignty (as I have before observed) is as incompatible with the federal union, as the natural right of human vengeance is, with the peace of society." McMaster and Stone 189. Cf. Federal Farmer VI, 2.8.80 n. 55.

2. James Wilson, "Address to the Citizens of Philadelphia," McMaster and Stone 144–45.

3. *Acts and Laws of the Commonwealth of Massachusetts* (Boston 1784) III (1784–85). Plain Truth's reply is interesting in its movement from narrow (and probably indefensible) to broader and better grounds: "The liberty of the press in each state can only be in danger from the laws of that state, and it is everywhere well secured. Besides, as the new Congress can only have the defined powers given, it was needless to say anything about the liberty of the press, liberty of conscience, or any other liberty that a freeman ought never to be deprived of. It is remarkable in this instance, that among all the cases to which the federal jurisdiction is to extend (art. 3), not a word is said of 'libels or pretended libels.' Indeed, in this extensive continent, and among this enlightened people, no government whatever *could* control the press. For after all that is said about 'balance of power,' there is one power which no

tyranny on earth could subdue if once roused by this great and general grievance, that is, the people. This respectable power has preserved the press in Great Britain in spite of government; and none but a madman could ever think of controlling it in America." McMaster and Stone 190–91. Cf. Madison's letter to Jefferson, 17 October 1788, Madison, *Writings* (ed. Hunt) V, 269–75; see Federal Farmer X, 2.8.139 n. 91.

4. Plain Truth answers in terms that anticipate the defense of the large republic fully enunciated by Publius in *The Federalist* no. 10: "The comparison of a little kingdom to a great republic, cannot be just. The revolution in Sweden was the affair of a day, and the success of it was owing to its confined bounds. To suppose a similar event in this extensive country, 3000 miles distant from European intrigues, is, in the nature of things, a gross absurdity." McMaster and Stone 193. See Agrippa IV, 4.6.16 n. 10.

5. See Centinel III, 2.7.76 n. 39. Plain Truth argues that men conscientiously scrupulous of bearing arms are not forced to do so in any state and that "whatever redress may be wished for, or expected, can only come from the State Legislature, where, and where only, the dispensing power, or enforcing power, is in the first instance placed." McMaster and Stone 194.

6. See above, n. 2.

7. According to Plain Truth, Wilson's " 'lofty carriage,' is very like to be the effect of habit; for I know by experience that a man who wears spectacles, must keep his head erect to see through them with ease, and to prevent them from falling off his nose." McMaster and Stone 187.

8. [Tench Coxe] *An Examination of the Constitution for the United States of America . . .*, 1788; Ford, *Pamphlets* 133–54. The pamphlet version, which Ford reprints, is substantially the same as the newspaper version to which An Officer refers and which appeared in numerous newspapers in the late months of 1787.

9. The author is probably referring not to Charles Cotesworth Pinckney but to Charles Pinckney, whose *Observations on the Plan of Government Submitted to the Federal Convention* appeared in October 1787 (see Farrand III, 106–23); Pinckney's *Observations*, an edited version of his speeches and proposals in the Philadelphia convention, does not support the Officer's contentions, however.

Essays of Philadelphiensis

(PHILADELPHIA) INDEPENDENT GAZETTEER
November 1787–April 1788

The essays of Philadelphiensis appeared between November 1787 and April 1788 simultaneously (or, in the case of those published in 1788, a day or two apart) in two Philadelphia newspapers, the *Independent Gazetteer* and the *Freeman's Journal*, except for three essays (V, VII, XI), which appeared only in the former journal. Some of them were reprinted in several northern papers. The series is taken here from the *Independent Gazetteer*. The author was a mathematics instructor at the University of Pennsylvania, Benjamin Workman, who had recently emigrated to the United States from Ireland. He was identified as the author by Francis Hopkinson, who suggested that the trustees of the University of Pennsylvania might wish to consider "whether the legislature hath so munificently endowed that institution to make it the hot-bed of sedition; or whether, after this narative, it will be prudent in them to continue in their service, as an instructor of youth, a man who is so wickedly endeavoring to disturb the public tranquility." He suggested to parents the question "whether the principles of youth are likely to be improved under the tuition of an hackneyed, hired party scribbler." Workman replied in kind and the little fire raged for several weeks.[1]

The essays have no clear order, but they contain some substantial arguments. A brief summary follows.

Essay I (3.9.1–7). Federalist attempts to stifle free discussion of the proposed Constitution are an indication of what government under that Constitution would be like.

Essay II (3.9.8–16). Addressed primarily to the Pennsylvania Quakers: (1) good government tends to promote religion and morality; (2) there is no provision in the Constitution for exempting conscientious objectors from bearing arms, and indeed the military president will despise and distrust them; (3) the absence of any provision for liberty of conscience indicates either an indifference to religion or a wish to compel conformity to one belief; (4) it is strange that some Quakers, foes of all forms of slavery, should support this constitution of despotism.

Essay III (3.9.17–22). It is now clear that the great men of America who took an active part in independence were acting in behalf of their own ambition rather than of patriotism. While we do want an efficient federal government, the proposed Constitution cannot provide it: (1) there is no protection of the liberty of conscience, press, and jury trials; (2) taxes must be so high as to take our whole produce; (3) the government will not be able to protect against foreign enemies because a government to be strong must be free and patriotic and the people wealthy and well affected, whereas under the Constitution the case will be the reverse.

Essay IV (3.9.24–30). (The argument of the latter part of essay III is repeated and elaborated. Then:) Because of the great love Americans have for their country, many are willing to overlook deficiencies in the Constitution, believing that it will promote American respectability and greatness. But this is a delusion. The standing army will be needed to keep the country in submission, could not conveniently be called to meet an emergency, and would in any case not fight; the militia would be dispirited and weak. Nor can a navy be built under a system which deprives the states both of resources and incentive and which ensures that the federal government will be too expensive to build a navy. (This is a rather unusual Anti-Federalist argument.)

Essay V (3.9.31–36). This essay adds little or nothing to the argument, consisting entirely in warm denunciation of the scorn with which the well-born proponents of the Constitution treat the opinion of the people and the tyranny that this foreshadows. Fortunately the tyrants revealed the plan prematurely, and in that Providential mistake lies the cause of their forthcoming defeat.

Essay VI (3.9.37–43). Only a system of perfect freedom is consistent with the principle of the American Revolution; only a free America can be strong and respectable; and the Constitution will destroy that freedom. Those who suggest, as a compromise, the addition of a declaration of rights do not understand that such a declaration would effectually annihilate the Constitution; but the proponents understand that and consequently refuse to accept any such declaration.

Essay VII (3.9.44–48). A navy is necessary to maintain United States national commerce and respectability, but all the available resources will go to support the standing army, which will be needed to maintain the new government and benefit the well-born governors.

Essay VIII (3.9.49–57). Philadelphiensis dilates on the importance of the liberty of the press, especially in an extensive country, where it is the chief means of rousing free men to guard their liberties, exposing the tyrant, and rewarding the patriot. A new trick to get Anti-Federalist writers to expose their names will doubtless be resisted; anonymity promotes genuine political debate. Despite attempts to stifle the freedom of the press, there is no

sign that the Anti-Federalists will cease their opposition even if nine states ratify.

Essay IX (3.9.58–72). Writers against the Constitution are called incendiaries, but they seek only to prevent the destruction of American liberties and the consolidation of our thirteen free commonwealths into one despotic monarchy. The "president-general" will be an elected king with command of a standing army. The government will be a combination of aristocracy and monarchy, with no real democratic part. The citizen will be left without the protection of a bill of rights. Every patriot should exert himself to secure a new convention which could form a government consistent with the principles of the American revolution.

Essay X (3.9.73–81). The Federalists hasten the decision before the people can be alerted to the danger, as in Pennsylvania and Maryland. In Massachusetts the minority is large, and the proposed amendments leave the main principles of the Constitution untouched. A halt should be called to ratification proceedings and a second convention called. A purely democratic America would be a happier and stronger nation, but what is proposed here is a government of an elected king and a standing army. The new Congress, unlike the state legislatures, will not be the immediate representatives of the people; its numbers are too small, its powers too great.

Essay XI (3.9.82–92). Members of the Convention betrayed their trust, intending to avoid rendering an account of public monies fraudently retained. Pennsylvania will get no credit for past payments, but the delinquent states will not gain either, because the taxes henceforth will be as oppressive as tyranny can make them. The struggle over the proposed Constitution is not like the healthy party controversies in Britain, because it involves the fundamental question whether the principles of the revolution are to be discarded or not. It is a delusion to suppose that amendments will be made after ratification. (See XI, 3.9.90–91 for important arguments on parties.)

Essay XII (3.9.93–98). While some futile attempts have been made to defend the size and power of the national legislature, no one has been so bold as to attempt to defend the President-General. An American Citizen attempted a feeble defense, by a false comparison with the King of Great Britain, but the weakness of the argument is obvious and there has been nothing since. Let another Convention be immediately called and a form of government consistent with the principles of the Revolution be formed; then America will be both free and respectable.

1. Hopkinson's first essay, over the signature "A.B." appeared in the *Independent Gazetteer* 11 March 1788; Workman wrote a series of replies and justifications, which appeared in the same journal (26 March, 1 April, 15 April, 24 April, 29 April 1788). See letter from Hopkinson to Thomas Jefferson, 6 April 1788, *Documentary History of the Constitution* IV, 562–64. See Centinel XI, 2.7.144.

I

3.9.1 When the advocates of a cause use their endeavours to stop a free and thorough investigation of the subject, we as naturally and as justly infer that the cause is a bad one, as that two and two make four. A good cause, like pure gold may be tried in the fire, and yet retain its full weight and value; or like the utensils of husbandry, grow brighter and fitter for use the more it is handled. The application of this observation in regard to the friends of the new constitution, is easy. They see, that the more this new scheme of government is discussed, the more tyrannical and ill-adapted to the present circumstances of America does it appear. We find, say they, that to reason in favour of the constitution, is only to give its enemies more latitude to condemn: for although we could call in to our aid a sufficient stock of sophistical arguments and circumstances, by which we might dispose the incautious part of the people to join us in establishing this government; yet we have already experienced that by such means, we defeat ourselves; as we thereby give a greater scope for those of more penetration, to write against the constitution. The advocates of this government have also tried an expedient which has been known to succeed upon some occasions, namely, to answer *reason* and *argument* with scurrility and personal invective; but even here they have failed; for the magnitude of the object is so great, as to reduce every little circumstance of this kind, to a mere point. In little matters, this kind of procedure might do well enough; but in an affair of such vast importance to the whole Continent of America, its operation is nugatory.

3.9.2 In this desperate situation of affairs, it need not to be wondered at, that the friends of this despotic scheme of government, were driven to the last and only alternative from which there was any probability of success; namely, the abolition of *the freedom of the Press*. And accordingly, we find in the Independent Gazetteer of the 29th of October, a writer who signs himself a Pennsylvania Mechanic, says, "It appears by a late eastern paper, that the publisher of the Massachusetts Gazette, is determined to publish no sentiments on this important subject, (viz. the new constitution) unless the writers leave their names with the printer; that any one who may be desirous of knowing the author, may be informed. No honest man, no true friend to America or to the liberty and happiness of mankind, can object to this—For your imitation, gentlemen, I humbly propose the conduct of this your worthy brother, the publisher of the Massachusetts gazette."[1] This Pennsylvania Mechanic one would take to be a blacksmith, whose true employment, is to construct chains to confine to perpetual slavery, the freemen of America; but be that as it may, we find that he can soon call in more of his fellow craftsmen to his assistance, who even seem to be more expert at their occupation than our mechanic above-mentioned: One of these tradesmen

has given us a small portion of his skill of chain-making, in the Independent Gazetteer of the 31st of October, under the signature of Galba; which small scrap of his workmanship, I beg leave to transcribe, that we may be the better able to judge of its excellency: He says, "Mr. Oswald, The hint in your paper of last Monday, that every one ought to leave his name with the printer who writes for or against the new form of government proposed by the honorable convention, is only, in my opinion, true[2] in part; for what reason is there that the patriotic gentlemen who write in favour of a scheme of government that holds forth peace, happiness and prosperity to our distressed country, should by leaving their names with the printers, be exposed to the malevolence of those wretches who pretend to find fault with it. Indeed I think it perfectly right that those who wantonly write against it should leave their names, that they may be justly exposed to the contempt and indignation of their fellow citizens, as enemies and traitors to their country; and I hope every patriotic printer in the union, will for the future pay proper attention to the justness and absolute propriety of this hint."

Stop and pause a little Galba, I really believe you were not in your right 3.9.3
senses when you wrote this your hint; for if you had been studying for seven years how you might effectually injure the new constitution, you could not have hit upon a thought more to your purpose: Your zeal has transported you so far beyond the bounds of propriety and discretion, that the haughtiest lordling and friend to arbitrary government in America, must hang down his head and blush upon reading your ill-timed hint.—I assure you sir, I think you have explained yourself right cleverly: You have given us a specimen of the genius and spirit of our new government: Here we see pretty plainly through your excellent regulation of the press, how things are to be carried on after the adoption of the new constitution: All the writings must be on ONE SIDE. The new constitution appears so glorious and immaculate to Galba, that all those who have sufficient spirit to avow their sentiments on the occasion, are to be called traitors and enemies to their country, if they do not think just as he does: And to render them still more odious and execrable, he would have the printers throughout the union, to publish their names with their pieces, should any of them have the imprudence of writing on the subject.—I wonder that Galba did not propose a suit of tar and feathers; but as the taylors have of late become a little bashful about trying on this sort of apparel, and the conceit is therefore a little stale, he would have those obnoxious writers to leave their names with the printers, that they may be cloathed by their fellow citizens with *indignation and contempt* as with a garment; whilst he would have the patriotic writers in favor of the constitution, entirely exempted from such an abstracted kind of a coat and jacket.—We thank you Galba for your kind and very liberal hint; for it certainly merits our attention. I make no doubt but it is the wish of a thousand of our *well born* as well as of yourself, that the printers would comply with your request: Such a thought is natural enough;—it must na-

tively be the wish of every *little petty* tyrant in the United States.—But most of the printers in Philadelphia are men of sentiment; they are lovers of liberty and the rights of mankind, and will necessarily despise such hints, and treat them with the contempt they deserve: There is such a degree of meanness in the requisition especially in that of Galba longhead, as must insult the understanding and integrity of every independent printer who sees it.

3.9.4 Galba your hint was rather calculated for the meridian of Boston, than that of Philadelphia; and I doubt not, but you and the Boston printers have one and the same object: *Self* is an old fellow: This trite saying will apply.—In Boston the liberty of the press is now completely abolished; and hence all other privileges and rights of the people will in a short time be destroyed: No wonder then that the printers in Boston would exert themselves in favor of this new government: Their present condition is a drawing in miniature of that[3] in which the adoption of the new constitution will certainly place the whole union; so that after the nature of the prince of darkness, they wish to have all their fellow citizens in the same dreadful situation with themselves.—Russell, the printer of the Massachusetts Centinel, has the effrontery to insult the freemen of America so far, as to say in his paper of October the 10th, "That aiming thereby to be just, he is determined not to give place to any piece against the new constitution except the writers leave their names to be made public if desired."[4]—Russell I would not hire a mob to bear you aloft as an object of hatred and contempt, nor would I bribe them to hang you in effigy, although you really deserve it; I am sensible of the danger of inflaming the multitude under a free government; for when a public tumult has once been raised, justice has often been sacrificed to appease it; so that I do not intend to raise a fatal prejudice against you; my intention is to consider the nature and consequences of your conduct, as an advocate for the new constitution, which as far as it respects the liberty of the press, has done more prejudice to your cause, than its enemies can do by the violence of their accusations, however well they may be founded.

3.9.5 On so momentous a subject as the new constitution, it is as plain as any axiom in geometry, that it is of no importance whether or not a writer gives his name; it is with the illustrations and arguments he affords us, and not with his name, we have any concern: Besides this practice would tend to draw off the mind of the writer from the calm investigation of the subject, to recriminations and personal invective: And moreover men of ability, of a modest, timid, or diffident cast of mind, would be detered altogether from publishing their sentiments.[5]—Of what use could it be to the public to know the name of the writer of the piece signed Lucius, that Russell refused to publish? Certainly of no use at all. Non quis sed quid: It was not with the author of Lucius that the freemen of Massachusetts had anything to do, but with his reasoning, which if it were

just ought not to be suppressed, and if it were fallacious should be refuted.—Let candor and impartiality be the characteristics of our printers, in respect to this new government which involves in its consequences the happiness or misery of millions yet unborn: This is the line of conduct which men of honor and integrity will naturally pursue, and I find an unspeakable satisfaction, when I every day behold the printers of Philadelphia following this path almost to a man: And hence I am led to conclude that the Pennsylvania mechanic and his successor Galba, must find their hints to be a little premature; such doctrine might have been suited finely about the time of the mock ringing of the bells in this city, for joy and gladness that Congress had *recommended* the adoption of this new plan of government to the different states, which, by the by, they unluckily forgot to recommend to this present hour.

3.9.6 The gentlemen who are friends to the new constitution had better not blab so freely; especially in regard to the freedom of the press; they ought to wait until this government of governments is once established; and then instead of a coat and jacket of *indignation and contempt,* they may speak boldly about a gallows, a gibbet, or at least a dungeon, for such writers as the *Old Whig*, or *Centinel*, who have dared to speak like freemen.[6] I wonder that our *well born* should allow such mean fellows to write against this their government; such base wretches ought not to live in the same country with *gentlemen;* and as soon as our new government is confirmed, these vile enemies to its *splendor and dignity*, shall quit their cap[e]ring,[7] I'll warrant them; a federal soldier with a fixed bayonet will soon give such daring dogs their quietis. Ah! what glorious days are coming; how I anticipate the brilliancy of the American court! Behold that gilded chariot, set with diamonds, and drawn by eight Arabian horses; off with your hats you poltrons, here is the president going in state to the senate house to confirm the law for the abolition of the liberty of the press. Men and brethren will not these things be so? Yes most assuredly if we adopt the new constitution in its present form, these things will be so. Rouse then; rouse my fellow-citizens, and show yourselves to be freemen: This is the most important object that ever presented itself to your understanding: The independence of America, which God himself vouched safe through his infinite mercy to confer upon us, must end in a curse, if this tyrannical government be suffered to be established. But forbid it Heaven![8]

3.9.7 I was told, last Saturday evening, by a gentleman of veracity whom I met at the meeting at the state-house, that several persons had waited that day on Mrs. Oswald,* for the purpose of requesting her not to publish any pieces against the new constitution, at the same time intimating, that if she persisted, she would forfeit their interests; and that in consequence of her spirited reply, several had that very day withdrawn their subscriptions for

*Col. Oswald being abroad.[9]

the paper. This is truly an alarming circumstance. Where is the freeman in America that this is not sufficient to rouse from a state of supineness? My brethren, be circumspect on this momentous occasion,—"And, take unto you the whole armour of God, that ye may be able to withstand in the evil day, and having done all to stand. Stand therefore, having your loins girt about with truth, and having on the breastplate of righteousness. And your feet shod with the preparation of the gospel of peace. Above all, taking the shield of fath, wherewith ye shall be able to quench all the fiery darts of the wicked."[10] *Amen.*

Philadelphiensis.

II

3.9.8 My fellow citizens, the present time will probably form a new epoch in the annals of America: This important, this awful crisis, bids fair to be the theme of our posterity for many generations. We are now publicly summoned to determine whether we and our children are to be *freemen* or *slaves;* whether the liberty, which we have so recently purchased with the blood of thousands of our fellow countrymen, is to terminate in a blessing or a curse.

3.9.9 The establishment of a new government is a matter of such immense magnitude, that any other human transaction is small indeed, when compared to it. Great circumspection is therefore necessary on this interesting occasion: The temporal, and in some measure, even the eternal happiness of millions of souls is involved in this important work: I say even in some measure, our eternal happiness is concerned; for, that a good, or a bad government naturally influences religion and morality, is a principle indisputably confirmed by fact: Under a free and patriotic government, the bulk of the people will necessarily be virtuous; but under a tyrannical and unjust one, the greater part of the people will as necessarily be wicked: The complexion of the *governing* is ever the colour of the *governed.*

3.9.10 Every freeman possessed of the smallest portion of patriotism and general philanthropy, ought, at this critical juncture, to think seriously, to deliberate cooly, and to determine cautiously. All that is dear to him, nay all that constitutes life itself happy or miserable, is at this very moment about to be unalterably fixed: The rivet of tyranny may now be clenched, that will bind forever the freedom of America in the indissoluble chains of cursed slavery. In the adoption of the new constitution in its present form, we will lose more than all that we have fought for and gained in a glorious and successful war of seven years; yea, and still more than all this, our very character of *citizens* and *freemen* will be changed to that of *subjects* and *slaves.* In this act the bright orb of glorious liberty will go down under the horizen of cruel

oppression, never, never to illuminate our western hemisphere again! How much better that she had never cast a ray on Columbia, than thus to blaze for a moment, and then to vanish forever!

3.9.11 In regard to religious liberty, the cruelty of the new government will probably be felt sooner in Pennsylvania than in any other state in the union. The number of religious denominations in this state, who are principled against *fighting* or *bearing arms*, will be greatly distressed indeed.[11] In the new constitution there is no declaration in their favor; but on the contrary, the Congress and President are to have an absolute power over the *standing army, navy,* and *militia;* and the President, or rather *Emperor,* is to be the commander in chief. Now, I think, that it will appear plain that no exemption whatever from militia duty shall be allowed to any set of men, however conscientiously scrupulous they may be against *bearing arms*. Indeed from the nature and qualifications of the president, we may justly infer, that such an idea is altogether preposterous: He is by profession a *military man*, and possibly an old soldier: Now such a man, from his natural temper, necessarily despises those who have a conscientious aversion to a military profession, which is probably the very thing in which he principally piques himself. Only men of his own kind will be esteemed by him; his fellow soldier he will conceive to be his true friend, and the only character worthy of his notice and confidence.

3.9.12 Since in the new constitution no provision is made for securing to these peaceable citizens their religious liberties; it follows then by implication, that no such provision was intended. Their influence in the state of Pennsylvania is fully sufficient to save them from suffering very materially on this account; but in the great vortex of the whole continent it can have no weight. How can we expect that a special law will be made by the new Congress merely on their account; and yet it will be absolutely necessary that such a law shall be made, before this privilege is secured to them. Can any man rationally suppose the president will give his assent to a law in favor of the men whom he heartily despises; a law also that in its operation must curtail his own *dignity and splendor,* by reducing the number of his military? No certainly. There is not probably a military man on earth who could bear the thought; so that such a supposition is absurd. The friends of this scheme of government may possibly attempt to say, that this religious liberty is sufficiently secured by the constitution of the state. But I say not; for, this is a case in which the United States are a party; and every case of this kind, according to the new plan, must be determined by *the supreme law of the land;* that is by the Congress and President, who are to have the sole direction of the militia. This will be a matter then in which a particular state can have no concern.

3.9.13 From the proceedings of the convention, respecting *liberty of conscience*, foreign politicians might be led to draw a strange conclusion, viz. That the majority of that assembly were either men of *no* religion, or all of *one*

religion; such a conclusion naturally follows their silence on that subject; they must either have been indifferent about religion, or determined to compel the whole continent to conform to their own. For my own part, I really think, that their conduct in this instance is inexplicable: It is impossible to divine what might have been their intentions.

3.9.14 Before I dismiss this subject, I cannot help taking notice of the inconsistency of some Pennsylvanians, in respect to this new government. The very men, who should oppose it with all their influence, seem to be the most zealous for establishing it. Strange indeed! that the professed enemies of *negro*, and every other species of *slavery*, should themselves join in the adoption of a constitution whose very basis is *despotism* and *slavery;* a constitution that militates so far against freedom, that even their own religious liberty may probably be destroyed by it. Alas! What frail, what inconsistent beings we are! To the catalogue of human weaknesses and mistakes, this is one to be added!

Ah, my country-men our situation is critical indeed! Let us make a solemn pause then! The eyes of the world are upon us, the patriots and friends of America in Europe are now anxiously concerned, lest the whirlwind of tyranny should raze from its tender root the hallowed plant of Columbian liberty.

3.9.15 Before we confirm this new constitution let us ask ourselves this question. For what did we withdraw our allegiance from Great-Britain: Was it because the yoke of George the third was not sufficiently galling, that we cast it off, at the expence of so much blood and treasure, in order to accommodate ourselves with one of our own construction more intolerable: Or was it because the tyrant was three thousand miles off, that we revolted, in order to appoint one at home, who should correct us with scorpeons instead of whips? If this was your design, I congratulate you on your success: Hesitate not a moment then in the adoption of the new constitution: It is a perfect model, and answers your intentions completely: It certainly is capable of carrying *tyranny* and *despotism* to their ne plus ultra: No second revolution will be necessary: No further attempt need be made on this head; for this government will answer the end proposed to all intents and purposes.

3.9.16 Are these groundless conjectures, mere declamations unsupported by evidence, or affirmations without proof? No truly. Read the Old Whig, read the Centinels, read Brutus—Cincinnatus,[12] &c. and then say if you can, that these things are not real: perhaps better arguments were never advanced in the demonstration of any truth, than these writers have given to illustrate this matter; whilst the writers on the opposite side, have not been able to refute them in a single instance.

I shall close this essay with one observation, viz. that should this despotic scheme of government be overthrown, which God grant; To what cause then are we to attribute this glorious triumph? The answer is obvious; to that

palladium of liberty, that inestimable privilege of freemen, that scourge of tyranny, *the freedom of the press.*

Philadelphiensis, No. 2.

III

Joel, 2d and 15th [2:15–17]. "*Blow the trumpet in Zion, sanctify a fast, call a solemn assembly. Gather the people, sanctify the congregation, assemble the elders: Gather the children and those that suck the breasts; let the bridegroom go forth of his chamber, and the bride out of her closet. Let the priests, the ministers of the Lord, weep between the porch and the altar, and let them say, spare thy people O Lord, and give not thine heritage to reproach, that the heathen should rule over them.*"

My Fellow Citizens,

Are you disposed to hear plain arguments, simple truth, and pure facts? If 3.9.17
you are, then let me tell you through the voice of reason, that the preservation of your little ones and yourselves, the love of mankind in general, and the liberty of your dear country, now demand your most serious attention. The peace, the freedom and the happiness of the present generation and possibly many succeeding ones, are the great subjects now under discussion. Was there ever then such an important time for America as this is; can there possibly be greater objects, than these are, presented to the human understanding? I say there cannot; and I affirm it, that there is not a man in the United States, except some base assassin or mean coward, who can be indifferent on this momentous occasion. Is there any one now among us who can remain unconcerned or neutral? If there be, I say he is not a *man;* no certainly he is unworthy of that character; such a wretch can have no claim to the title of a free citizen of America, he is a pitiful sycophant, a cringing spaniel, a menial slave.

The independence of America, with great propriety, was thought, during 3.9.18
our late glorious struggle, an object of such immense value, that we could scarce pay too high a price for it; an object that even dignified human nature; and that thousands of our countrymen magnanimously and chearfully paid their blood for its purchase. But great as this was, I say that the adoption of the new constitution is an object of much greater concern. The parents of a child may rejoice at its birth, as a happy circumstance, but his conduct and character in manhood only can give them real and permanent pleasure; if these be bad, their pain is encreased by disappointment, the recollection of their former joyous hopes now augment their misery; yea, the misconduct of a son has frequently compelled his parents to curse the very day of his

nativity. In this relation, the independence of America and the new constitution exactly coincide. For if we adopt this plan of government in its present form, I say we shall have reason to curse the day that America became independent. Horrid thought! that the greatest blessing that God ever bestowed on a nation, should terminate in its misery and disgrace. Strange reverse this! that the freemen of America, *the favored of heaven*, should submit to a government so arbitrary in its embryo, that even a *bill of rights* cannot be obtained, to secure to the people their unalienable privilege.

3.9.19 It was a common saying among many sensible men in Great Britain and Ireland in the time of the war; that they doubted whether the great men of America, who had taken an active part in favor of independence, were influenced by pure patriotism; that it was not the love of their country they had so much at heart, as their own private interests; that a thirst after dominion and power, and not to protect the *oppressed* from the *oppressor*, was the great operative principle that induced these men to oppose Britain so strenuously. This seemingly illiberal sentiment was however generally denied by the well hearted and unsuspecting friends of American liberty in Europe, who could not suppose that men would engage in so noble a cause through such base motives. But alas! the truth of the sentiment is now indisputably confirmed; facts are stubborn things, and these set the matter beyond controversy. The new constitution, and the conduct of its despotic advocates shew that these men's doubts were really well founded. Unparelleled duplicity! that men should oppose tyranny under a pretence of patriotism, that they might themselves become the tyrants. How does such villainy disgrace human nature! Ah, my fellow citizens, you have been strangely deceived indeed; when the wealthy of your own country assisted you to expel the foreign tyrant, only with a view to substitute themselves in his stead.

3.9.20 But we want an efficient federal government; we want an efficient federal government: this is the constant theme of the day. Well, my friends, I grant this. But what is the ultimate end of an efficient government: in what should it be efficient? I hope you anticipate my answer. The only thing in which a government should be efficient, is to protect the *liberties, lives,* and *property* of the people governed, from foreign and domestic violence. This, and this only is, what every government should do effectually. For any government to do more than this, is impossible, and every one that falls short of it is defective. Let us now compare the new constitution with this legitimate definition of an efficient government, and we shall find that it has scarce a particle of an efficient government in its whole composition.

3.9.21 In the first place then, it does not protect the people in those liberties and privileges that all freemen should hold sacred;—*the liberty of conscience, the liberty of the press, the liberty of trial by jury, &c.* are all unprotected by this constitution. And in respect to protecting our *property*, it can have no

pretensions whatever to that; for the *taxes* must and will be so enormously oppressive, for supporting this expensive government, that the whole produce of our farms would not be sufficient to pay them.

As to this government being efficient, or rather sufficient to protect the people from the violence of a foreign enemy; the idea is so absurd that it offends common sense; it can neither have strength, energy, nor respectability, in the great scale of nations. For a new country to become strong and energetic, so as to be able to repel a foreign foe, the government must be *free* and *patriotic*, and the people must be *wealthy* and *well-affected* to it. Now if these requisites be wanting, that country is in jeopardy every moment, in fact it is on the direct road of falling a prey to the surrounding nations. In this miserable predicament then, must America stand, if we adopt the new constitution: for the government will neither be *free* nor *patriotic;* but on the contrary, *despotic* and *oppressive;* and the people will be *abject slaves*, toiling to support a government, which they curse in their hearts; a government composed only of an *emperor and a few lordlings*, surrounded by thousands of blood-suckers, and cringing sycophants. And in respect to the *standing army*, it will only be made up of profligate idle ruffians, whose prowess will chiefly consist in feats of cruelty exercised on their innocent fellow citizens; but in facing a foreign foe, they will prove themselves to be a body of mean cowards; like the Turkish Janissaries, better acquainted with plundering their country than fighting for its protection. In regard to a militia defending the country, the thing is still more absurd if possible: who in his senses could suppose that people, with their spirits broken by oppression, would voluntarily fight for that government, to which they are necessarily disaffected? No truly: common sense would point out to government that its safety could not be the object of the people arming; and hence it is plain that even were the militia willing to act, such a government would not trust them.—Lastly in respect to a navy, it is a matter of mere moonshine, such an expensive government as this would be, could not spare as much money in fifty years, as would build *three ships of the line*. This is a short portrait of the efficiency of our *efficient* federal government. What think you of it, my fellow citizens? 3.9.22

Philadelphiensis No. 3.

Mr. Oswald,

Russell, the printer of the Massachusetts Centinel, has attempted to answer a remark I make on his conduct in refusing to publish a piece signed Lucius in his paper:[13] Yet he allows that my observation was just; namely, "that it was not with the author of that piece that the freemen of Massachusetts had any thing to do, but with his reasonings." Now let him make 3.9.23

this his rule in future, and then his paper will be free and patriotic; let his conduct quadrate with the sentiment that he admits to be just, and I am perfectly satisfied: All I wished for, or intended, was to have our presses unshackled in respect to the new constitution, the liberty of America required, that they should be open to all parties, but influenced by none; and this impartiality was certainly better observed in Philadelphia, when I wrote, than at Boston, and therefore I made the remark, which I hope will have the desired effect: Indeed from his own concessions I have good reason to believe that my animadversions have been useful in setting the presses free in Boston; and this is as much as I wanted.

He is now obliged to let the scrap of Lucius appear, which probably would never have been the case, if I had not taken notice of the matter: But he has artfully given us no more than the thesis and smothered the rest; well this is still better than nothing.

Philadelphiensis.

December 5.

IV

I. Samuel, 8th and 18th [8:18]. *And ye shall cry out in that day, because of your* King *which ye shall have chosen you: And the Lord will not hear you in that day.*

My Fellow Citizens,

3.9.24 I do not write to inflame your minds, but to inform them: I do not write with a view to excite jealousies, and exhibit imaginary evils, but to promote your peace: I have no intentions of encouraging you to oppose or alter your present free government; but on the contrary, I advise you, yea, I entreat you, not to change it for one that is worse: If you cannot procure a better, why be doing [away?] with the old bad one. Except you are tired of freedom; except you are determined to entail slavery on yourselves and your posterity; for God's sake reject with that dignity becoming freemen, that tyrannical system of government, the new constitution. If you adopt it in toto, you will lose every thing dear to freemen, and receive nothing in return; but misery and disgrace.—Were some additional powers for regulating commerce, and the *impost duties* for a limited time, granted to the present Congress; this would probably answer all our purposes: But before Congress should be vested with greater powers than they now have, their number ought at least to be tripled,—suppose two hundred and sixty; that is, twenty members for each state. But this matter I shall leave for the

discussion of our next federal convention; if we should have the good luck to see their High Mightinesses once more *locked up in the State-house*, guarded by Captain M'Clain's Old Battle-Axe battalion.

Among the schemes and collusions that the friends of the new constitution have made use of to dupe the people into its adoption; that of making them believe that such a government would raise America to an eminent rank among the nations of the earth, seems to have been one of the most successful: There is not a writer that I have seen on the subject, that has called the truth of this matter into question; no wonder then that the less informed should be imposed on; when men of more enlightened understanding seem even to have swallowed the bait. 3.9.25

No people in the world have more of the genuine amor patriae than the citizens of the United States; that noble ambition, that laudable love for the dignity and character of his country, is so implanted in the breast of an American, that he is willing not only to contribute generously and largely of his property; but likewise to expend his blood to support that government that should establish the national respectability of his country.—This truly grand principle is so copiously infused into the hearts of our countrymen, that, I really believe, there is scarce an inconvenience to which they would not chearfully submit, provided this great point could be obtained. On this account then there are many who, although they are thoroughly persuaded that the new constitution is defective in many striking and material instances, yet through their national pride, would magnanimously overlook these, to have their country on a respectable footing as a nation. But ah my fellow citizens you are even disappointed here! It is a mere delusion! nothing but the basest deception; for, in the adoption of this constitution we will probably lose that small portion of national character which we now enjoy, instead of gaining an accession to it. What compensation then are you to receive in return for the liberties and privileges belonging to yourselves and posterity that you are now about to sacrifice at the altar of this *monster*, this *Colosus of despotism?* Why really the return you deserve, if you are mean enough to submit to be gulled after this manner; *poverty, slavery, and broken-heads.*—But, probably you will say, these are groundless conjectures; and we are perfectly convinced, that our new government, however it may be imperfect in some matters of an inferior nature, yet it must and will be *powerful;* yea a government that will make its enemies tremble. If you mean by its enemies the helpless widow, and orphan, the hard-working husbandman sunk down by labour and poverty: I grant it; but if you mean a foreign enemy; you insult your own understanding. No my friends; instead of becoming formidable, we will be the scorn and contempt of the whole world, during the existence of this contemptible government. Let us take but a rational view of its strength and respectability, and then we shall see that we have really nothing to depend on in this new constitution that 3.9.26

can raise the national character of America, but on the contrary, we will sink into a state of insignificance and misery.

3.9.27 The number of inhabitants in the United States is now probably about three millions and an half.—These are scattered over a continent twelve hundred miles long and eight hundred broad. Now to keep such an extensive country in subjection to one general government, a *standing army* by far too numerous for such a small number of people to maintain, must and will be garrisoned in every district through the whole.—And in case of immergency, the collecting of these scattered troops into one large body, to act against a foreign enemy, will be morally impossible. Besides they will have too much business on hand at their respective garrisons, *in awing the people*, to be spared for other purposes: There is no doubt, but to carry the arbitrary decrees of the federal judges into execution, and to protect the *tax gatherers* in collecting the revenue, will be ample employment for the military; indeed with all their strength and numbers, I am afraid, that they will find this a job of some difficulty, perhaps more than they will get through decently. Upon the whole, I think it is pretty obvious, that our *standing army* will have *other fish to fry* than fighting a foreign enemy; there is work enough cut out for them of a domestic nature, without troubling them on other occasions. Moreover such of them as might be brought into action, could not be depended on; for they will principally consist of the purgings of the European prisons, and low ruffians bred among ourselves that do not like to work.—And who could suppose that such vile characters as these, should be trusted to protect our country, our wives, our daughters, and our little ones? No my friends: God deliver us from such protectors.—Their *mean souls* wanting that amor patriae, that love of virtue, that noble love for the welfare and happiness of their fellow men, which animates the man of courage and constituted him the soldier; would fail them at the approach of an enemy. Yea they would either fly e're the battle commenced; or submit on the first charge; and probably turn their arms against the country that expected their protection. What I advance here, are truths founded on reason and the nature of things, and the experience of all ages affords ample examples for their illustration.

3.9.28 Very little need be said respecting the militia defending the country; perhaps what I have advanced in my last essay, is enough on that head: Indeed the thing itself carries its own evidence along with it: A person that has judgement sufficient to compare two ideas together, must see, that an *oppressed people*, reduced to a state of abject vassalage, by a despotic government, will never voluntarily venture their lives for it. When people are once slaves it is a matter of little concern to them who their masters are. The fable of the sensible ass is so pertinent to our purpose, that I cannot forbear reciting it. "An old fellow was feeding an ass in a fine green meadow, and being alarmed with the sudden approach of the enemy, was

impatient with the ass to put himself forward, and fly with all the speed he was able. The ass asked him, whether or no he thought the enemy would clap *two pair of panniers* upon his back? The man said, no, there was no fear of that. Why then, says the ass, I'll not stir an inch; for what is it to me who my master is, since I shall but carry my *panniers,* as usual."

There is not the most distant hope, that we ever shall have a navy under 3.9.29
this constitution which annihilates the state governments; for, if each state were to retain its *sovereignty,* I am well convinced, that we might have a considerable *fleet* in a few years: The larger states might each build a ship of the line every year, and the lesser states would furnish us with frigates: A noble emulation among the states would be the consequence; one state would vie with another; and public spirited individuals would contribute generously to raise the character of their own state. But this consolidation of all the states into one general government, renders this project impossible; the federal government having an unlimited power in taxation, which no doubt, they will exercise to the utmost; leaves the states without the means of building even a *boat.* But had they money, they dare not use it for that purpose; for, Congress are to have an absolute power over the *standing army, navy and militia;* so that it is out of the question whether a particular state be, or be not, able to build a ship of war; she must meddle with no such matter; it only belongs to the Emperor and our well-born Congress to build and maintain a navy. Now if we give ourselves time to think but for a moment, we must be convinced in our minds, that Congress having a large national debt already accumulated, the Emperor, themselves, their judges, lawyers, revenue-collectors, dependants, flatterers, &c. &c. and above all the *standing army,* at least *double officered,* to provide for, will find themselves at their wits-end to devise *ways* and *means* for all these purposes. In short, the industry of three millions of people were it all applied to this use, would be little enough. Where then will the *navy* come from, where will Congress find money even to build and maintain cutters to prevent smuggling on the extensive coast of America? No where truly: Such a supposition is farsical indeed: And should the new constitution be established, a federal navy is a mere finesse, an absolute nonentity.

The Congress must procure money to pay the *standing army punctually,* 3.9.30
come of other matters what will; their very existence depends on this. For a neglect of payment might, and really would, cause a mutiny in the military; and then down tumbles the federal constitution, whose *mighty basis* was said to be at the center of the earth: The standing army will be its grand supporters.—now if these give way, the building itself will be instantly levelled to the ground. And Heaven grant that Columbia may never see such another erected again on her domain. Amen.

Philadelphiensis, No. 4.

V

This is true liberty, when free born men
Having to advise the public may speak free;
Which he who can, and will, deserves high praise;
Who neither can, nor will, may hold his peace;—
What can be juster in a state than this?[14]

My Fellow Citizens,

3.9.31 If the arbitrary proceedings of the convention of Pennsylvania do not rouse your attention to the rights of yourselves and your children, there is nothing that I can say will do it. If the contempt and obloquy with which that body (whose legality even may be questioned) has treated your petitions, can not bring you to think seriously, what then will? When a few Demagogues despising every sense of order and decency, have rejected the petitions of the people, and in the most supercilious manner, triumphed over the freemen of America, as if they were their slaves, and they themselves their lords and masters. I say that if such barefaced presumption and arrogance, such tyrannical proceedings of the men, who, if acting constitutionally, were the servants of the people, be not sufficient to awaken you to a sense of your duty and interest, nothing less than the goad and the whip can succeed: your condition must be like that of the careless and insecure sinner, whom neither the admonitions nor entreaties of his friends, nor even the threatnings of awaiting justice, could reclaim or convince of his error; his reformation is neglected until it is too late, when he finds himself in a state of unutterable and endless woe.

3.9.32 It may be asserted with confidence, that besides the petitions that Mr. Whitehill presented to the convention from Cumberland county against the adoption of the new constitution, there is not a country [county?] or town in the state that should not have followed the example, if a reasonable time had been allowed for the petitions to come in. Now if we consider but for a moment how contemptuously the people were treated on this occasion, we may form some idea of the way in which they are hereafter to be governed by their *well born masters*. "The petitions being read from the chair. Mr. M'Kean said he was sorry that at this stage of the business so *improper* an attempt should be made; he hoped therefore that the petitions would not be *attended to*." (Pennsylvania Herald.)[15] Where is the freeman in America that can tamely suffer such an insult to his dignity to pass with impunity; where is that pusillanimous wretch who can submit to this contumely? Is not this the language of Britain, in the years 1775 and 1776, renewed. What said George the third and his pampered ministers, more than this, to the petitions of America? Is it improper for freemen to petition for their rights? If it be; then I say that the impropriety consisted only in their not *demanding* them.

Propriety requires that the people should approach their representatives with a becoming humility; but the governors of a free people must ever be considered as their servants, and are therefore bound to observe decency towards them, and to act according to their instructions and agreeably to conscience. If the petitions of the freemen of America, couched in decent and respectful terms, will not be attended to; then be it known, that their *demands* must and will be granted: If no better will do, the ultima ratio regum must secure to the people their rights. God in his providence has crowned them with success once already on this head; and there is little doubt, with the same assistance, but a second attempt will terminate just as much in favor of liberty.

3.9.33 The indignity offered to the people and their petitions, by the haughty lordlings of the convention, proclaims the chains of despotism already firmly riveted; like a herald it cries aloud, hush ye slaves, how dare you interrupt your *mighty rulers*, who alone have a divine right to establish constitutions and governments calculated to promote their own agrandizement and honor. Ah my friends, the days of a cruel Nero approach fast; the language of a monster, of a Caligula, could not be more imperious. I challenge the whole continent, the *well born and their parasites,* to show an instance of greater insolence than this, on the part of the British tyrant and his infernal junto, to the people of America, before our glorious revolution. My fellow citizens, this is an awful crisis; your situation is alarming indeed; yourselves and your petitions are despised and trampled under the feet of self-important nabobs; whose diabolical plots and secret machinations have been carried on since the revolution, with a view to destroy your liberties, and reduce you to a state of slavery and dependence: and alas! I fear they have found you off your guard, and taken you by surprise: there aspiring men having seized the government, and secured all power, as they suppose, to themselves, now openly browbeat you with their insolence, and assume majesty; and even treat you like menial servants, your representatives as so many conquered slaves, that, they intend to make pass under the yoke, as soon as leisure from their gluttony and rioting on the industry of the poor, shall permit them to attend such a pleasing piece of sport.

3.9.34 But I trust, these petty tyrants will soon find to their confussion, that their own imprudent zeal has defeated their designs. Providence has ordered, that they should begin to carry their arbitrary schemes too soo[n] into execution, that, their boundless ambition should precipitate their destruction, and that the glory of God should be made perfect in the salvation of the poor. Blessed be his name, "He hath shewed strength with his arm; he hath scattered the proud in the imagination of their hearts. He hath put down the mighty from their seat, and exalted them of low degree. He hath filled the hungry with good things, and the rich he hath sent empty away."[16] As a villain, who, secreted to rob and murder in the silent hour of night, issues forth from his

lurking place before the people have retired to sleep, and thus frustrates his infernal design by impatience; so in like manner the lust of dominion has urged these despots on to the adoption of measures that will inevitably, and, I hope, immediately unhinge every part of their conspiracy against the rights of their fellow-men, and bring on themselves infamy and disgrace.

3.9.35 Figure to yourselves, my brethren, a man with a plantation just sufficient to raise a competency for himself and his dear little children; but by reason of the immoderate revenue necessary to support the *emperor*, the illustrious *well born Congress, the standing army*, &c. &c. he necessarily fails in the payment of his *taxes;* then a hard-hearted federal officer seizes, and sells, his cows, his horses, and even the land itself must be disposed of to answer the demands of government: He pleads unfruitful seasons, his old age, and his numerous, and helpless family. But alas! these avail him nothing, his farm, his cattle, and his all are sold for less than half their value to his wealthy neighbour, already possessed of half the land in the county, to whom also himself and his children must become servants and slaves, or else perish with hunger and want. Do I exaggerate here? No truly. View the misery of the poor under the despotic governments of Europe and Asia, and then deny the truth of my position, if you can. It is a common saying among the poor of Indostan, that to lie is better than to stand, to sleep is better than to wake, but death is best of all; for it delivers them from the cruelty of their nabobs. Even in the freest country in Europe, a lady's lap-dog is more esteemed than the child of a poor man. O God, what a monster is man! that a dog should be nourished and pampered up by him with dainties; whilst a being, possessed of knowledge, reason, judgement, and an immortal soul, bought with no less a price than the blood of our divine Redeemer, should be driven from his door, without admitting him even for a moment to assuage his hunger with the crumbs that might fall from his table.

3.9.36 But the members of the Federal Convention were men who have been all tried in the field of action, say some; they have fought for American liberty: Then the more to their shame be it said; curse on the villain who protects virgin innocence only with a view that he may himself become the ravisher; so that if the assertion were true, it only turns to their disgrace; but as it happens it is not true, or at least only so in part: This was a scheme taken by the despots and their sycophants to bïass the public mind in favor of the constitution; for the convention was composed of a variety of characters; ambitious men[,] Jesuites, tories, lawyers, &c. formed the majority, whose similitude to each other, consisted only in their determination to lord it over their fellow citizens; like the rays that converging from every direction meet in a point, their sentiments and deliberations concentered in tyranny alone; they were unanimous in forming a government that should raise the fortunes and respectability of the *well born few*, and oppress the plebians.

Philadelphiensis, No. 5.

VI

Distress'd Columbia, must thou lie so low?
Must all thy conquests, glories, triumphs, spoils,
End in thine own disgrace?[17]

My Fellow-Citizens,

If America is to become a respectable nation, the people must retain their freedom in the fullest extent possible; this is the *sine qua non* of our respectability; on this alone must the strength, honor, and national character of this country depend. Indeed, any other system defeats the intention of the revolution; freedom was the ultimate object of the war with Britain, and must, from the nature of things, be the object as long as America remains an independent country. The Turkish empire was established by cruelty and dominion, by the swords of bigotted infidels, whose religion taught them to murder without remorse: probably then, that empire should have been extinct long ago, if the same system of despotism and cruelty had not been preserved; (although there are some authors who affirm that even in Turkey great and valuable privileges have always been enjoyed) but be that as it may, the case is widely different with us; nothing short of pure liberty is consistent with revolution principles; the *temple of freedom* that was raised in America, was intended by Providence to be the asylum of the poor and the oppressed of every nation and every clime. If then we prostitute this hallowed edifice, to purposes for which Providence never designed it, our ruin is inevitable. Our national independence will probably not survive the loss of our liberties a single day. As darkness brings the night, so despotism will obliterate the very name of the American empire. 3.9.37

It is a principle almost universally confirmed by the joint evidences of reason and experience, that that nation which is most free, is always most victorious; people who enjoy their civil and religious liberty, according to the true sense and meaning of the phrase, are laborious and brave. As the nature of a free government is to protect the lives, liberties, and property of the people, that each may enjoy what he hath by honest industry acquired; so it will be the temper and nature of that people, voluntarily to fight in defence of that government; for its interests and preservation is the same as their own. Hence, under a free constitution which secures the rights and privileges of the people, we will find courage, fortitude, and an unshaken loyalty to that government: but on the contrary, where despotism and tyranny prevail, the people are indolent and pusillanimous, backward to toil and fight in support of a government which their interest must lead them rather to see annihilated than preserved. If we take a view of ancient or modern history, we will find that freedom and superiority have ever gone hand in hand. The history of England affords us many striking instances to 3.9.38

illustrate this truth; the party that fought for the country, in civil broils, has always been victorious over the faction that endeavoured to enslave it. But why need I advance examples to prove a point, that the bare mentioning of the American revolution seems to put beyond controversy. If the history of the Turkish empire does not afford an exception to this principle, *that freedom and victory are inseparable*, there can be none found that I know of, without the conquest of the island of Corsica, by the French, be admitted as one; which certainly ought not, for it rather shows that freemen contending for their liberties are invincible.

3.9.39 Since it is obvious from what has been said, that the energy and national strength of America are concomitant with her freedom; it follows then that the adoption of the new constitution which ncessarily destroys the latter, must of consequence destroy the former: This constitution, in the first instance, will lop off above one half of our sacred rights and privileges, for which we bled and conquered; and the remainder are generally left insecure, and therefore must eventually be lost too; for the cursed lust of dominion can never be satisfied until it is in possession of all power, yea, it even then will be discontent, for it is insatiable. If America is to be *great* she must be *free;* freedom is her heart, her very life-blood; and the liberty of the press, like the great aorta, the prime artery, must convey it to the remotest parts of the extremities. That the adoption of this new constitution, in toto, will destroy the freedom of the press, and every other right and liberty that should adorn the freemen of America, has been proved in a clear and masterly manner by many patriotic writers, even before the dissent of the virtuous minority of the convention of Pennsylvania appeared;[18] but this gives the matter a finishing stroke: he who denies the evidence of their positions is either a designing villain, or one who insults his own reason, and declares himself incapable of judging right from wrong, or freedom from slavery, and consequently unworthy of enjoying American liberty.

3.9.40 The political alchymist, Dr. Rush, in his fulsome speech, that he has so assiduously published, patched, and re-published in all our newspapers, says, that our adoption of the new constitution will "produce paleness and distress at the court of St. James's."[19] From such a fallacious assertion, one would imagine that the Doctor must suppose the people of the United States are already as blind as he would wish to make them, if he thinks they will swallow this his bolus of deceit; such a declaration may probably work upon the prejudices of an American reader, but can never convince his reason. The assertion is false, take it in what sense you will; whether the Doctor meant that the adoption of this system of government will produce our *misery* or *prosperity*, he is equally wrong. That our establishing a despotic government possessed of every necessary power and qualification for annihilating the freedom of the people, and reducing them to the lowest state of slavery and wretchedness, should excite paleness and distress at the court of London is truly paradoxical; the sentiments of that nation must

have undergone a great change indeed; a greater change certainly than any man of common sense can credit. I know there are many good men of patriotic hearts and friends of American liberty in Britain, who will feel the most poignant grief when they hear of its adoption; but that these are of the court party, I can scarce believe: and I question much whether we should not doubt the sincerity of a positive and official declaration of the court, sympathizing with us in our sorrow. So that, upon the whole, I think it is pretty obvious, that the court of St. James's will not be much distressed at our misery. And that the British government should be distressed on account of our prosperity that must result to this country from our adoption of this system of government is a sophistical faslehood, that a grain of reason is sufficient to detect: Britain will never be distressed by reason of our prosperity under this constitution; for the truth of the matter is, we cannot *prosper* under it, but on the contrary, we will sink into misery and contempt; and probably cease to be an independent nation: This is a consequence that every politician will necessarily and quickly draw, and that the British, or any other government, must comprehend in an instant: Neither *energy*, *strength* nor *respectability* can exist a moment in America after the adoption of this tyrannical government.

3.9.41 There are several who have imagined that this government will for some time be a moderate aristocracy,[20] but end in a despotic monarchy; but this is a mistake; for it must commence in despotism: if ever it has a beginning. A large *standing army* will be absolutely necessary to set it in motion; I say a large standing army, for a small military force would only excite opposition in its enemies, and encourage them to attempt its destruction, by an appeal to arms. The impolitic conduct of Britain at the commencement of the American war, is a lesson for despotic governments in future; a decisive blow must be struck at once, otherwise liberty may triumph.

3.9.42 The advocates of the new constitution must be pretty well convinced by this time, that there are in every state a considerable number of people, perhaps one half of the whole, disaffected to it: now if nine states should really come into the measure, would it be prudent to compel the rest. I think not; although it is already whispered about, that if Virginia or any of the southern states should not adopt it, that force will certainly be applied; but this is Utopian altogether, nor can I conceive even if every state in the union should adopt it, how this *faction* can be crushed, and crushed it must be effectually, before this government is firmly established: I even doubt, whether all the military that the *well born* and their parasites can raise, will compleat this piece of business to their satisfaction. Has not America already shewn to the world that no power on earth can overcome a *phalanx of freemen* defending their sacred liberties?

3.9.43 Many patriotic writers wishing to compromise matters between the friends and enemies of the proposed government, have imagined that the difference might be amicably settled, if a declaration of rights were prefixed

to the constitution, so as to become a part of it; and therefore have recommended this to the parties as a necessary measure to reconcile them again to each other: But these good men did not consider that a declaration of rights would effectually annihilate the constitution; of this however, its advocates were well aware, and consequently could not consent to the amendment. No, no, the haughty lordlings and their sycophants must have no *limits* set to their power; they alone should rule; yes, and rule as they *list* too; why should any poor paltroon speak of rights? Why, to work as a slave for his *well born master*. Ah, my fellow citizens, this is a trying moment! an awful time indeed! Is it possible that the freemen of America should lose their liberties so soon? I hope not; and I trust, that the Lord, who is the friend of the poor and oppressed, will defeat the purposes, and confound the counsels of their haughty enemies; so that "they shall take them captives whose captives they were, and they shall rule over their oppressors."[21] *Amen*.

Philadelphiensis. No. 6.

VII

3.9.44 Common sense said, that, in case America became an independent nation, *neutrality* would be a safer convoy than a *man of war:*[22] Probably Mr. Paine thought so, when he wrote; but if he did he thought wrong: For the position ought to be reversed.—*A man of war* is a safer convoy than *neutrality;* or at least, without a naval convoy there is no safety in neutrality. If America is to be a commercial neutral power, she ought to have some naval strength to intitle her to the appellation. We all know that the *armed neutrality* of the northern European powers injured the trade of Britain more, during the late war, than the combined fleets of her open enemies. If a war should now commence between Britain and France or any of the nations who have possessions in America; can America remain a neutral *power*, or join in an armed neutrality for the protection of her commerce? No. Neutral she may be, and neutral she must be, and nothing else; and as for her being called a *power* it is a mere solecism, as long as she has no navy: Her trade may be destroyed with impunity; her seamen taken to man the fleets of her enemies, without the possibility of redress; and her government insulted and her cities laid in ashes by her enemies ships riding triumphant in her rivers and harbours, without being able to help herself, or retaliate.

3.9.45 But however necessary a fleet may be for the protection of our *seamen, commerce, and national honor*, it is pretty plain, that as long as the proposed government would exist, (if ever it should be established) we must do without one: That government must at least for some years be administered

by a standing army. Nothing short of despotism can reduce the disaffected part of the people to submit to it, who are the friends to liberty and the rights of human nature. Those who say that its enemies are a few insignificant individuals, talk something like the British ministry at the commencement of the war, who represented the American discontents, as a parcel of cowardly paltroons, whom they would soon bring to obedience, by a handful of military; but a short time convinced them of their mistake.

3.9.46 As the spirit of the new constitution admits of a standing army, and the opposition absolutely must be crushed by strength, every nerve of power must be strained, and every way and means of collecting money devised, for raising an *efficient army* for this purpose, in the first instance. This is a system of procedure that the despots must pursue, if they have any hopes of success. Either moderation or delay would effectually defeat them.

3.9.47 I question whether all the *hard money*, that the well born can procure at this juncture, will be sufficient to support their government and army for six months; without expending a single shilling on building a federal navy. The greater part of that junto are extremely poor; and have their hopes of agrandizement on the new government; now if a part of the people refuse to pay taxes to that government, as they certainly will, how will they provide for the national debt; how will these poor gentlemen make their fortunes; how will they pay their *standing army*, to whom they owe their existence; a few interogatives of this sort must shew clearly, that a single ship of war will never be built while this great government is in operation.

3.9.48 It is generally said, that the present distresses of America are in consequence of the want of the states delegating sufficient powers to congress: This is right in part, for the powers of congress were certainly too limitted to promote the general good of the union; but little power as that body had, they have not managed it well; indeed if they had had any more and the number of members so small, we would have had a tyrannical aristocracy established long ago; and the country involved in more misery. That body never attempted to build a navy; but, on the contrary, to complete our disgrace, sold the only ship of war we had, the Alliance frigate, for a mere song: They have found money however, to pay their *well born* ambassadors at the different European courts, and squandered away money on guilded swords, presents to Baron ____,[23] &c. &c. &c. and they have even had credit to negociate loans lately; but not a farthing could be spared to employ our poor mechanics to build a few frigates, by which a thousand honest families might have been saved from starving, and prevented from emigrating from the country, and our commerce and national respectability preserved. This is a specimen of the plan of our new system of government. When the present peddling and limited congress have taken such arbitrary steps, so diametrically opposite to the interest of the public good, what may we not expect from the friends of the new constitution? The poor working-

man is not to be thought of except his work will add to the character and dignity of the lordling nobility.

Philadelphiensis, No. 7.

VIII

This is true liberty; when freeborn men,
Having to advise the public, may speak free;
Which he who can, and will, deserves high praise,
Who neither can, nor will, may hold his peace—
What can be juster in a state than this?[24]

3.9.49 Hail, immortal genius!—hail, thou friend of freedom, and of thy fellow-men, whose patriotic pen first wrote this divine sentiment, "Let it be impressed upon your minds, let it be instilled into your children, that the liberty of the press is the palladium of all civil, political, and religious rights of freemen."[25] This is the scourge of tyrants, oppressors, villains, and blood-suckers; the bulwark of freedom, that causes the haughtiest lordling to tremble; an inestimable jewel, that places the poorest citizen on a level with the richest demagogue. In America the freedom of the press is peculiarly interesting: to a people scattered over such a vast continent, what means of information or redress have they, when a conspiracy has been formed against their sacred rights and privileges? None but the press. This is the herald that sounds the alarm, and rouses freemen to guard their liberty. From this scourge, the parricide, the knave of power and his cringing sycophants have every thing to fear; it hurls fury on the guilty heads of such base characters, and drags them to the public altar—And through the medium of the press, the *good and the patriotic* citizen receives the thanks of his grateful countrymen.

3.9.50 The sons of freedom who framed the constitution of Pennsylvania, expressly declared this to be one of the unalienable rights of the people, and therefore it ought not to be restrained. That some evils attend an unrestrained press, is obvious; but these are infinitely overbalanced by its advantages. The very salvation of America, I trust, will be wrought out by it; and the *conspirators* be taken by their own snares, which they so artfully set to seize the liberties of their fellow citizens, to their extreme mortification and disgrace.

3.9.51 In my first number, I took notice of some attempts, made by some of the *well born* or their parasites, to destroy the freedom of the press. A scheme was then proposed, that every writer, for or against the constitution, should leave his name with the printer, to be published if required. This plan was first set on foot in Boston, and adopted by some of the printers there; in

consequence of which, a gentleman under the signature of *A Pennsylvania Mechanic*, recommends a similar conduct to the printers of Philadelphia—And a few days after, another, under the signature of *Galba*, carries the system something higher; for he must have the villains only who wrote against the new government to leave their names for publication, while the *patriotic gentlemen* who wrote in favour of it, might walk at large.

3.9.52 Either through my reply, the terrors of a guilty conscience, or probably both, we heard no more of these press-fettering gentlemen until Monday last, when a writer in the Independent Gazetteer, under the signature of *One of the whigs of* 1776, comes forth with an improvement upon the original plan.[26] As he says "he has been bred a *mechanic*," I conceive he is the identical *Pennsylvania Mechanic*, who, we formerly observed, must be a blacksmith, employed in the service of the *well-born* to construct chains for confining to perpetual slavery the rest of his fellow-citizens. As his method of obtaining the names of the patriotic writers is tolerably clever, it deserves our particular notice. He says that he has left his name with the printer, and hopes the opposite writers will have no objections to do the same, to the end that he may have a private interview with them, and probably they may then make a convert of him. This is a pretty decent kind of a *trap* of the blacksmith's construction; but let him recollect the old proverb, *There is no catching old birds with chaff;* and then, I think, he will soon find that his *interviews and conversions* are rather visionary.

3.9.53 Tyrannical men are generally cunning, and hence they use deceitful arguments, with all the appearance of plausible equality. The author of a piece, say they, ought to give his name, for no man should write what he is ashamed to own. There is an appearance of candour in this argument, which renders it dangerous; but if we consider the thing more attentively, we shall find, that such a system would be subversive of truth and free enquiry, and eventually annihilate the freedom of the press.

3.9.54 When a political writer gives his name with his piece, he then shews where the opposite party may aim their shafts of malice, falshood, and scurrility, with certainty and success. Will a man, for his own sake—or if he has friends, family and endearing connections in life, still more for their sake; venture to expose his interest, his property, and perhaps his life, to the mercy of a revengeful, and probably a powerful party? He certainly will not, if he has common sense; and yet if he gives his name, this would necessarily be the consequence—All investigation of the subject would cease; the whole attention would be drawn off to another object; reason and argument must give place to personal invective and scurrility. When a person writes upon a national subject, he appeals to the public, who have nothing to do with the man himself, but with his sentiments: If his arguments and illustrations are well founded, they ought by all means to be published, as they tend to promote the general good; but if they are of a false or dangerous nature, let them be refuted.

3.9.55 The friends of the new constitution have used every method and device, that their power, their cunning, or their influence could have access to, in order to restrain the liberty of the press respecting that despotic scheme of government; but to their confusion be it remembered, that there were printers in Philadelphia beyond their influence or corruption: No city in the Union has afforded such illustrious instances of independence and patriotism among printers. While such a noble spirit exists among these men, there is little danger of the new government ever being established. The despots and their parasite are well aware, that if they could restrain the freedom of the press, all would be their own; hence they have pursued the object with unremitting zeal, and have in some measure succeeded. They have, I am told, by threats and by withdrawing subscriptions, stopt the publication of the debates of the Convention in the Pennsylvania Herald, and otherwise injured that paper so far, that the printer must cease publishing.[27] If such conduct as this be not sufficient to rouse the people of America to a sense of their duty, they must become the scorn of the whole world—a mere bye-word of contempt.

3.9.56 The advocates of this government say, that if nine states come into it, they will proceed to organize and put it in operation. They hug themselves up in the idea, that its enemies will cease their opposition and submit peaceably. How they came to make such a silly conclusion, is to me matter of surprise, as I never have observed the smallest change of sentiment among the patriotic gentlemen with whom I have conversed. From some of the writings of its friends, it seems probable, that this idea sprang from the circumstance of the Declaration of Independence. That measure was carried by a bare majority in some of the states, yet the minority gave way and joined cordially in it.—If there were any similarity between the circumstances of the Declaration of Independence and the adoption of the proposed Constitution, this argument would have some weight; but the premises are widely different, and consequently the inference inconclusive. The whole body of the people were determined to defend their liberties, at the hazard of their lives and fortunes, against the tyranny of the British government; so that there was a union of sentiment in respect of the great object, the only difference was in the means of obtaining it; in this case, then, common sense must have pointed out the expediency of the minority accommodating their private sentiments to those of the majority.

3.9.57 But the matter now in debate has no relation to that: the men opposed to the new constitution have the same cause to defend, that the people of America had during the period of a seven years war. Who is he so base, that will peaceably submit to a government that will eventually destroy his sacred *rights and privileges?* The liberty of conscience, the liberty of the press, the liberty of trial by jury, &c. must lie at the mercy of a few despots—an infernal junto, that are for changing our *free republican government* into a tyrannical and absolute monarchy. These are what roused the sons of

America to oppose Britain, and from the nature of things, they must have a similar effect now.

Philadelphiensis, No. 8.

IX

Instamus tamen immemores, cœcique furore,
Et monstrum infelix sacrata sistimus arce.

VIRG.

TRANSLATION.
Thus we, by madness blinded and o'ercome,
Lodge the dire monster *in the sacred dome.*[28]

My Fellow-Citizens,

Before *martial law* is declared to be the supreme law of the land, and your character of free citizens be changed to that of the subjects of a *military king*, which are necessary consequences of the adoption of the proposed constitution, let me admonish you in the name of *sacred liberty*, to make a solemn pause. Permit a freeman to address you, and to solicit your attention to a cause wherein yourselves and your posterity are concerned. The sun never shone upon a more important one: It is the cause of freedom—of a whole continent—of yourselves and of your fellow men. 3.9.58

Men who have so gloriously asserted the rights of human nature, and overcome tyranny, one ought reasonably to suppose could not have their spirits so much broken as peaceably to submit to it a few years afterwards. By the declaration of peace, wherein Britain acknowledged the independence and sovereignty of the United States, the people of America became citizens of the freest country under heaven. But under the proposed plan of government the least fragment of liberty cannot exist. 3.9.59

The writers against the proposed constitution are denominated, by the *aristocratics, incendiaries,* and enemies to America, men whose writings tend to involve this devoted country in anarchy, and in all the horrors of a civil war. Now, in reply to this charge; let me ask the friends of this government, is that man an *incendiary* who advocates the unalienable rights of the people? Is he an enemy to America who endeavors to protect the *oppressed* from the *oppressor;* who opposes a conspiracy against the liberties of his country, concerted by a few *tyrants*, whose views are to lord it over the rest of their fellow citizens, to trample the poorer part of the people under their feet, that they may be rendered their servants and slaves? If such a writer is an incendiary, and an enemy to America, then I glory in the character. A conspiracy against the freedom of America, both deep and dangerous, has 3.9.60

been formed by an infernal junto of demagogues. Our thirteen free commonwealths are to be consolidated into one *despotic monarchy*. Is not this a position obvious? Its evidence is intuitive; and the address and dissent of the minority of the convention of Pennsylvania add such strength to its illustration, that no man of common sense can refuse his assent.[29] But why need I attempt to prove a point, that that honest man and firm patriot, Mr. MARTIN, says the monarchy men of the federal convention declared was their intention.[30]

3.9.61 Who can deny but the *president general* will be a *king* to all intents and purposes, and one of the most dangerous kind too; a king elected to command a standing army? Thus our laws are to be administered by this *tyrant;* for the whole, or at least the most important part of the executive department is put in his hands.

3.9.62 A quorum of 65 representatives, and of 26 senators, with a *king* at their head, are to possess powers, that extend to the *lives*, the *liberties*, and *property* of every citizen of America. This novel system of government, were it possible to establish it, would be a compound of *monarchy* and *aristocracy*, the most accursed that ever the world witnessed. About 50 (these being a quorum) of the *well born*, and a *military king*, with a *standing army* devoted to his will, are to have an uncontrouled power over our lives, our liberties, and property, in all cases whatsoever. Is he an incendiary who abhors the thought of such a government, who declares it his opinion, that none but a sycophant or a slave could submit to it? I think not; and there is no power under heaven that could cause me to change my opinion; which has the joint evidences of reason and experience for its foundation.

3.9.63 There is not a tincture of democracy in the proposed constitution, except the nominal elections of the president general and the illustrious Congress be supposed to have some colour of that nature; but this is a mere deception, invented to gull the people into its adoption. Its framers were well aware that some appearance of election ought to be observed, especially in regard to the first Congress; for without such an appearance there was not the smallest probability of their having it organized and set in operation. But let the wheels of this government be once cleverly set in motion, and I'll answer for it, that the people shall not be much troubled with future elections, especially in choosing their *king*, the *standing army* will do that business for them.

3.9.64 The thoughts of a military officer possessing such powers, as the proposed constitution vests in the president general, are sufficient to excite in the mind of a freeman the most alarming apprehensions; and ought to rouse him to oppose it at *all events*. Every freeman of America ought to hold up this idea to himself, *that he has no superior but God and the laws*. But this tyrant will be so much his superior, that he can at any time he thinks proper, order him out in the militia to exercise, and to march when and where he pleases. His officers can wantonly inflict the most disgraceful punishment

on a peaceable citizen, under pretence of disobedience, or the smallest neglect of militia duty.

Among the substantial objections to the great powers of the president, 3.9.65
that of his *negative* upon the laws, is one of the most inconsiderable, indeed it is more a sound than any thing else; For, if he be a bold enterprising fellow, there is little fear of his ever having to exercise it. The two branches of the legislature, will be at his service; no law contrary to his sentiments, however salutary in its operation, dare be mentioned by them. As a body, and as individuals, they will be his sycophants and flatterers. But, if on the contrary he should not be a man of spirit, a thing very improbable, as none but an ambitious man, well versed in the ways of men, could have the address to be raised to that elevated station; if, however, I say, he should not be a man of an enterprising spirit, in that case he will be a *minion* of the aristocratics, doing according to their will and pleasure, and confirming every law they may think proper to make, without any regard to their public utility.

Every idea of such unlimited powers being lodged in so small a number of 3.9.66
the *well born,* elevated so far above the rest of their fellow citizens, and supported by a *king* with a *standing army* at his disposal, ought to cause the blood of a free citizen to boil with indignation: the very mentioning of it shocks my whole frame. I abhor the thought from my soul: And I flatter myself that the people of this continent will not suffer such a government to be placed over them. Indeed it astonishes me, that the conspirators who framed it, had not the most dreadful apprehensions of their personal safety, from the just resentment of the freemen of an insulted country.

To such lengths have these bold conspirators carried their scheme of 3.9.67
despotism, that your most sacred rights and privileges are surrendered at discretion. When government thinks proper, under the pretence of writing a libel, &c. it may imprison, inflict the most cruel and unusual punishment, seize property, carry on prosecutions, &c. and the unfortunate citizen has no *magna charta,* no *bill of rights,* to protect him; nay, the prosecution may be carried on in such a manner that even a *jury* will not be allowed him. Where is that *base slave* who would not appeal to the *ultima ratio,* before he submits to this government?

If the despots persist in pushing it on, let them answer the consequences; 3.9.68
they may fall a sacrifice to their own obstinacy; for liberty will triumph over every obstacle, even were a *standing army* opposed to it.

To preserve the peace of the country, every patriot should exert himself at this awful crisis, and use his influence to have another federal convention called as soon as possible; either to amend the old articles of confederation, or to frame a constitution on revolution principles, that may secure the freedom of America to the remotest time.

If the State of Massachusetts should reject the proposed constitution, of 3.9.69
which there is a strong probability, what a contemptible figure must its

advocates make, who, after it made its appearance from the *dark conclave*, affirmed that there was but *five men* opposed to it in the United States.[31] The convention of that state was chosen in the moment of blind enthusiasm, and yet we find it so much divided that the issue is doubtful. The sentiments of the people are changing every day, and were that convention to be elected now, I doubt not but four fifths would be against it. In the back counties of Pennsylvania, where the *well born* have no influence, the opposition is said to have become so powerful that a person would be in danger of losing his life, if he ventured to speak a word in its favor.

3.9.70 The conspirators saw clearly, that such a system of government could never be established over freemen, except they were taken by surprize; and hence they hurried matters forward with that view; in short, the people were made to believe, that they were all *dead men*, if they did not adopt it immediately. Even still they are endeavoring to hold up the idea of anarchy being the consequence of rejection: But he must have very weak intellects indeed, and [be] little acquainted with the spirit of freemen, to whom it is not obvious that adoption will produce anarchy and ruin.

3.9.71 No evil can result from calling another general convention, but much good would be the consequence. The distresses of America are not of that nature to be healed all of a sudden; some of them indeed have arisen from the defects in the general government; but there are others of a different kind, that must be removed by time, and by the prudence of the people at large.

3.9.72 Ye patriots! ye lovers of peace, of liberty, and of your fellow men! Ye are called upon at this solemn juncture, to stand forth and save your country; before the breach is too wide, and while the parties may still be reconciled to each other; before anarchy stalks through the land; and before the sword of civil discord is unsheathed. For the sake of every thing that is great and good, and as you shall answer for it at the great tribunal, use your influence to procure another general convention with all possible speed, as the only way left to preserve the union of America, and to save your fellow citizens from misery and destruction.

Philadelphiensis. (No. IX.)

X

My Fellow-Citizens,

3.9.73 If stupid irony, falsehood, scurrility, and abusive language, be sufficient to silence a writer in the cause of freedom, my sentiments must have been suppressed long ago; but that old saying, that *nothing cuts like the truth*, has

encouraged me to address you once more. Probably this essay may be more obnoxious to the friends of the proposed plan of government than any of my former publications; and if so, the above saying is farther confirmed. A freeman must have a *little soul* indeed, whose attention can be diverted from its proper object, by the schemes practised by the friends of unlimited dominion. His own happiness, as being connected with the happiness of his fellow-men, ought to be his chiefest good. The *divine founder* of our religion and his beatified followers had no aim but this, and they pursued it with a zeal consistent with its excellence.

If the proposed plan be a good one upon the whole, why should its friends 3.9.74
endeavour to prevent investigating its merits or defects? Why should they hurry it on us before we have even read it? Does not this look suspicious like? Is it not a proof that it is the works of darkness, and cannot bear the light? Why should they summon a Convention in Pennsylvania, before the tenth part of the people had time to judge for themselves, or to know whether it was a free or a tyrannical system of government? Why employ bullies to drag some members of the Assembly per force to the House to make a quorum, in order to call a Convention?[32] The answers of these interrogatives are obvious, and the conclusions deduced from them will in time have their proper effect.

The principles of its framers are now clearly understood; the proceedings 3.9.75
of the *dark conclave* have undergone an *ordeal* in Maryland, that exhibits the monarchy-men in convention as a set of the basest conspirators that ever disgraced a free country.[33] At the time that these men were plotting the ruin of their country, and forming a system of national cruelty unequalled in the annals of time, the unsuspecting freemen of America were blessing them, were praying for them in their private families, and in their public churches, and looking up to them for relief; they even called the federal convention an *august body, the most excellent assembly of men that ever appeared in the world.*

The *President-general,* who is to be our *king* after this government is 3.9.76
established, is vested with powers exceeding those of the most *despotic monarch* we know of in modern times. What a handsome return have these men made to the people of America for their confidence! Through the misconduct of these bold conspirators we have lost the most glorious opportunity that any country ever had to establish a free system of government. America under one purely democratical, would be rendered the happiest and most powerful nation in the universe; but under the proposed one, composed of an *elective king* and a standing army, officered by his sycophants, the starvelings of the Cincinnati, and an aristocratical Congress of the *well-born,* an iota of happiness, freedom or national strength cannot exist. What a pitiful figure will these ungrateful men make in history; who, for the hopes of obtaining some lucrative employment, or of receiving a little

more homage from the rest of their fellow creatures, framed a system of oppression that must involve in its consequences the misery of their own offspring? There is but one rational way remaining to prevent themselves from being eye witnesses of a dreadful scene, and that is for them to cease immediately every operation that respects the establishing of this plan of government; and then all parties will join heartily in calling another federal convention, and the peace of the country will be preserved.

3.9.77 One of the members of the virtuous minority of the convention of Massachusetts openly declared in that assembly, that pushing on this accursed system would produce a *civil war:*[34] the freemen of New-England, the best soldiers on the continent, have had their eyes opened, and begin to see through the conspiracy; that sacred palladium of liberty, *the freedom of the press,* has dispelled the cloud, and cleared their understandings. In that state, through the influence of the tyrants of Boston, very little information has reached the people; the *press,* generally speaking, was devoted to the *well-born* and their tools; yet out of near 400 members, of which that convention consisted, only a majority of 19 could be procured, notwithstanding every possible method of overawing, threatening and *bribing* was practised.

3.9.78 I conceive that carrying it by so small a majority, is little better than a rejection; in fact it may prove worse, for the breach is only widened so much the more by it, and truly it was wide enough before. The freemen of Massachusetts will never cowardly surrender their sacred rights and liberties into the hands of one man, or any body of men whatever. They know what freedom is, and they will support it at the risque of their lives and fortunes. Their courage, fortitude, and achievements in the late war have rendered their character, as friends to liberty, immortal.

3.9.79 The amendments proposed by the president will be another source of mischief; the people cannot be so ignorant as to be deceived by so pitiful a manoeuvre. Here is a positive acknowledgement made by one of its advocates, who hopes to be appointed the *little king* if not the *big one,* that it is objectionable; and his amendments are introduced as a blind; the weighty ones are untouched: not a whimper of the extraordinary powers of the *President-general,* the *standing army,* the *liberty of the press, &c.* No, no! if these *glorious parts* be lopped off, what would become of the monarchymen? And respecting *internal taxation,* is not his amendment a disgrace to himself, and an insult to the understanding of the people? Mr. Hancock knows, or ought to know at least, that the liberties of the citizens of America are not to be trifled with: his schemes are too flimsey not to be seen through.

3.9.80 The allegiance of freemen to government will ever be a consequence of protection; the Congress of America withdrew their allegiance from the king of Great Britain when he changed his protection into acts of cruelty; and on the same account the citizens of these United States will not chearfully bear allegiance to the new government; which, instead of protecting them in their

sacred rights and privileges, will be a system of tyranny and oppression. The unlimited powers of the new Congress in respect to taxation, are abundantly sufficient to alarm the people. While the state assemblies retained the right of *internal taxation*, the country farmers could not be burdened beyond their abilities; these men being the true representatives of the people, would never attempt to levy an oppressive tax; their own feelings and interests being congenial with those of their constituents, their consent must be withheld when a measure was proposed subversive of public good.

3.9.81 That the new Congress will not be the immediate representatives of the people, that their number is too small, their powers too great, their accountability to the people not properly secured, and above all the *executive* dangerously placed in the hands of one man, who is really a *king*, have been fully illustrated by many able writers, and ably proved in the conventions of this state and Massachusetts by worthy patriots whose names will be revered as long as time shall remain. Upon the whole, my fellow citizens, if the great characters, who are said to advocate this system of government, wish to act consistently, the greatest proof they can give of their love for their country, is to join the rest of their fellow citizens in endeavouring to call another federal convention.

Philadelphiensis, No. X.

XI

My Fellow Citizens,

3.9.82 Every day opens a new scene of the baseness of the conspirators, their intentions of screening themselves from rendering an account of the public money so fraudulently detained, will rank them among the meanest traitors, that ever dishonoured the human character.[35] How must their consciences condemn them, when avarice and lust of dominion are suffered for a moment to subside, and reason and reflection take their place? Let these men but cooly consider the misery that must inevitably befal millions of their countrymen, in consequence of their treachery in framing this system of fraud and oppression; and remorse and deep anguish of soul must await them! Humanity brings a tear of sympathetic pity from the eye of their fellow men, whose ruin they had secretly projected. As our holy religion expressly enjoins it as a duty, not to return evil for evil, but to overcome evil with good; consequently our resentment against these ungrateful men should be moderated by christian charity: Yet as freemen and citizens, determined to hand down to posterity sacred liberty unimpaired, we are

solemnly bound, at the hazard of our fortunes and lives, to oppose this base attempt of theirs to enslave our country.

3.9.83 If on the broad basis of equity and justice, crimes and punishments have their proper proportion: What punishment then, on the scale of moderation, could counterpoise, or atone, for a crime so aggravated as that charged to the majority of the members of the late federal convention? I assert roundly, that another assembly of men never met in this, or any other country, possessing so fully the confidence of so many freemen: and to their shame be it said, they abused this confidence; their own private interest, private emolument, and hopes of dominion, overcame every consideration of duty, honor, and gratitude.

3.9.84 The citizens of Pennsylvania have nobly shown their love for liberty, and attachment to the true interests of the union, by their generous exertions in favor of public credit. They have rigidly fulfilled their engagements in regard to the general debt; the requisitions of Congress have been strictly attended to, and fully answered. Add to this, that we have sunk a considerable part of the domestic debt, and in fact assumed a larger portion of it than in justice belonged to us. These spirited exertions, while they contributed to the general welfare of the union, and raised the reputation of the state, did not fail however to distress our farmers and every other class and description of citizens, very sensibly indeed.

3.9.85 But what is the result of their unshaken loyalty to the cause of liberty, and the honor of their country? What recompence will the honest and industrious Pennsylvanians receive for their patriotism, if the new government be established? Such a return as perhaps history does not afford a single instance similar to. So base a violation of public justice and plighted faith, is certainly a novelty in politics, and begins a new epoch in history. Pennsylvania, instead of receiving credit for the immense sums she has paid into the general treasury, will be placed on a footing with the most delinquent state in the union; and which is highly probable she and all the other states will be taxed hereafter in an exact ratio of the sums they have hitherto raised. Consequently our former acts of generosity, in support of public faith, is to terminate in a two-fold loss to our citizens. In the first place we have nearly ruined ourselves already, through our punctuality in paying our quota of the public debt; and secondly, to complete the scene, our future quotas of continental revenue will be apportioned to the exertions we have heretofore made: That is in plain terms, Pennsylvania will be much worse under this cruel system of tyranny in consequence of her fidelity and honor, than she would have been had she never attempted to pay a shilling of public debt; or if she be not worse, the uniformity of internal taxation through the union, which is expressly stipulated by the constitution, necessarily places her citizens on a parallel with those of that state which has not paid a shilling of public debt since the peace.

The people of the delinquent states might inconsiderately be induced to triumph in the new system of government; for they may conclude, now our public debts are paid as far forward as those of any other state, but attentive consideration will soon convince them of their mistake. Although the new constitution advances them as high in the public scale as if they had strictly and honorably made good the requisitions of the old Congress: yet the unbounded powers of the new Congress in respect to internal taxation, must eventually fleece them of their all; and from their inability heretofore to pay their just quotas as levied by Congress, we may rationally conclude, that, even the states of Pennsylvania and New-York, which are in advance at present, will still be above them, supposing the extra payments of these two states not to be carried to the credit of their account, which they certainly will not, on the principles of this constitution. 3.9.86

The truth of this matter is simply this; the taxes will hereafter be uniform in all the states, and as oppressive as tyranny can make them. In every state the face of the poor must be ground to dust; and where any appearance of prosperity or wealth is observed, an additional tax will be devised; for so complicated and uncontrouled a government, will find ways and means to apply all the revenue that America can raise; indeed the whole produce of the lands cultivated by three millions and an half of people, could not satiate the desires of such a government. If the *lesser,* or rather *weaker* states would moderate their precipitancy, in urging forward the constitution, by reason and the certainty of misery that stares them in the face, I imagine they would find their advantage in the measure. Lenity in the old Congress has in some degree screened them; and besides their fellow citizens in the other states befriend them; but the high hand of power, so completely vested in the new Congress, will exact the uttermost farthing, both from the states and individuals: No excuse will satisfy the demands of a cruel *excise-man;* we must instantly pay the federal tax, or have our property seized, and ourselves dragged to prison by a federal soldier. 3.9.87

That this government, should it be ratified by nine states, will not possess the confidence of the majority of the people, is a truth incontrovertible. I admit, that through fraud and surprise, many have inconsiderately joined themselves to its deceptive standard; but their number is diminishing rapidly; and I sincerely believe, that in a few months the *office-hunters,* the *well born,* and their sycophants, will be left alone: The farmer, the mechanic, and even the merchant, would be ruined if it took effect; their interest is to oppose it, and to endeavor to have another convention called immediately. 3.9.88

Who is so dimsighted as to suppose that a constitution so essentially differing from the principles of the revolution, and from freedom, and opposed by so respectable a body of freemen, could be established in America; or if it were possible by force or surprise to put it in motion, could it exist 3.9.89

any space of time? Nay, the idea is futile, and common sense spurns at it. While it would exist, it must be by the power of a standing army alone; but its warmest advocates know, that all their credit, and influence could not support a standing army, equal to the business, six months.

3.9.90 It is admitted, that in Great Britain they are scarce ever without violent factions and parties, and yet no injury is apprehended to the country on that account, but generally much good: But let us attend to this matter seriously, and we must see clearly that factions and parties in America in respect to the present important object, would eventually ruin this country. The parties, factions, and cabals, so frequent in Britain, are not from a dislike to the fundamentals of their constitution, but on account of mal-administration: All parties glory in the constitution, and disagree only, when it is infringed, or violated.

3.9.91 To infer then, from the example of Britain, that the opposition to the new government would not terminate in our ruin, if it were adopted by a majority in nine states, would be a dangerous mistake; for there is no analogy between the premises, the conclusions are therefore different. The opposition in America is against the fundamentals of the constitution itself; but this is not so in England. No constitution that is not popular can possibly be established in America; or if for a short time it were established, we would have nothing but anarchy and civil war, while it was in existence.

3.9.92 Let us not be deceived by delusive tales, that it shall be amended after the meeting of the first Congress; since it is admitted almost universally that it wants amendments; now is the time to have them done, while we are at peace abroad, and among ourselves. A fragment of liberty cannot remain, if we once set it in motion in its imperfect state. How can we suppose, that the president general, being once in full possession of his unlimited powers, would deliver them back again to the people; the supposition is preposterous; he must be more than *man* if he would; a more dangerous king is not in the world than he will be; liberty will be lost in America the day on which he is proclaimed, and must be recovered by the *sword*, if ever we are to enjoy it again.

Philadelphiensis, (No. XI.)

XII

My Fellow Citizens,

3.9.93 The essays under the signature of Philadelphiensis are represented as without argument, and their prime object is said to be to involve this devoted country in a civil war.[36] But *time*, the discoverer of future events, will

certainly shew that the calling another Federal Convention is the only rational way to prevent it. Heaven grant that these eyes may never behold that dreadful scene. The writer of these essays was actuated by the purest motives, namely, to defend the liberty and advance the happiness of his fellow-citizens. These he conceived insecure, or rather destroyed, if the proposed constitution should be established, and hence he labored to procure another Convention. The expediency of this measure was demonstrated by illustrating the principal defects in the proposed system;—defects did I say—the expression is too soft—the ruin that must follow its adoption.

If pointing out the unlimited powers of the new Congress over the lives and property of their fellow citizens, which may and certainly would be abused, be not an argument against it, there remains no fixed determinate idea to be annexed to the term argument; indeed, on such principles right and wrong, freedom and slavery have no essential difference, and the human mind is a mere chaos. 3·9·94

Some feeble attempts have been made by the advocates of this system of tyranny, to answer the objections made to the smallness of the number of representatives and senators, and the improper powers delegated to them; but, as far as I recollect, no one has been found bold enough to stand forth in defence of that dangerous and uncontrouled officer, the *President General,* or more properly, our new KING. 3·9·95

A few pieces under the signature of *An American Citizen* were published immediately after the Constitution broke the shell, and the hydra made its way from the *dark conclave* into the open light; in the first number of which the writer, in touching on the *President,* endeavored to conceal his immense powers, by representing the King of Great-Britain as possessed of many hereditary prerogatives, rights and powers that he was not possessed of; that is, he shews what he is not, but neglects to shew what he really is; but so flimsey a palliative could scarcely escape the censure of the most ignorant advocate for such an officer; and since we hear of no further attempts to prove the necessity of a King being set over the freemen of America.[37] 3·9·96

The writer of these essays has clearly proven, that the president is a King to all intents and purposes, and at the same time one of the most dangerous kind too—an *elective King,* the commander in chief of a standing army, &c. and to these add, that he has a negative over the proceedings of both branches of the legislature: and to complete his uncontrouled sway, he is neither restrained nor assisted by a *privy council,* which is a novelty in government. I challenge the politicians of the whole continent to find in any period of history a monarch more absolute. 3·9·97

Who is so base as not to burn with resentment against the conspirators, who have dared to establish such a tyrant over his life, his liberty and property? Is the flame of sacred liberty so entirely extinguished in the American breast as not to be kindled again? No; you mistaken despots, do 3·9·98

not let such a preposterous thought madden you into perseverance, lest your persons fall sacrifices to the resentment of an injured country. Stop at once, and join the rest of your fellow citizens. Let another Convention be immediately called, and let a system of government fitted to the pure principles of the Revolution, be framed. Then a general amnesty among all ranks and degrees of your fellow citizens must succeed, and America become the seat of liberty, peace, friendship and happiness; and her government have ample *energy* and *respectability* among the nations of the earth; yea, she will thereby be rendered the great arbiter of the world.

Philadelphiensis, No. XII.

1. A Pennsylvania Mechanic's reasons for this proposal appear in the portion of his brief essay just preceding that quoted by Philadelphiensis:

"The friends of the new system are not ashamed to show their principles, and their writings, on the subject, while its enemies take every prudent measure to prevent detection.

"I know a gentleman in this city, high in office, who has written much against the new system, not withstanding he has never, in company, uttered a syllable against it. Hence I conclude that the small anti-federal junto are conscious of the wickedness of their proceedings—that their cause is that of the devil—and of it they are truly ashamed. It appears by a late eastern paper . . .[etc.]." For a similar controversy, see [Maryland]Farmer I, 5.1.1 n. 2.

2. The *Independent Gazetteer* reads "right in part," but the *Freeman's Journal* version, given here, is correct. With this correction Galba's statement is given accurately and in full.

3. The *Independent Gazetteer* reads "and that," but the *Freeman's Journal* version, given here, is doubtless correct.

4. For Russell's partial retraction, see IV, 3.9.23. For defenses of the policy of requiring that names be given, see Amen, *Massachusetts Centinel* 13 October 1787, and One of the People, ibid. 17 October 1787.

5. This whole matter is resumed in essay VIII, 3.9.51–55, but the arguments are substantially the same as here.

6. See above, 2.7, 3.3. The first two letters of Centinel and the first five of the Old Whig had been published at this time.

7. Following the *Freeman's Journal* version. The other possibility is of course "carping," but it is unlikely that both printers would have missed the word.

8. The *Independent Gazetteer* version ends here; the paragraph that follows appeared only in the *Freeman's Journal*.

9. Eleazer Oswald was the publisher of the *Independent Gazetteer, or Chronicle of Freedom*.

10. Ephesians 6:13–16.

11. See Centinel III, 2.7.76 n. 39.

12. See above, 2.7, 2.9, 3.3, and below, 6.1.

13. See I, 3.9.4.

14. Euripides, *The Suppliants*, translated by John Milton, who used it as a preface to his *Areopagitica*.

15. McMaster and Stone 420–21. Philadelphiensis omits McKean's argument that "the duty of the Convention was circumscribed to the adoption or rejection of the proposed plan, and such had certainly been the sense of the members, when it was agreed that only one question could be taken on the important subject before us."

16. Luke 1:51–53.

17. Adaptation of Shakespeare's *Julius Caesar* act 3, sc. 1. Anthony: "O mighty

Caesar! dost thou lie so low? Are all thy conquests, glories, triumphs, spoils, shrunk to this little measure?"

18. See below, 3.11.

19. The reference is presumably to Rush's final speech before the Pennsylvania ratifying convention, of which only a brief report survives, and the numerous newspaper essays that he wrote under various pseudonyms, few of which can now be traced. None of the identifiable Rush materials contain the quotation attributed to him here. See *The Autobiography of Benjamin Rush*, ed. George W. Corner (Princeton 1948) 160–61; *Letters of Benjamin Rush*, ed. L. H. Butterfield (Princeton 1951), 2 vols., passim; Harry G. Good, *Benjamin Rush and His Services to American Education* (Berne, Ind., 1918) 70–71.

20. This is George Mason's widely distributed view; see 2.2.15.

21. Isaiah 14:2.

22. Thomas Paine, *Common Sense*, "Thoughts on the Present State of American Affairs."

23. The reference is to the Baron von Steuben, Inspector General of the American Army, who was presented with a gold-hilted sword by Congress in 1784. John McAuley Palmer, *General von Steuben* (New Haven 1937) 327, 344.

24. See above, n. 14.

25. "Dedication to the English Nation," *Letters of Junius* (Bohn Library ed.) I, 88. Junius calls the liberty of the press the palladium "of all the civil, political, and civil rights of *an Englishman* . . ."

26. The *Independent Gazetteer* 21 January 1788. This was part of an exchange of slight pieces between "One of the Whigs of 1788" and "One of the Whigs of 1776" (18 January, 19 January, 25 January), and quite possibly did have the aims ascribed to it by Philadelphiensis.

27. McMaster and Stone 15.

28. *Aeniad* II, lines 244–45.

29. See below, 3.11; Plebeian 6.11.15 n. 9.

30. See above, Martin 2.4.24.

31. The reference is probably to Mr. Daniel Clymer's observation in the Pennsylvania legislature that "only four or five leading party-men in this city are against it." McMaster and Stone 30.

32. See above, Pennsylvania House Minority 3.2.3.

33. Luther Martin describes the persistence with which the advocates of the party wishing a President holding office during good behavior pressed for reeligibility. See above, 2.4.81–82. Philadelphiensis may be referring more particularly to Martin's charge that more than twenty members of the Convention favored monarchy. The claim was based on a list drawn up by John Mercer, who, however, claimed that the list contained the names of nationalists, not monarchists. See letter of David Carroll to James Madison, 28 May 1788, Farrand III, 305–6.

34. The reference may be to a remark made by William Symmes. See below, 4.5.13.

35. Centinel charged that the ex post facto clause was intended to free public creditors of their obligations and discussed the affairs of Robert Morris and Thomas Mifflin in his sixteenth and seventeenth essays (2.7.167–77). A repetition of the charge by an anonymous writer in the *Freeman's Journal* (5 March 1788) gave rise to replies by Morris and Mifflin, which are printed in McMaster and Stone 786–89.

36. A Real Patriot, *Independent Gazetteer* 28 January 1788, McMaster and Stone 524–25.

37. [Tench Coxe] An American Citizen, "An Examination of the Constitution for the United States of America," Ford, *Pamphlets* 137–39. Philadelphiensis evidently had not seen the essays of *The Federalist* on the presidency (nos. 67–77), which had been published only a month before. For other Federalist comparisons of the President and the English king or kings generally see Ford, *Pamphlets* 35 (An American Citizen), 211–12 (Fabius), 232–35 (Aristides), 351 (Marcus); Ford, *Essays* 38 (Cassius); Elliot IV, 74, 107–9 (Iredell). For Anti-Federal comparisons see Martin 2.4.86; Cato IV, 2.6.31; Old Whig V, 3.3.31; Impartial Examiner 5.14.36–39; *Brutus* [Virginia]

5.15; Henry 5.16.7, 11–14. As the case of Henry illustrates, however, the Anti-Federalists were not unequivocally opposed to monarchy. While Henry found the Constitution defective in that "it squints toward monarchy," he allowed that "if you cannot love a Republican Government, you may love the British monarchy. . . ." (5.16.7, 14).

Essay by Alfred

(PHILADELPHIA) INDEPENDENT GAZETTEER
13 December 1787

"Alfred" argues that America, being free and prosperous, should not give up her excellent state constitutions and substitute a vast empire. The present grievances stem from a want of money and of virtue, and the remedy is to be found in greater independence of foreign trade and in frugal public administration rather than in dangerous political changes. The author is unknown.

To the *real* Patriots of America.

The history of mankind teacheth us how *sudden* and easy the transition is 3.10.1
from *liberty* to a state of *slavery*. The *Romans*, the bravest people the world ever saw, after all their struggles and contentions, found themselves under the absolute direction of a *Nero*, a *Caligula*, a *Tiberius*, and a *Domitian*.

Governments, as they are the workmanship of *man*, so they partake of the changeableness of *his* nature; but the changes which happen, have been more frequently from *liberty* to *slavery*, than from slavery to liberty. When once a community are fast bound in chains and in misery, there *must* be great efforts, and the effusion of much blood, to liberate them from their wretched condition.

America is *now* free—she now enjoys a greater portion of political liberty 3.10.2
than any other country under heaven. How long she may continue so, depends entirely upon her own *caution* and *wisdom*. If she would look to herself more, and to Europe less, I am persuaded, it would tend to promote her felicity. She possesses all the advantages which characterize a rich country:—rich within herself, she ought less to regard the politics, the manufactures, and the interests of *distant* nations.

When I look to our situation, climate, extent, soil, and its productions, 3.10.3
rivers and ports; when I find I can at this time purchase grain, bread, meat, and other necessaries of life, at as reasonable a rate as in any country; when I see we are sending great quantities of tobacco, wheat and flour to England and other parts of the globe, beyond the Atlantic; when I get on the other

side of the western mountains, and see an extensive country, which, for its multitude of rivers and fertility of soil, is equal, if not superior, to any other whatever; when I see these things, I cannot be brought to believe that America is in that deplorable, ruined condition which some designing politicians represent; or that we are in a state of anarchy beyond redemption, unless we adopt, without any addition or amendment, the *new* constitution proposed by the late Convention; a constitution which, in my humble opinion, contains the seeds and scions of slavery and despotism.

3.10.4 When the volume of American constitutions first made its appearance in Europe, we find some of the most eminent political writers of the present age, and the reviewers of literature, full of admiration, and declaring they had never before seen so much *good sense, freedom,* and *real wisdom* in one publication. Our good friend Doctor *Price* was charmed, and almost prophesied the near approach of the happy days of the millennium.[1] We have lived under these constitutions; and, after the experience of a few years, some among us are *ready* to *trample* them under their feet, though they have been esteemed, even by our enemies, as *"pearls of great price."*

3.10.5 Let us not, ye lovers of freedom, be rash and hasty—Perhaps the real evils we labor under, do not arise from these systems—There may be many other causes, to which our misfortunes may be properly attributed—Read the American constitutions, and you will find our essential rights and privileges well guarded and secured. May not *our manners* be the source of our national evils? May not our attachment to foreign trade increase them? Have we not acted imprudently in exporting almost all our gold and silver for foreign luxuries? It is now acknowledged that we have not a sufficient quantity of the precious metals to answer the various purposes of government and commerce; and without a breach of charity, it may be said that this deficiency arises from the want of public virtue, in prefering private interest to every other consideration.

3.10.6 If the states had in any tolerable degree been able to answer the requisitions of Congress; if the continental treasury had been so far assisted, as to have enabled us to pay the interest of our foreign debt, possibly we should have heard little, very little about a new system of government. It is a just observation that in modern times, *money* does every thing. If a government can command this unum necessarium from a certain revenue, it may be considered as wealthy and respectable; if not, it will lose its dignity, become inefficient and contemptible. But cannot we regulate our finances, and lay the foundations for a permanent, certain revenue, without undoing all that we have done, without making an entire new government? The most wise and philosophic characters have bestowed on our *old systems* the highest encomiums. Are we sure this new political phenomenon will not fail? If it should fail, is there not a great probability, *that our last state will be worse than the first?* Orators may declaim on the badness of the times as long as they please, but I must tell them that the want *of public virtue, and*

the want of money, are two of the principal sources of our grievances; and if we are under the pressure of these wants, it ought to teach us *frugality*—to adopt a frugal administration of public affairs.

It has been said that the civil list expences of the several states, have 3.10.7
enormously exceeded what they formerly were prior to the late revolution. Will the new system, which really comprehends an imperium in imperiis, be administered at a less expence, than we now experience? Can we create new *offices* without an accumulation of expences? Shall we enjoy a greater degree of political freedom and happiness under the proposed plan? If *these* and other advantages are not quite evident, we ought to be extremely cautious, how we change our condition. Systems may be very specious in theory; but fail us in practice. Government is a science which consists more in experience than in notional knowledge. What will suit the different manners, habits, and interests, of a wide extended country like America, can only be known by an *experiment;* and if that should fail, our liberties might fail with it. Cannot we be a number of confederated states, confederated for the purpose of defence and commerce, without erecting a fabric, more like *an empire*, than *a republic?* Empires are considered as despotic, and is there no danger of despotism in the establishment of *one* so great and complicated as the American will be?

Most liberal authors would dissuade us from so great and dangerous an 3.10.8
experiment.—I shall conclude at present, with a quotation from* one of them; "Vast empires are in many respects unnatural: but particularly in this, that be they ever *so well constituted, the affairs of the many must, in such governments, turn upon a few;* and the relation be less sensible, and in a manner lost between the magistrate and the people, *in a body so unwieldy in its limbs*, and whose members lie so remote from one another, and distant from the head. 'Tis in such bodies as these that *strong factions* are aptest to engender. The associating spirits, for want of exercise, form new movements, and seek a narrower sphere of activity, when they want action in a greater. Thus we have *wheels within wheels*, and in some national constitutions, notwithstanding the *absurdity* in politics, we have one empire within another."[3]

Alfred.

**The Characteristics*.[2]

1. Richard Price, *Observations on the Importance of the American Revolution, and the Means of Making It a Benefit to the World* (1784 and 1785; several U.S. editions), ch. 1 and passim.

2. Anthony, Earl of Shaftesbury, *Characteristics of Men, Manners, Opinions, Times, etc.* (first published as such in 1711), Treatise II, "*Sensus Communis;* An Essay on the Freedom of Wit and Humor in a Letter to a Friend," part 3, sec. 2. See the edition of John M. Robertson (Gloucester, Mass., 1963) I, 76.

3. James Madison, in *The Federalist* no. 10, turns Shaftesbury's argument on its head, finding the salvation of the free state precisely in the associating tendencies that

Shaftesbury goes on to describe here. The "associating genius," which Shaftesbury sees forming societies "in opposition to the general one of mankind, and to the real interest of the State," Madison sees as the engine of those freedom-preserving "wheels within wheels" that are one of the great advantages of the extended republic. See Agrippa IV, 4.6.16 n. 10. Shaftesbury agrees with Madison, however—as do some of the Anti-Federalists, e.g., Agrippa—that selfishness is a force for moderation. "[O]f all characters, the thorough selfish one is the least forward in taking party. The men of this sort are, in this respect, true men of moderation. They are secure of their temper, and possess themselves too well to be in danger of entering warmly into any cause, or into engaging deeply with any side or faction." *Characteristics* I, 76.

The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania To Their Constituents

PENNSYLVANIA PACKET AND DAILY ADVERTISER
18 December 1787

Failing in its attempt to secure the pages of the official journal to spread its views (a not uncommon practice in faction-torn Pennsylvania) the minority of the state ratifying convention published its Address and Reasons of Dissent in the *Pennsylvania Packet and Daily Advertiser*. The Address was frequently reprinted and commented on by both Federalist and Anti-Federalist writers.[1] The author was probably Samuel Bryan, even though he was not a member of the convention.[2]

The Address consists of three parts: (1) a description of events leading up to and concluding the Pennsylvania ratifying convention (3.11.1–2); (2) a list of proposed amendments, many of which found their way into the Bill of Rights (3.11.12–15); and (3) the three general grounds of dissent—(a) that an extensive territory cannot be governed on the principles of freedom, except as a confederation of republics (3.11.16–17), (b) that the government under the Constitution will not be a confederation but a consolidation founded on a destruction of the states (3.11.18–30), (c) that the Constitution is defective (3.11.30–56) in its failure to provide (i) a bill of rights, (ii) adequate representation, (iii) the traditional safeguards of the common law, (iv) a due separation of powers, (v) protection against excessive and tyrannical taxation, and (vi) adequate representation for Pennsylvania. For all of these reasons the government will not possess the confidence of the people and will have to rely on a standing army and a strictly controlled militia, leading to the suppression of individual liberty as well as to great expense.

1. For Centinel's complaint that the distribution of the Address was hampered by unfriendly postal arrangements, see Centinel XVIII, 2.7.182 n. 96. See the essays of A Freeman, addressed to the Minority of the Pennsylvania Convention, published in the *Pennsylvania Gazette* 23 January, 30 January, and 6 February 1788. These were, in turn, replied to by [Pennsylvania] Farmer, whose essay is printed below, 3.14. Noah Webster replied in a forceful and interesting essay, published under the pseudonym "America" in the New York *Daily Advertiser* 31 December 1787, and

reprinted in his *Collection of Essays* (Boston 1790). McMaster and Stone print some of the responses, beginning at p. 483, including Francis Hopkinson's Federalist parable, "The New Roof" (pp. 510–16), which appeared in the *Pennsylvania Packet* 29 December 1787.

2. Samuel Bryan claimed authorship in letters to Jefferson, 27 February 1801 and 24 July 1807, and in a letter to Albert Gallatin, 18 December 1790. Files of Ratification of Constitution project, National Archives. See Centinel 2.7. intro. n. 4. The attribution is strengthened by several striking similarities between passages in the Address of the Pennsylvania Convention minority, and in the Centinel letters, although of course one author might, under the circumstances, very well have drawn on another. Cf. the following passages of Centinel and the Pennsylvania Convention Minority, respectively: V, 2.7.95; 3.11.22. III, 2.7.73; 3.11.26. I, 2.7.9; 3.11.48. IV, 2.7.93; 3.11.56. IX, 2.7.129; 3.11.4–5. III, 2.7.70; 3.11.8.

3.11.1 It was not until after the termination of the late glorious contest, which made the people of the United States, an independent nation, that any defect was discovered in the present confederation. It was formed by some of the ablest patriots in America. It carried us successfully through the war; and the virtue and patriotism of the people, with their disposition to promote the common cause, supplied the want of power in Congress.

3.11.2 The requisition of Congress for the five *per cent.* impost was made before the peace, so early as the first of February, 1781, but was prevented taking effect by the refusal of one state; yet it is probable every state in the union would have agreed to this measure at that period, had it not been for the extravagant terms in which it was demanded. The requisition was new moulded in the year 1783, and accompanied with an additional demand of certain supplementary funds for 25 years. Peace had now taken place, and the United States found themselves labouring under a considerable foreign and domestic debt, incurred during the war. The requisition of 1783 was commensurate with the interest of the debt, as it was then calculated; but it has been more accurately ascertained since that time. The domestic debt has been found to fall several millions of dollars short of the calculation, and it has lately been considerably diminished by large sales of the western lands. The states have been called on by Congress annually for supplies until the general system of finance proposed in 1783 should take place.

3.11.3 It was at this time that the want of an efficient federal government was first complained of, and that the powers vested in Congress were found to be inadequate to the procuring of the benefits that should result from the union. The impost was granted by most of the states, but many refused the supplementary funds; the annual requisitions were set at nought by some of the states, while others complied with them by legislative acts, but were tardy in their payments, and Congress found themselves incapable of complying with their engagements, and supporting the federal government. It was found that our national character was sinking in the opinion of foreign

nations. The Congress could make treaties of commerce, but could not enforce the observance of them. We were suffering from the restrictions of foreign nations, who had shackled our commerce, while we were unable to retaliate: and all now agreed that it would be advantageous to the union to enlarge the powers of Congress; that they should be enabled in the amplest manner to regulate commerce, and to lay and collect duties on the imports throughout the United States. With this view a convention was first proposed by Virginia, and finally recommended by Congress for the different states to appoint deputies to meet in convention, "for the purposes of revising and amending the present articles of confederation, so as to make them adequate to the exigencies of the union." This recommendation the legislatures of twelve states complied with so hastily as not to consult their constituents on the subject; and though the different legislatures had no authority from their constituents for the purpose, they probably apprehended the necessity would justify the measure; and none of them extended their ideas at that time further than "revising and amending the present articles of confederation." Pennsylvania by the act appointing deputies expressly confined their powers to this object; and though it is probable that some of the members of the assembly of this state had at that time in contemplation to annihilate the present confederation, as well as the constitution of Pennsylvania, yet the plan was not sufficiently matured to communicate it to the public.

3.11.4 The majority of the legislature of this commonwealth, were at that time under the influence of the members from the city of Philadelphia. They agreed that the deputies sent by them to convention should have no compensation for their services, which determination was calculated to prevent the election of any member who resided at a distance from the city. It was in vain for the minority to attempt electing delegates to the convention, who understood the circumstances, and the feelings of the people, and had a common interest with them. They found a disposition in the leaders of the majority of the house to chuse themselves and some of their dependants. The minority attempted to prevent this by agreeing to vote for some of the leading members, who they knew had influence enough to be appointed at any rate, in hopes of carrying with them some respectable citizens of Philadelphia, in whose principles and integrity they could have more confidence; but even in this they were disappointed, except in one member: the eighth member was added at a subsequent session of the assembly.[1]

3.11.5 The Continental convention met in the city of Philadelphia at the time appointed. It was composed of some men of excellent characters; of others who were more remarkable for their ambition and cunning, than their patriotism; and of some who had been opponents to the independence of the United States. The delegates from Pennsylvania were, six of them, uniform and decided opponents to the constitution of this commonwealth. The con-

vention sat upwards of four months. The doors were kept shut, and the members brought under the most solemn engagements of secrecy.* Some of those who opposed their going so far beyond their powers, retired, hopeless, from the convention, others had the firmness to refuse signing the plan altogether; and many who did sign it, did it not as a system they wholly approved, but as the best that could be then obtained, and notwithstanding the time spent on this subject, it is agreed on all hands to be a work of haste and accommodation.

3.11.6 Whilst the gilded chains were forging in the secret conclave, the meaner instruments of despotism without, were busily employed in alarming the fears of the people with dangers which did not exist, and exciting their hopes of greater advantages from the expected plan than even the best government on earth could produce.

3.11.7 The proposed plan had not many hours issued forth from the womb of suspicious secrecy, until such as were prepared for the purpose, were carrying about petitions for people to sign, signifying their approbation of the system, and requesting the legislature to call a convention. While every measure was taken to intimidate the people against opposing it, the public papers teemed with the most violent threats against those who should dare to think for themselves, and *tar and feathers* were liberally promised to all those who would not immediately join in supporting the proposed government be it what it would. Under such circumstances petitions in favour of calling a convention were signed by great numbers in and about the city, before they had leisure to read and examine the system, many of whom, now they are better acquainted with it, and have had time to investigate its principles, are heartily opposed to it. The petitions were speedily handed into the legislature.

3.11.8 Affairs were in this situation when on the 28th of September last a resolution was proposed to the assembly by a member of the house who had been also a member of the federal convention, for calling a state convention, to be elected within *ten* days for the purpose of examining and adopting the proposed constitution of the United States, though at this time the house had not received it from Congress. This attempt was opposed by a minority, who after offering every argument in their power to prevent the precipitate measure, without effect, absented themselves from the house as the only alternative left them, to prevent the measure taking place previous to their constituents being acquainted with the business—That violence and outrage which had been so often threatened was now practised; some of the members were seized the next day by a mob collected for the purpose, and forcibly dragged to the house, and there detained by force whilst the quorum of the legislature, *so formed,* compleated their resolution. We shall dwell no longer on this subject, the people of Pennsylvania have been already ac-

*The Journals of the conclave are still concealed.

quainted therewith.[2] We would only further observe that every member of the legislature, previously to taking his seat, by solemn oath or affirmation, declares, "that he will not do or consent to any act or thing whatever that shall have a tendency to lessen or abridge their rights and privileges, as declared in the constitution of this state." And that constitution which they are so solemnly sworn to support cannot legally be altered but by a recommendation of a council of censors, who alone are authorised to propose alterations and amendments, and even these must be published at least *six months*, for the consideration of the people.[3]—The proposed system of government for the United States, if adopted, will alter and may annihilate the constitution of Pennsylvania; and therefore the legislature had no authority whatever to recommend the calling a convention for that purpose. This proceeding could not be considered as binding on the people of this commonwealth. The house was formed by violence, some of the members composing it were detained there by force, which alone would have vitiated any proceedings, to which they were otherwise competent; but had the legislature been legally formed, this business was absolutely without their power.[4]

In this situation of affairs were the subscribers elected members of the convention of Pennsylvania. A convention called by a legislature in direct violation of their duty, and composed in part of members, who were compelled to attend for that purpose, to consider of a constitution proposed by a convention of the United States, who were not appointed for the purpose of framing a new form of government, but whose powers were expressly confined to altering and amending the present articles of confederation.—Therefore the members of the continental convention in proposing the plan acted as individuals, and not as deputies from Pennsylvania.* The assembly who called the state convention acted as individuals, and not as the legislature of Pennsylvania; nor could they or the convention chosen on their recommendation have authority to do any act or thing, that can alter or annihilate the constitution of Pennsylvania (both of which will be done by the new constitution) nor are their proceedings in our opinion, at all binding on the people. 3.11.9

The election for members of the convention was held at so early a period and the want of information was so great, that some of us did not know of it until after it was over, and we have reason to believe that great numbers of the people of Pennsylvania have not yet had an opportunity of sufficiently 3.11.10

*The continental convention in direct violation of the 13th article of the confederation, have declared, "that the ratification of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same."—Thus has the plighted faith of the states been sported with! They had solemnly engaged that the confederation now subsisting should be inviolably preserved by each of them, and the union thereby formed, should be perpetual, unless the same should be altered by mutual consent.

examining the proposed constitution.—We apprehend that no change can take place that will affect the internal government or constitution of this commonwealth, unless a majority of the people should evidence a wish for such a change; but on examining the number of votes given for members of the present state convention, we find that of upwards of *seventy thousand* freemen who are intitled to vote in Pennsylvania, the whole convention has been elected by about *thirteen thousand* voters, and though *two thirds* of the members of the convention have thought proper to ratify the proposed constitution, yet those *two thirds* were elected by the votes of only *six thousand and eight hundred* freemen.

3.11.11 In the city of Philadelphia and some of the eastern counties, the junto that took the lead in the business agreed to vote for none but such as would solemnly promise to adopt the system in *toto*, without exercising their judgment. In many of the counties the people did not attend the elections as they had not an opportunity of judging of the plan. Others did not consider themselves bound by the call of a set of men who assembled at the state-house in Philadelphia, and assumed the name of the legislature of Pennsylvania; and some were prevented from voting by the violence of the party who were determined at all events to force down the measure. To such lengths did the tools of despotism carry their outrage, that in the night of the election for members of convention, in the city of Philadelphia, several of the subscribers (being then in the city to transact your business) were grossly abused, ill-treated and insulted while they were quiet in their lodgings, though they did not interfere, nor had any thing to do with the said election, but as they apprehend, because they were supposed to be adverse to the proposed constitution, and would not tamely surrender those sacred rights, which you had committed to their charge.

3.11.12 The convention met, and the same disposition was soon manifested in considering the proposed constitution, that had been exhibited in every other stage of the business. We were prohibited by an express vote of the convention, from taking any question on the separate articles of the plan, and reduced to the necessity of adopting or rejecting *in toto*.—'Tis true the majority permitted us to debate on each article, but restrained us from proposing amendments.—They also determined not to permit us to enter on the minutes our reasons of dissent against any of the articles, nor even on the final question our reasons of dissent against the whole. Thus situated we entered on the examination of the proposed system of government, and found it to be such as we could not adopt, without, as we conceived, surrendering up your dearest rights. We offered our objections to the convention, and opposed those parts of the plan, which, in our opinion, would be injurious to you, in the best manner we were able; and closed our arguments by offering the following propositions to the convention.

3.11.13 1. The right of conscience shall be held inviolable; and neither the legis-

lative, executive nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.

2. That in controversies respecting property, and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in those of the several states.[5]

3. That in all capital and criminal prosecutions, a man has a right to demand the cause and nature of his accusation, as well in the federal courts, as in those of the several states; to be heard by himself and his counsel; to be confronted with the accusers and witnesses; to call for evidence in his favor, and a speedy trial by an impartial jury of his vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to give evidence against himself; and that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

4. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

5. That warrants unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and shall not be granted either by the magistrates of the federal government or others.

6. That the people have a right to the freedom of speech, of writing and publishing their sentiments, therefore, the freedom of the press shall not be restrained by any law of the United States.[6]

7. That the people have a right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up: and that the military shall be kept under strict subordination to and be governed by the civil powers.

8. The inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands in the United States not inclosed, and in like manner to fish in all navigable waters, and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.[7]

9. That no law shall be passed to restrain the legislatures of the several states from enacting laws for imposing taxes, except imposts and duties on goods imported or exported, and that no taxes, except imposts and duties upon goods imported and exported, and postage on letters shall be levied by the authority of Congress.

10. That the house of representatives be properly increased in number; that elections shall remain free; that the several states shall have power to

regulate the elections for senators and representatives, without being controuled either directly or indirectly by any interference on the part of the Congress; and that elections of representatives be annual.

11. That the power of organizing, arming and disciplining the militia (the manner of disciplining the militia to be prescribed by Congress) remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.

That the sovereignty, freedom and independency of the several states shall be retained, and every power, jurisdiction and right which is not by this constitution expressly delegated to the United States in Congress assembled.

12. That the legislative, executive, and judicial powers be kept separate; and to this end that a constitutional council be appointed, to advise and assist the president, who shall be responsible for the advice they give, hereby the senators would be relieved from almost constant attendance; and also that the judges be made completely independent.

13. That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed, or made conformable to such treaty; neither shall any treaties be valid which are in contradiction to the constitution of the United States, or the constitutions of the several states.

14. That the judiciary power of the United States shall be confined to cases affecting ambassadors, other public ministers and consuls; to cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states—between a state and citizens of different states—between citizens claiming lands under grants of different states; and between a state or the citizen thereof and foreign states, and in criminal cases, to such only as are expressly enumerated in the constitution, and that the United States in Congress assembled, shall not have power to enact laws, which shall alter the laws of descents and distribution of the effects of deceased persons, the titles of lands or goods, or the regulation of contracts in the individual states.

3.11.14 After reading these propositions, we declared our willingness to agree to the plan, provided it was so amended as to meet these propositions, or something similar to them: and finally moved the convention to adjourn, to give the people of Pennsylvania time to consider the subject, and determine for themselves; but these were all rejected, and the final vote was taken, when our duty to you induced us to vote against the proposed plan, and to decline signing the ratification of the same.

3.11.15 During the discussion we met with many insults, and some personal abuse; we were not even treated with decency, during the sitting of the convention, by the persons in the gallery of the house; however, we flatter

ourselves that in contending for the preservation of those invaluable rights you have thought proper to commit to our charge, we acted with a spirit becoming freemen, and being desirous that you might know the principles which actuated our conduct, and being prohibited from inserting our reasons of dissent on the minutes of the convention, we have subjoined them for your consideration, as to you alone we are accountable. It remains with you whether you will think those inestimable privileges, which you have so ably contended for, should be sacrificed at the shrine of despotism, or whether you mean to contend for them with the same spirit that has so often baffled the attempts of an aristocratic faction, to rivet the shackles of slavery on you and your unborn posterity.

Our objections are comprised under three general heads of dissent, viz.

3.11.16 We dissent, first, because it is the opinion of the most celebrated writers on government, and confirmed by uniform experience, that a very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the management of their general, and foreign concerns.

3.11.17 If any doubt could have been entertained of the truth of the foregoing principle, it has been fully removed by the concession of *Mr. Wilson*, one of majority on this question; and who was one of the deputies in the late general convention. In justice to him, we will give his own words; they are as follows, viz.[8] "The extent of country for which the new constitution was required, produced another difficulty in the business of the federal convention. It is the opinion of some celebrated writers, that to a small territory, the democratical; to a middling territory (as Montesquieu has termed it) the monarchial; and to an extensive territory, the despotic form of government is best adapted. Regarding then the wide and almost unbounded jurisdiction of the United States, at first view, the hand of despotism seemed necessary to controul, connect, and protect it; and hence the chief embarrassment rose. For, we know that, altho' our constituents would chearfully submit to the legislative restraints of a free government, they would spurn at every attempt to shackle them with despotic power."—And again in another part of his speech he continues.—"Is it probable that the dissolution of the state governments, and the establishment of one *consolidated empire* would be eligible in its nature, and satisfactory to the people in its administration? I think not, as I have given reasons to shew that so extensive a territory could not be governed, connected, and preserved, but by the *supremacy of despotic power*. All the exertions of the most potent emperors of Rome were not capable of keeping that empire together, which in extent was far inferior to the dominion of America."[9]

3.11.18 We dissent, secondly, because the powers vested in Congress by this constitution, must necessarily annihilate and absorb the legislative, executive, and judicial powers of the several states, and produce from their ruins

one consolidated government, which from the nature of things will be *an iron handed despotism*, as nothing short of the supremacy of despotic sway could connect and govern these United States under one government.

3.11.19 As the truth of this position is of such decisive importance, it ought to be fully investigated, and if it is founded to be clearly ascertained; for, should it be demonstrated, that the powers vested by this constitution in Congress, will have such an effect as necessarily to produce one consolidated government, the question then will be reduced to this short issue, viz. whether satiated with the blessings of liberty; whether repenting of the folly of so recently asserting their unalienable rights, against foreign despots at the expence of so much blood and treasure, and such painful and arduous struggles, the people of America are now willing to resign every privilege of freemen, and submit to the dominion of an absolute government, that will embrace all America in one chain of despotism; or whether they will with virtuous indignation, spurn at the shackles prepared for them, and confirm their liberties by a conduct becoming freemen.

3.11.20 That the new government will not be a confederacy of states, as it ought, but one consolidated government, founded upon the destruction of the several governments of the states, we shall now shew.

The powers of Congress under the new constitution, are complete and unlimited over the *purse* and the *sword*, and are perfectly independent of, and supreme over, the state governments; whose intervention in these great points is entirely destroyed. By virtue of their power of taxation, Congress may command the whole, or any part of the property of the people. They may impose what imposts upon commerce; they may impose what land taxes, poll taxes, excises, duties on all written instruments, and duties on every other article that they may judge proper; in short, every species of taxation, whether of an external or internal nature is comprised in section the 8th, of article the 1st, viz. "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States."

3.11.21 As there is no one article of taxation reserved to the state governments, the Congress may monopolise every source of revenue, and thus indirectly demolish the state governments, for without funds they could not exist, the taxes, duties and excises imposed by Congress may be so high as to render it impracticable to levy further sums on the same articles; but whether this should be the case or not, if the state governments should presume to impose taxes, duties or excises, on the same articles with Congress, the latter may abrogate and repeal the laws whereby they are imposed, upon the allegation that they interfere with the due collection of their taxes, duties or excises, by virtue of the following clause, part of section 8th, article 1st. viz. "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this con-

stitution in the government of the United States, or in any department or officer thereof."[10]

The Congress might gloss over this conduct by construing every purpose for which the state legislatures now lay taxes, to be for the "*general welfare,*" and therefore as of their ju[ris]diction.

And the supremacy of the laws of the United States is established by article 6th, viz. "That this constitution and the laws of the United States, which shall be made in pursuance thereof, and *all treaties* made, or which shall be made, under the authority of the United States, shall be the *supreme law* of the *land;* and *the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary notwithstanding.*" It has been alledged that the words "pursuant to the constitution," are a restriction upon the authority of Congress;[11] but when it is considered that by other sections they are invested with every efficient power of government, and which may be exercised to the absolute destruction of the state governments, without any violation of even the forms of the constitution, this seeming restriction, as well as every other restriction in it, appears to us to be nugatory and delusive; and only introduced as a blind upon the real nature of the government. In our opinion, "pursuant to the constitution," will be co-extensive with the *will* and *pleasure* of Congress, which, indeed, will be the only limitation of their powers. 3.11.22

We apprehend that two co-ordinate sovereignties would be a solecism in politics.[12] That therefore as there is no line of distinction drawn between the general, and state governments; as the sphere of their jurisdiction is undefined, it would be contrary to the nature of things, that both should exist together, one or the other would necessarily triumph in the fullness of dominion. However the contest could not be of long continuance, as the state governments are divested of every means of defence, and will be obliged by "the supreme law of the land" *to yield at discretion.* 3.11.23

It has been objected to this total destruction of the state governments, that the existence of their legislatures is made essential to the organization of Congress; that they must assemble for the appointment of the senators and president general of the United States.[13] True, the state legislatures may be continued for some years, as boards of appointment, merely, after they are divested of every other function, but the framers of the constitution foreseeing that the people will soon be disgusted with this solemn mockery of a government without power and usefulness, have made a provision for relieving them from the imposition, in section 4th, of article 1st, viz. "The times, places, and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; *but the Congress may at any time, by law make or alter such regulations; except as to the place of chusing senators.*" 3.11.24

As Congress have the controul over the time of the appointment of the 3.11.25

president general, of the senators and of the representatives of the United States, they may prolong their existence in office, for life, by postponing the time of their election and appointment, from period to period, under various pretences, such as an apprehension of invasion, the factious disposition of the people, or any other plausible pretence that the occasion may suggest; and having thus obtained life-estates in the government, they may fill up the vacancies themselves, by their controul over the mode of appointment; with this exception in regard to the senators, that as the place of appointment for them, must, by the constitution, be in the particular state, they may depute some body in the respective states, to fill up the vacancies in the senate, occasioned by death, until they can venture to assume it themselves. In this manner, may the only restriction in this clause be evaded. By virtue of the foregoing section, when the spirit of the people shall be gradually broken; when the general government shall be firmly established, and when a numerous standing army shall render opposition vain, the Congress may compleat the system of despotism, in renouncing all dependance on the people, by continuing themselves, and children in the government.

3.11.26 The celebrated *Montesquieu*, in his Spirit of Laws, vol. 1, page 12th, says, "That in a democracy there can be no exercise of sovereignty, but by the suffrages of the people, which are their will; now the sovereigns will is the sovereign himself; the laws therefore, which establish the right of suffrage, are fundamental to this government. In fact, it is as important to regulate in a republic in what manner, by whom, and concerning what suffrages are to be given, as it is in a monarchy to know who is the prince, and after what manner he ought to govern."[14] The *time, mode* and *place* of the election of representatives, senators and president general of the United States, ought not to be under the controul of Congress, but fundamentally ascertained and established.

3.11.27 The new constitution, consistently with the plan of consolidation, contains no reservation of the rights and privileges of the state governments, which was made in the confederation of the year 1778, by article the 2d, viz. "That each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States in Congress assembled."

The legislative power vested in Congress by the foregoing recited sections, is so unlimited in its nature; may be so comprehensive and boundless [in] its exercise, that this alone would be amply sufficient to annihilate the state governments, and swallow them up in the grand vortex of general empire.

3.11.28 The judicial powers vested in Congress are also so various and extensive, that by legal ingenuity they may be extended to every case, and thus absorb the state judiciaries, and when we consider the decisive influence that a general judiciary would have over the civil polity of the several states, we do

not hesitate to pronounce that this power, unaided by the legislative, would effect a consolidation of the states under one government.

The powers of a court of equity, vested by this constitution, in the tribu- 3.11.29
nals of Congress; powers which do not exist in Pennsylvania, unless so far as they can be incorporated with jury trial, would, in this state, greatly contribute to this event. The rich and wealthy suitors would eagerly lay hold of the infinite mazes, perplexities and delays, which a court of chancery, with the appellate powers of the supreme court in fact as well as law would furnish him with, and thus the poor man being plunged in the bottomless pit of legal discussion, would drop his demand in despair.

In short, consolidation pervades the whole constitution. It begins with an 3.11.30
annunciation that such was the intention. The main pillars of the fabric correspond with it, and the concluding paragraph is a confirmation of it. The preamble begins with the words, "We the people of the United States," which is the style of a compact between individuals entering into a state of society, and not that of a confederation of states.[15] The other features of consolidation, we have before noticed.

Thus we have fully established the position, that the powers vested by this constitution in Congress, will effect a consolidation of the states under one government, which even the advocates of this constitution admit, could not be done without the sacrifice of all liberty.

3. We dissent, Thirdly, Because if it were practicable to govern so exten- 3.11.31
sive a territory as these United States includes, on the plan of a consolidated government, consistent with the principles of liberty and the happiness of the people, yet the construction of this constitution is not calculated to attain the object, for independent of the nature of the case, it would of itself, necessarily, produce a despotism, and that not by the usual gradations, but with the celerity that has hitherto only attended revolutions effected by the sword.

To establish the truth of this position, a cursory investigation of the principles and form of this constitution will suffice.

The first consideration that this review suggests, is the omission of a BILL 3.11.32
of RIGHTS, ascertaining and fundamentally establishing those unalienable and personal rights of men, without the full, free, and secure enjoyment of which there can be no liberty, and over which it is not necessary for a good government to have the controul. The principal of which are the rights of conscience, personal liberty by the clear and unequivocal establishment of the writ of *habeas corpus*, jury trial in criminal and civil cases, by an impartial jury of the vicinage or county, with the common-law proceedings, for the safety of the accused in criminal prosecutions; and the liberty of the press, that scourge of tyrants, and the grand bulwark of every other liberty and privilege; the stipulations heretofore made in favor of them in the state constitutions, are entirely superceded by this constitution.

3.11.33 The legislature of a free country should be so formed as to have a competent knowledge of its constituents, and enjoy their confidence. To produce these essential requisites, the representation ought to be fair, equal, and sufficiently numerous, to possess the same interests, feelings, opinions, and views, which the people themselves would possess, were they all assembled; and so numerous as to prevent bribery and undue influence, and so responsible to the people, by frequent and fair elections, as to prevent their neglecting or sacrificing the views and interests of their constituents, to their own pursuits.

3.11.34 We will now bring the legislature under this constitution to the test of the foregoing principles, which will demonstrate, that it is deficient in every essential quality of a just and safe representation.

The house of representatives is to consist of 65 members; that is one for about every 50,000 inhabitants, to be chosen every two years. Thirty-three members will form a quorum for doing business; and 17 of these, being the majority, determine the sense of the house.

The senate, the other constituent branch of the legislature, consists of 26 members being *two* from each state, appointed by their legislatures every six years—fourteen senators make a quorum; the majority of whom, eight, determines the sense of that body: except in judging on impeachments, or in making treaties, or in expelling a member, when two thirds of the senators present, must concur.

The president is to have the controul over the enacting of laws, so far as to make the concurrence of *two* thirds of the representatives and senators present necessary, if he should object to the laws.

3.11.35 Thus it appears that the liberties, happiness, interests, and great concerns of the whole United States, may be dependent upon the integrity, virtue, wisdom, and knowledge of 25 or 26 men—How unadequate and unsafe a representation! Inadequate, because the sense and views of 3 or 4 millions of people diffused over so extensive a territory comprising such various climates, products, habits, interests, and opinions, cannot be collected in so small a body; and besides, it is not a fair and equal representation of the people even in proportion to its number, for the smallest state has as much weight in the senate as the largest, and from the smallness of the number to be chosen for both branches of the legislature; and from the mode of election and appointment, which is under the controul of Congress; and from the nature of the thing, men of the most elevated rank in life, will alone be chosen. The other orders in the society, such as farmers, traders, and mechanics, who all ought to have a competent number of their best informed men in the legislature, will be totally unrepresented.[16]

3.11.36 The representation is unsafe, because in the exercise of such great powers and trusts, it is so exposed to corruption and undue influence, by the gift of the numerous places of honor and emoluments at the disposal of the execu-

tive; by the arts and address of the great and designing; and by direct bribery.

The representation is moreover inadequate and unsafe, because of the long terms for which it is appointed, and the mode of its appointment, by which Congress may not only controul the choice of the people, but may so manage as to divest the people of this fundamental right, and become self-elected.

The number of members in the house of representatives *may* be encreased to one for every 30,000 inhabitants. But when we consider, that this cannot be done without the consent of the senate, who from their share in the legislative, in the executive, and judicial departments, and permanency of appointment, will be the great efficient body in this government, and whose weight and predominancy would be abridged by an increase of the representatives, we are persuaded that this is a circumstance that cannot be expected. On the contrary, the number of representatives will probably be continued at 65, although the population of the country may swell to treble what it now is; unless a revolution should effect a change.[17] 3.11.37

We have before noticed the judicial power as it would effect a consolidation of the states into one government; we will now examine it, as it would affect the liberties and welfare of the people, supposing such a government were practicable and proper. 3.11.38

The judicial power, under the proposed constitution, is founded on the well-known principles of the *civil law*, by which the judge determines both on law and fact, and appeals are allowed from the inferior tribunals to the superior, upon the whole question; so that *facts* as well as *law*, would be re-examined, and even new facts brought forward in the court of appeals; and to use the words of a very eminent Civilian—"The cause is many times another thing before the court of appeals, than what it was at the time of the first sentence."[18]

That this mode of proceeding is the one which must be adopted under this constitution, is evident from the following circumstances:—1st. That the trial by jury, which is the grand characteristic of the common law, is secured by the constitution, only in criminal cases.—2d. That the appeal from both *law* and *fact* is expressly established, which is utterly inconsistent with the principles of the common law, and trials by jury. The only mode in which an appeal from law and fact can be established, is, by adopting the principles and practice of the civil law; unless the United States should be drawn into the absurdity of calling and swearing juries, merely for the purpose of contradicting their verdicts, which would render juries contemptible and worse than useless.—3d. That the courts to be established would decide on all cases *of law and equity*, which is a well known characteristic of the civil law, and these courts would have conusance not only of the laws of the United States and of treaties, and of cases affecting ambassadors, but of all 3.11.39

cases of *admiralty and maritime jurisdiction,* which last are matters belonging exclusively to the civil law, in every nation in Christendom.

3.11.40 Not to enlarge upon the loss of the invaluable right of trial by an unbiassed jury, so dear to every friend of liberty, the monstrous expence and inconveniences of the mode of proceedings to be adopted, are such as will prove intolerable to the people of this country. The lengthy proceedings of the civil law courts in the chancery of England, and in the courts of Scotland and France, are such that few men of moderate fortune can endure the expence of; the poor man must therefore submit to the wealthy. Length of purse will too often prevail against right and justice. For instance, we are told by the learned judge *Blackstone,* that a question only on the property of an ox, of the value of *three* guineas, originating under the civil law proceedings in Scotland, after many interlocutory orders and sentences below, was carried at length from the court of sessions, the highest court in that part of Great Britain, by way of *appeal* to the house of lords, *where* the question of law and fact was finally determined. He adds, that no pique or spirit could in the court of king's bench or common pleas at Westminster, have given continuance to such a cause for a tenth part of the time, nor have cost a twentieth part of the expence. Yet the costs in the courts of king's bench and common pleas in England, are infinitely greater than those which the people of this country have ever experienced. We abhor the idea of losing the transcendant privilege of trial by jury, with the loss of which, it is remarked by the same learned author, that in Sweden, the liberties of the commons were extinguished by an aristocratic senate: and that *trial by jury* and the liberty of the people went out together.[19] At the same time we regret the intolerable delay, the enormous expences and infinite vexation to which the people of this country will be exposed from the voluminous proceedings of the courts of civil law, and especially from the appellate jurisdiction, by means of which a man may be drawn from the utmost boundaries of this extensive country to the seat of the supreme court of the nation to contend, perhaps with a wealthy and powerful adversary. The consequence of this establishment will be an absolute confirmation of the power of aristocratical influence in the courts of justice: for the common people will not be able to contend or struggle against it.

3.11.41 Trial by jury in criminal cases may also be excluded by declaring that the libeller for instance shall be liable to an action of debt for a specified sum; thus evading the common law prosecution by indictment and trial by jury. And the common course of proceeding against a ship for breach of revenue laws by information (which will be classed among civil causes) will at the civil law be within the resort of a court, where no jury intervenes. Besides, the benefit of jury trial, in cases of a criminal nature, which cannot be evaded, will be rendered of little value, by calling the accused to answer far from home; there being no provision that the trial be by a jury of the neighbourhood or country. Thus an inhabitant of Pittsburgh, on a charge of

crime committed on the banks of the Ohio, may be obliged to defend himself at the side of the Delaware, and so *vice versa*. To conclude this head: we observe that the judges of the courts of Congress would not be independent, as they are not debarred from holding other offices, during the pleasure of the president and senate, and as they may derive their support in part from fees, alterable by the legislature.

3.11.42 The next consideration that the constitution presents, is the undue and dangerous mixture of the powers of government; the same body possessing legislative, executive, and judicial powers. The senate is a constituent branch of the legislature, it has judicial power in judging on impeachments, and in this case unites in some measure the characters of judge and party, as all the principal officers are appointed by the president-general, with the concurrence of the senate and therefore they derive their offices in part from the senate. This may biass the judgments of the senators and tend to screen great delinquents from punishment. And the senate has, moreover, various and great executive powers, viz. in concurrence with the president-general, they form treaties with foreign nations, that may controul and abrogate the constitutions and laws of the several states. Indeed, there is no power, privilege or liberty of the state governments, or of the people, but what may be affected by virtue of this power. For all treaties, made by them, are to be the "supreme law of the land, any thing in the constitution or laws of any state, to the contrary notwithstanding."

3.11.43 And this great power may be exercised by the president and 10 senators (being two-thirds of 14, which is a quorum of that body). What an inducement would this offer to the ministers of foreign powers to compass by bribery *such concessions* as could not otherwise be obtained. It is the unvaried usage of all free states, whenever treaties interfere with the positive laws of the land, to make the intervention of the legislature necessary to give them operation. This became necessary, and was afforded by the parliament of Great-Britain. In consequence of the late commercial treaty between that kingdom and France—As the senate judges on impeachments, who is to try the members of the senate for the abuse of this power! And none of the great appointments to office can be made without the consent of the senate.

3.11.44 Such various, extensive, and important powers combined in one body of men, are inconsistent with all freedom; the celebrated Montesquieu tells us, that "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty, because apprehensions may arise, lest the same monarch or *senate* should enact tyrannical laws, to execute them in a tyrannical manner."

"Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary controul: for the judge would then be legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. There would be an

end of every thing, were the same man, or the same body of the nobles, or of the people, to exercise those three powers; that of enacting laws; that of executing the public resolutions; and that of judging the crimes or differences of individuals."[20]

3.11.45 The president general is dangerously connected with the senate; his coincidence with the views of the ruling junto in that body, is made essential to his weight and importance in the government, which will destroy all independency and purity in the executive department, and having the power of pardoning without the concurrence of a council, he may skreen from punishment the most treasonable attempts that may be made on the liberties of the people, when instigated by his coadjutors in the senate. Instead of this dangerous and improper mixture of the executive with the legislative and judicial, the supreme executive powers ought to have been placed in the president, with a small independent council, made personally responsible for every appointment to office or other act, by having their opinions recorded; and that without the concurrence of the majority of the quorum of this council, the president should not be capable of taking any step.

3.11.46 We have before considered internal taxation, as it would effect the destruction of the state governments, and produce one consolidated government. We will now consider that subject as it affects the personal concerns of the people.

The power of direct taxation applies to every individual, as congress, under this government, is expressly vested with the authority of laying a capitation or poll tax upon every person to any amount. This is a tax that, however oppressive in its nature, and unequal in its operation, is certain as to its produce and simple in its collection; it cannot be evaded like the objects of imposts or excise, and will be paid, because all that a man hath will he give for his head. This tax is so congenial to the nature of despotism, that it has ever been a favorite under such governments. Some of those who were in the late general convention from this state have long laboured to introduce a poll-tax among us.

3.11.47 The power of direct taxation will further apply to every individual, as congress may tax land, cattle, trades, occupations, etc. in any amount, and every object of internal taxation is of that nature, that however oppressive, the people will have but this alternative, except to pay the tax, or let their property be taken, for all resistance will be in vain. The standing army and select militia would enforce the collection.

3.11.48 For the moderate exercise of this power, there is no controul left in the state governments, whose intervention is destroyed. No relief, or redress of grievances can be extended, as heretofore by them. There is not even a declaration of RIGHTS to which the people may appeal for the vindication of their wrongs in the court of justice. They must therefore, implicitly obey the most arbitrary laws, as the worst of them will be pursuant to the principles and form of the constitution, and that strongest of all checks upon the

conduct of administration, *responsibility to the people*, will not exist in this government. The permanency of the appointments of senators and representatives, and the controul the congress have over their election, will place them independent of the sentiments and resentment of the people, and the administration having a greater interest in the government than in the community, there will be no consideration to restrain them from oppression and tyranny. In the government of this state, under the old confederation, the members of the legislature are taken from among the people, and their interests and welfare are so inseparably connected with those of their constituents, that they can derive no advantage from oppressive laws and taxes, for they would suffer in common with their fellow citizens; would participate in the burthens they impose on the community, as they must return to the common level, after a short period; and notwithstanding every ex[er]tion of influence, every means of corruption, a necessary rotation excludes them from permanency in the legislature.

This large state is to have but ten members in that Congress which is to 3.11.49
have the liberty, property and dearest concerns of every individual in this vast country at absolute command and even these ten persons, who are to be our only guardians; who are to supercede the legislature of Pennsylvania, will not be of the choice of the people, nor amenable to them. From the mode of their election and appointment they will consist of the lordly and high-minded; of men who will have no congenial feelings with the people, but a perfect indifference for, and contempt of them; they will consist of those harpies of power, that prey upon the very vitals; that riot on the miseries of the community. But we will suppose, although in all probability it may never be realized in fact, that our deputies in Congress have the welfare of their constituents at heart, and will exert themselves in their behalf, what security could even this afford; what relief could they extend to their oppressed constituents? To attain this, the majority of the deputies of the twelve other states in Congress must be alike well disposed; must alike forego the sweets of power, and relinquish the pursuits of ambition, which from the nature of things is not to be expected. If the people part with a responsible representation in the legislature, founded upon fair, certain and frequent elections, they have nothing left they can call their own. Miserable is the lot of that people whose every concern depends on the WILL and PLEASURE of their rulers. Our soldiers will become Janissaries, and our officers of government Bashaws; in short, the system of despotism will soon be compleated.

From the foregoing investigation, it appears that the Congress under this 3.11.50
constitution will not possess the confidence of the people, which is an essential requisite in a good government; for unless the laws command the confidence and respect of the great body of the people, so as to induce them to support them, when called on by the civil magistrate, they must be executed by the aid of a numerous standing army, which would be in-

consistent with every idea of liberty; for the same force that may be employed to compel obedience to good laws, might and probably would be used to wrest from the people their constitutional liberties. The framers of this constitution appear to have been aware of this great deficiency; to have been sensible that no dependence could be placed on the people for their support: but on the contrary, that the government must be executed by force. They have therefore made a provision for this purpose in a permanent STANDING ARMY, and a MILITIA that may be subjected to as strict discipline and government.

3.11.51 A standing army in the hands of a government placed so independent of the people, may be made a fatal instrument to overturn the public liberties; it may be employed to enforce the collection of the most oppressive taxes, and to carry into execution the most arbitrary measures. An ambitious man who may have the army at his devotion, may step up into the throne, and seize upon absolute power.

The absolute unqualified command that Congress have over the militia may be made instrumental to the destruction of all liberty, both public and private; whether of a personal, civil or religious nature.

3.11.52 First, the personal liberty of every man probably from sixteen to sixty years of age, may be destroyed by the power Congress have in organizing and governing of the militia. As militia they may be subjected to fines to any amount, levied in a military manner; they may be subjected to corporal punishments of the most disgraceful and humiliating kind, and to death itself, by the sentence of a court martial: To this our young men will be more immediately subjected, as a select militia, composed of them, will best answer the purposes of government.

3.11.53 Secondly, The rights of conscience may be violated, as there is no exemption of those persons who are conscientiously scrupulous of bearing arms.[21] These compose a respectable proportion of the community in the state. This is the more remarkable, because even when the distresses of the late war, and the evident disaffection of many citizens of that description, inflamed our passions, and when every person, who was obliged to risque his own life, must have been exasperated against such as on a,y account kept back from the common danger, yet even then, when outrage and violence might have been expected, the rights of conscience were held sacred.

At this momentous crisis, the framers of our state constitution made the most express and decided declaration and stipulations in favour of the rights of conscience: but now when no necessity exists, those dearest rights of men are left insecure.

3.11.54 Thirdly, The absolute command of Congress over the militia may be destructive of public liberty; for under the guidance of an arbitrary government, they may be made the unwilling instruments of tyranny. The militia of Pennsylvania may be marched to New England or Virginia to quell an insurrection occasioned by the most galling oppression, and aided by the standing army, they will no doubt be successful in subduing their liberty and

independency; but in so doing, although the magnanimity of their minds will be extinguished, yet the meaner passions of resentment and revenge will be increased, and these in turn will be the ready and obedient instruments of despotism to enslave the others; and that with an irritated vengeance. Thus may the militia be made the instruments of crushing the last efforts of expiring liberty, of riveting the chains of despotism on their fellow citizens, and on one another. This power can be exercised not only without violating the constitution, but in strict conformity with it; it is calculated for this express purpose, and will doubtless be executed accordingly.

As this government will not enjoy the confidence of the people, but be executed by force, it will be a very expensive and burthensome government. The standing army must be numerous, and as a further support, it will be the policy of this government to multiply officers in every department: judges, collectors, tax-gatherers, excisemen and the whole host of revenue officers will swarm over the land, devouring the hard earnings of the industrious. Like the locusts of old, impoverishing and desolating all before them. 3.11.55

We have not noticed the smaller, nor many of the considerable blemishes, but have confined our objections to the great and essential defects; the main pillars of the constitution; which we have shewn to be inconsistent with the liberty and happiness of the people, as its establishment will annihilate the state governments, and produce one consolidated government that will eventually and speedily issue in the supremacy of despotism. 3.11.56

In this investigation, we have not confined our views to the interests or welfare of this state, in preference to the others. We have overlooked all local circumstances—we have considered this subject on the broad scale of the general good; we have asserted the cause of the present and future ages: the cause of liberty and mankind.

Nathaniel Breading,
John Smilie
Richard Baird
Adam Orth
John A. Hanna
John Whitehill
John Harris
Robert Whitehill
John Reynolds
Jonathan Hoge
Nicholas Lutz
John Ludwig,
Abraham Lincoln
John Bishop
Joseph Heister
Joseph Powel
James Martin
William Findley
John Baird
James Edgar
William Todd.

The yeas and nays upon the final vote were as follows, viz.

YEAS.

George Latimer	James Wilson	John Hunn
Benjamin Rush	Thomas M'Kean	George Gray
Hilary Baker	William M'Pherson	Samuel Ashmead

Enoch Edwards	Sebastian Graff	William Wilson
Henry Wynkoop	John Hubley	John Boyd
John Barclay	Jasper Yates	Thomas Scott
Thomas Yardley	Henry Slagle	John Nevill
Abraham Stout	Thomas Campbell	John Allison
Thomas Bull	Thomas Hartley	Jonathan Roberts
Anthony Wayne	David Grier	John Richards
William Gibbons	John Black	F. A. Muhlenberg
Richard Downing	Benjamin Pedan	James Morris
Thomas Cheyney	John Arndt	Timothy Pickering
John Hannum	Stephen Balliott	Benjamin Elliot
Stephen Chambers	Joseph Horsefield	
Robert Coleman	David Deshler	

46

NAYS.

John Whitehill	John Bishop	James Edgar
John Harris	Joseph Heister	Nathaniel Breading
John Reynolds	James Martin	John Smilie
Robert Whitehill	Joseph Powell	Richard Baird
Jonathan Hoge	William Findley	William Brown
Nicholas Lutz	John Baird	Adam Orth
John Ludwig	William Todd	John Andre Hannah
Abraham Lincoln	James Marshall	

23

Philadelphia, Dec. 12, 1787.

1. The eighth member was Benjamin Franklin, who had not been chosen at the first election because of doubt about his willingness to serve. See the reply by some of the majority to the "Address of the Minority of the Assembly," McMaster and Stone 79–83.

2. McMaster and Stone 65–71; see Pennsylvania House Minority above 3.2.3.

3. Constitution of Pennsylvania, 1776, sec. 47; Thorpe, *Federal and State Constitutions* V, 3091–92. See "Minutes of the Council of Censors, 1783–1784," *Pennsylvania Archives* 3d series, X (1896), 785 ff.

4. This is presumably the argument referred to by Publius when he claims that the enemies of the proposed Constitution question "that fundamental principle of republican government, which admits the right of the people to alter or abolish the established constitution whenever they find it inconsistent with their happiness. . . ." *The Federalist* no. 78, 527. Note however that the Minority of the Pennsylvania Convention does not make the argument Publius attributes to it and that Publius himself is here cautioning against ill-considered change.

5. This proposal is criticized by Publius in *The Federalist* no. 83, 563–68.

6. See the penetrating discussion by America (Noah Webster) of the difficulties of defining and applying a guarantee of freedom of the press. The New York *Daily Advertiser* 31 December 1787, reprinted in Webster's *Collection of Essays* (1790).

7. America gleefully shows how irrelevant this proposal is in free America, where every man is lord of this own land, and how much it derives from the "feudal tyranny" of Europe. Ibid.

8. McMaster and Stone 220. This is Wilson's speech at the Pennsylvania ratifying convention, given on 24 November 1787.

9. McMaster and Stone 225. Exactly the same portions of the speech are quoted by Centinel V, 2.7.94.

10. Cf. *The Federalist* on taxation, especially nos. 32 and 33. The question of concurrent taxation was of course very widely discussed. See McMaster and Stone 260 (Whitehill), 268–69 (Smilie); for other citations see Federal Farmer III, 2.8.39 n. 29.

11. Wilson in Pennsylvania Convention, McMaster and Stone 308; see also Ford, *Essays* 45–46 (Cassius), and *The Federalist* no. 33, 207. On the Anti-Federal side see Centinel V, 2.7.97, and Federal Farmer IV, 2.8.49; the latter, in criticizing the absence of this language from the treaty-making power, seems to imply that it does restrict the authority of Congress.

12. Cf. the argument following and Centinel V, 2.7.99.

13. This argument was made frequently, but the reference here is doubtless to James Wilson in his influential speech of 6 October and in the Pennsylvania convention; see McMaster and Stone 147, 264; for other citations see Centinel II, 2.7.36 n. 16. For an argument similar to the one here see Republican Federalist 4.13.23, 26. The deeper Anti-Federal reply is not that Congress will usurp the state's elective roles but that participation of that kind is not sufficient to maintain the states as truly significant parts of the federal republic. See Federal Farmer X, 2.8.132 n. 84.

14. *The Spirit of Laws* II, ch. 2. The same compressed version of Montesquieu's statement is used by Centinel (III, 2.7.73).

15. A Freeman replied that "tho' the convention propose that it should be the act of the people, yet it is in their capacities as citizens of *the several members of our confederacy*—for they are expressly declared to be the people of *the United States*—to which idea the expression is *strictly* confined, and the *general* term of *America*, which is constantly used in speaking of us *as a nation*, is carefully omitted; a pointed view was evidently had to our *existing union*." *Pennsylvania Gazette* 23 January 1788. Cf. Henry's denunciation of the language of the preamble, 5.16.1, and the discussion in the North Carolina ratifying convention Elliot IV, 15–16, and McMaster and Stone 256–57 (Whitehill).

16. Cf. *The Federalist* nos. 35–36; see Federal Farmer II, 2.8.15 n. 11.

17. See Publius' ingenious, and in its implications profound, contention that the balance of interest will be such that representation will be increased, *The Federalist* no. 58, 392–95. For other Federalist discussions of this question see Federal Farmer X, 2.8.137 n. 88.

18. The source of this quotation has not been found. See above, Democratic Federalist 3.5.6 n. 6.

19. *Commentaries* III, 380–81. I do not find the discussion of Scottish proceedings.

20. Montesquieu, *The Spirit of Laws* XI, ch. 6.

21. See Centinel III, 2.7.76 n. 39.

Essays by William Penn

(PHILADELPHIA) INDEPENDENT GAZETTEER
2 and 3 January 1788

These thoughtful essays are interesting partly for the general principles of government stated at the outset, but more especially for the discussion of the principle of the division of power in a democracy. "William Penn" emphatically accepts democracy, or government of the people, as the only government under which liberty can be attained or preserved (3.12.11). He examines the need in such a government for a division of power, the first and most natural being between the legislative and executive branches (3.12.13–14). He argues against giving the executive a negative or any other control over the legislative (3.12.15). He finds his argument supported by the principles, though not always the practice, of the state constitutions, the book of which is second only to the Bible in its store of eternal truths (3.12.16–18).

I

To the Citizens of the United States.

Fellow Citizens,

3.12.1 At this important moment which is to decide on your future happiness or misery by the adoption or rejection of the *new proposed form of government*, a cool and dispassionate investigation of that system becomes indispensably necessary—I have waited for a considerable time, hoping that the subject would be taken up by some abler pen than mine—I have been disappointed in my expectation—a great many pieces have indeed appeared, which have thrown a considerable light on this interesting subject, but they have been mostly of the desultory kind, and no person (at least that I know of) has as yet attempted a methodical examination of the proposed constitution, or a comparative view of its principles with the principles of a government in general, and of a *federal* government in particular—Although

I am greatly deficient in the necessary abilities, I have however undertaken the arduous task; and I propose, in this and the ensuing papers, to go through it in the best manner I am able, and without attempting to display any ornament or elegance of style, I shall endeavour to explain my ideas with clearness and simplicity—my sole object is to be understood, and to render (if possible) these observations as useful, as their subject is interesting.

I shall in the first place lay down general principles, and proceed afterwards to their applications. I shall make very few quotations, from political writers, and take very few examples from the government of other countries whether ancient or modern—truth needs nothing but itself to enforce conviction on unprejudiced minds, and principles are a thousand times above precedents. 3.12.2

I shall therefore begin with examining into the nature of government in general. 3.12.3

Government in its general sense may be defined *a human institution by which certain powers are delegated by the people to one or more citizens to preserve their national existence, and secure to each individual, the enjoyment of his natural rights:* otherwise, in the words of the constitution of Massachusetts, It is *a social compact by which the whole people convenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good.*[1]

Government was originally instituted for the benefit of mankind—The welfare of the community is the great end which, under every form, it is intended to obtain—but what is the best form of government has long been an object of dispute among the learned and speculative. It is not true that that government is best which is best administered—it is a sophism invented by tyranny to quiet the inquisitive mind; a good administration is at best but a temporary palliative to a bad government, but it does not alter its nature, any more than a bad man by doing one good action in the course of his life, ceases to be a bad man.[2] The best government is certainly that which is the least liable to be ill administered, in which the rulers have the most power to do good and the least to do evil. In other words it is that in which the natural rights of mankind are the most inviolably secured. 3.12.4

And of consequence as liberty is the most essential of those rights, which man holds by inheritance from all-bountiful nature, that which takes from him the least share of that liberty ought to be the best—for the same principle holds in the political as in the mechanical science, and that machine in either must be allowed to be the most perfect, which with the least *strength* performs the greatest *execution.* 3.12.5

But here a long agitated question will occur: *What is liberty?* What is that supreme good which every one feels, and so very few can define?—I would call it *the unlimited power of doing good,* and without very critically examining into this definition, I know not what internal voice tells me that I am 3.12.6

not mistaken. But again, What is good?—When that is fully known and understood, men will no longer differ about forms of government; it is the tree of knowledge which we have as yet only tasted; it is that we have for thousands of years, with various successes, been eagerly seeking after; it is the ultimate end of the painful researches of the human mind, and the object of these disquisitions.

3.12.7 Without going too deep into metaphysical investigations, that are no part of our present design, let us go back to the leading principle already established, that the best government is that which secures to the citizens the greatest share of their natural rights: their full extent unfortunately is not yet known to us; it is by slow, and often interrupted, steps that we have discovered those we now enjoy. That discovery is owing partly to our own sad experience, and partly to the philanthrophic researches of those chosen few to whom the Almighty has in his mercy bestowed a larger portion of the ethereal fire than usually falls to the lot of the common race of men. Those men, whom we call *philosophers* or *lovers of wisdom,* have generally been persecuted while they lived, and have had altars erected to them after their death. Because prejudice, supported by private interest, has always stood in the way of useful truths, which however have in the end seldom failed to prevail. And wherever a sufficient number of those truths has been established and generally diffused, liberty and happiness have become the portion of every nation so enlightened—liberty is the fair offspring of knowledge, as tyranny is the grim-child of ignorance.

3.12.8 In this respect America is of all other nations the most favored of Heaven—The book of the constitutions of the different states,[3] reflects such a mass of light as would have dazzled the greatest philosophers of antiquity. After the holy scriptures, it is certainly of all books that which contains the greatest store of eternal truths. I never open that sacred volume without feeling a kind of awful reverence, mixed with gratitude to the Almighty giver of all good gifts, who has been pleased to enlighten the minds of the legislators of this favored nation.

3.12.9 The truths which those great men have thus declared and established, are not (GOD be thanked) solely consigned to books made of perishable materials; they are deeply engraved in the hearts of every American. This nation may boast of enjoying the greatest collective store of political knowledge of any people on earth. Maxims of the utmost importance to the happiness of mankind, are familiar to our meanest citizens, which many eminent Philosophers in other parts of the world, have perhaps never had an idea of—hence it must be inferred, that if we are ever brought into slavery, we shall never be allowed the easy plea of ignorance: the nations that now envy us, will despise our meaness, and see our miseries without pity.

3.12.10 Let us therefore try this new federal constitution that is now offered to us by the light of our own knowledge—Let us recur to those original principles

upon which our present constitutions have been established. These guides never can mislead us; they are a sure touchstone to try any form of government by. If we find the federal plan conformable to those principles, let us by all means adopt it, and thereby secure perpetual happiness to ourselves and our posterity—If, on the contrary, we find that it is built on a different foundation, we must not hesitate a moment, but with a manly firmness, worthy of ourselves, unanimously reject it.

William Penn.

II

To the Citizens of the United States.

Fellow Citizens,

I shall now proceed to lay down the principles that I think necessary to 3.12.11
the formation of a *free* government, and without which, I sincerely believe, no true liberty can exist. I shall not here take notice of the *scholastic* division of government into three kinds, to wit, *monarchy, aristocracy* and *democracy,* nor consider separately the nature and effects of each of these different species. At present I shall confine my enquiries entirely to a *democracy,* or *government, of the people,* which I am confident is the only one under which liberty can be obtained or preserved. The two other forms of government are so essentially different from it, that it is impossible they should have been intended to obtain the same, and which can never be done by following opposite roads. The *unity* of truth is as fixed and immutable a principle as that of the Divinity from whence it springs, and whose chief attribute it is. If so, no two opposite principles in government, any more than in any other science, can be equally founded upon it. Whether it was given to man to reach the source of the great fountain of truth, from which all true principles are derived, as rivers flow from the sea, it is not in my power to determine. We ought at least, with cautious and diffident steps, to approach it as nearly as we can, and treasure up and secure to ourselves and our posterity, the advantage of those *partial* truths, which the human mind is allowed to discover, waiting with confidence in HIM who constantly watches over his favorite creature *man,* and made him to be happy; for the blessed time when we shall perhaps discover the *grand principle,* which, when once found, it will not be in our power any more to tread the paths of error. Then, and not till then, may we expect to see the days foretold by the greatest philosopher of antiquity, when laws and government (their true principles being known to all the world) will be the same through all man-

kind. *Non erit lex alia Romae, alia Athenis, alia, nunc, alia posthac, sed et omni tempore, et apud omnes gentes, una eadem qua lex obtinebit.* Cic. Fragm. de Repub. [III, 22].

3.12.12 I believe that it is universally agreed upon in this enlightened country, that all power residing originally in the people, and being derived from them, they ought to be governed by themselves only, or by their immediate representatives. I shall not spend any time in explaining a principle so well and so generally understood, but I shall proceed immediately to that which I conceive to be the next in order.

3.12.13 The next principle, without which it must be clear that no free government can ever subsist, is the DIVISION OF POWER among those who are charged with the execution of it. It has always been the favorite maxim of princes, to *divide* the people, in order to *govern* them; it is now time that the people should avail themselves of the same maxim, and *divide* power among their rulers, in order to prevent their abusing it—The application of this great political truth, has long been unknown to the world, and yet it is grounded upon a very plain natural principle,—If, says Montesquieu, the same man, or body of men, is possessed both of the legislative and executive power, there is NO LIBERTY, because it may be feared that the same monarch, or the same *senate*, will enact tyrannical laws, in order to execute them in a tyrannical manner[4]—nothing can be clearer, and the natural disposition of man, to ambition and power, makes it probable that such would be the consequence—suppose for instance, that the same body, which has the power of raising money by taxes, is also entrusted with the application of that money, they will very probably raise large sums, and apply them to their own private uses; if they are empowered to create offices, and appoint the officers, they will take that opportunity of providing for themselves, and their friends, and if they have the power of inflicting penalties for offences, and of trying the offenders, there will be no bounds to their tyranny. Liberty therefore can only subsist, where the powers of government are properly *divided,* and where the different jurisdictions are inviolably kept distinct and separate.*

3.12.14 The first and most natural division of the powers of government are into the legislative and executive branches. These two should never be suffered to have the least share of each others jurisdiction, or to intermeddle with it

*I shall illustrate this doctrine by an example. A burgher of a certain borough of Switzerland was elected *Bailiff*, or Chief Magistrate, for one year, according to the constitution of the place. Shortly after his appointment, he sent for one of his neighbours, and ordered him to pull off his boots. The honest neighbour was astonished, and attempted to remonstrate, but the bailiff was determined to exert his authority, and threatened to send him to jail, if he did not yield him an immediate obedience. The poor man was forced to comply, for the bailiff was vested with power, both legislative and executive, he pulled off his worship's boots, but said to him, "*when I am appointed bailiff in my turn, you shall pull off my boots and clean them too.*"[5]

in any manner. For which ever of the two divides its power with the other, will certainly be subordinate to it, and if they both have a share of each others authority, they will be in fact but one body; their interest as well as their powers will be the same, and they will combine together against the people.

It is therefore a political error of the greatest magnitude, to allow the executive power a negative, or in fact any kind of control over the proceedings of the legislature.[6] The people of Great Britain have been so sensible of this truth, that since the days of William III. no king of England has dared to exercise the negative over the acts of the two houses of parliament, to which he is clearly entitled by his prerogative. 3.12.15

This doctrine is not novel in America, it seems on the contrary to be every where well understood and admitted beyond controversy; in the bills of rights or constitutions of *New-Hampshire, Massachusetts, Maryland, Virginia, North-Carolina and Georgia,* it is expressly declared, "*That the legislative, executive and judicial departments, shall be forever separate and distinct from each other.*"[7] In *Pennsylvania* and *Delaware,* they are effectually separated without any particular declaration of the principle. In the other states indeed, the executive branch possesses more or less of the executive [legislative?] power—And here it must appear singular that the state of Massachusetts, where the doctrine of a separate jurisdiction is most positively established, and in whose bill of rights these remarkable words are to be found: "The executive shall never exercise the legislative and judicial powers, or either of them, to the end it may be a government of laws and not of men." (§30)[8] Yet in that commonwealth and New-Hampshire, the executive branch, which consists of a *single magistrate,* has more controul over the legislature than in any other state; for there, if the governor refuses his assent to a bill, it cannot be passed into a law, unless two-thirds of the house afterwards concur. In New-York the same power is given to a Council of Revision, consisting of the Governor, the Chancellor and Judges of the Supreme Court, or any three of them, of which the Governor is to be one. In Rhode-Island and Connecticut, whose governments were established before the revolution, the Governor has a single vote as a member of the upper house, and New-Jersey has adopted this part of their constitution. In Georgia the laws are to be revised by the Governor and Council, but they can do no more than give their opinion upon them. In Maryland the bills are to be signed by the governor before they can be enacted, and in South-Carolina they are to be sealed with the great seal, which is in the governor's custody. But in the first of these states, the constitution prescribes, that the governor *shall* sign the bills, and in the latter, a joint committee of both houses of legislature is to wait upon chief magistrate to receive and return the great seal, which implies that he is bound to deliver it to them, for the special purpose of affixing it to the laws of the state. Pennsylvania has proceeded upon a much more rational 3.12.16

ground, their legislature having a particular *seal* of their own, and their laws requiring only to be signed by the speaker. If in Maryland or South-Carolina a difference should ever arise between the legislature and the governor, and the latter should refuse to sign the laws, or to deliver the great seal, the most fatal consequences might ensue.

3.12.17 Here then we see the great leading principle of the *absolute division of the legislative from the executive jurisdiction,* admitted in almost every one of the American states as a fundamental maxim in the politics of a free country. The *theory* of this general doctrine is every where established, though a few states have somewhat swerved from it in the *practice*. From whence we must conclude, that even the knowledge and full conviction of a new political truth will not always immediately conquer inveterate habits and prejudices. The idea of the negative, which the constitution of England gives to the monarch over the proceedings of the other branches of parliament, although it has so long become obsolete, has had an effect upon timid minds, and upon the minds of those who could not distinguish between the *form* and *spirit* of the *British* constitution. They would not grant to the executive branch an absolute negative over the legislature, but yet they tried every method to introduce something similar to it. They reprobated the doctrine in the most express words, and yet they could not bear to part entirely with it. It is curious to observe how many different ways they have endeavored to conciliate truth with prejudice. Of those states who have allowed the executive branch to intermeddle with the proceedings of the legislature, no two (New-Hampshire and Massachusetts excepted) have done it exactly in the same manner. They have tried every possible medium, but having lost sight of the original principle which they had already established, and which alone could have been their safest guide, they groped about in the dark, and could not find any solid ground on which to establish a general rule. Like Noah's dove, being once out of the ark of truth, they could not find elsewhere a place to rest their feet.

3.12.18 These facts will no doubt afford an interesting page in the history of the contradictions of the human mind. Unfortunately, they do not stand single, and this is not the only instance that we find in the constitutions of the different states, of a general principle being expressly declared as a part of the natural rights of the citizens, and afterwards being as expressly contradicted in the practice. Thus we find it declared in every one of our bills of rights, "that there shall be a perfect liberty of conscience, and that no sect shall ever be entitled to a preference over the others."[9] Yet in Massachusetts and Maryland, all the officers of government, and in Pennsylvania the members of the legislature, are to be of the Christian religion; in New-Jersey, North-Carolina, and Georgia, the protestant, and in Delaware, the trinitarian sects, have an exclusive right to public employments; and in South-Carolina the constitution goes so far as to declare the creed of the established church. Virginia and New-York are the only states where there

is a perfect liberty of conscience. I cannot say any thing as to Connecticut and Rhode-Island, as their constitutions are silent on the subject, and I have not been informed of their practice.

Whether these religious restrictions are right or wrong it is not my intention, nor is it my object to examine in the course of these disquisitions—I only meant to shew, that in laying down a political system it is safer to rely on principles than upon precedents, because the former are fixed and immutable, while the latter vary with men, places, times and circumstances. 3.12.19

William Penn.

1. Massachusetts Constitution, 1780, preamble. In Thorpe, *Federal and State Constitutions* III, 1889.
2. See Federal Farmer I, 2.8.1 n. 3; Poplicola 4.11 n. 1.
3. *The Constitutions of the Several Independent States of America* Published by order of Congress (Philadelphia 1781). This volume went through several editions and reprintings.
4. Montesquieu, *The Spirit of Laws* XI, ch. 6.
5. The source of this anecdote has not been found.
6. In the original this sentence ends with a question mark.
7. This language adequately conveys the meaning of the various provisions, although it is a composite and does not appear in precisely this form in any of the state constitutions referred to. See Thorpe, *Federal and State Constitutions* II, 778; III, 1687, 1893; IV, 2457; V, 2787; VII, 3813.
8. Ibid. III, 1893.
9. Ibid. III, 1689, 1889; IV, 2454; V, 2788; VII, 3814.

Essay by Deliberator

(PHILADELPHIA) FREEMAN'S JOURNAL
20 February 1788

This essay and the next were written in reply to a series of three essays by A Freeman (written by Tench Coxe), contending that the government under the Constitution would not be a consolidation but a federal government.[1] The essay here by Deliberator is concerned with the *powers* of the general and state governments. The author rebuts some of A Freeman's claims and goes on to make sixteen assertions of his own about the powers granted under the new Constitution, the most striking of which are that under its power to regulate commerce Congress may authorize the importation of slaves, even in states where this trade is prohibited; that Congress may establish a uniformity of religion if it should think it for the "general welfare"; that Congress cannot increase the number of the House of Representatives; that no state may call forth its militia to suppress insurrection; and that no state can compel one of its citizens to pay a debt to a citizen of another state.

This essay may be regarded as a kind of preface to the essay by A [Pennsylvania] Farmer (below, 3.14), which provides a more penetrating and comprehensive examination of the arguments of A Freeman.[2]

1. While A Freeman is identified by Centinel as James Wilson ("James the Caledonian"—see Centinel XIII, 2.7.158), there is solid evidence that he was in fact Tench Coxe. See Harold Hutcheson, *Tench Coxe: A Study in American Economic Development* (Baltimore 1938) 65.

2. Two other essays over the pseudonym "*Deliberator*" appeared in the newspaper in the following two months, but these consisted entirely of lengthy extracts from Centinel. See Centinel IV, 2.7.79 n. 41.

Mr. Bailey,

3.13.1 A writer in the Pennsylvania Packet, under the signature of *A Freeman*,[1] has lately entered the lists as another champion for the proposed constitution; particularly he has endeavoured to shew that our apprehensions of this plan of government being a *consolidation* of the United States into one

government, and not a confederacy of sovereign independent states, is entirely groundless; and it must be acknowledged, that he has advocated this cause with as much shew of reason, perhaps, as the subject will admit.

The words *states, several states,* and *united states* are, he observes, 3.13.2
frequently mentioned in the constitution—and this is an argument that their separate sovereignty and independence cannot be in danger! He has enumerated a variety of matters which, he says, Congress cannot do, and which the states, in their individual capacity, must or may do, and thence infers their sovereignty and independence. In some of these, however, I apprehend he is a little mistaken.

(1.) "Congress cannot train the militia."—This is not strictly true; for by 3.13.3
the 1st Article they are empowered "to *provide* for organizing, arming and *disciplining*" them; and tho' the respective states are said to have the authority of training the militia, it must be "according to the discipline prescribed by Congress." In this business, therefore, they will be no other than subalterns under Congress, to execute their orders; which, if they shall neglect to do, Congress will have constitutional powers to provide for, by any other means they shall think proper. They shall have power to declare what description of persons shall compose the militia; to appoint the stated times and places for exercising them; to compel *personal* attendance, whether when called forth into actual service, or on other occasions, under what penalties they shall think proper, without regard to scruples of conscience, or any other consideration; their executive officer may march, and countermarch them from one extremity of the state to the other—and all this without so much as consulting the legislature of the particular states to which they belong! Where then is that boasted security against the annihilation of the state governments, arising from "the powerful military support" they will have from their militia?

(2.) "Congress cannot enact laws for the inspection of the produce of the country."—Neither is this strictly true. The power "to regulate commerce with foreign nations and among the several States, and to *make* all laws which shall be necessary and proper for carrying this power (among others vested in them by the constitution) into execution," most certainly extends to the enacting of inspection laws. The particular states may indeed propose such laws to them; but it is expressly declared, in the 1st article, that "all such laws shall be subject to the revision and *controul* of the Congress."

(3.) "The several states can . . . prohibit or impose duties on the importation of slaves into their own ports"—Nay, not even this can they do, "without the consent of Congress," as is expressly declared in the close of the 1st article. The duty which Congress may, and it is probable will lay on the importation of slaves, will form a branch of their revenue; but his impost, as well as all others, "must be *uniform* throughout the United States"; Congress therefore *cannot* consent that one state should impose an additional duty on this *article of commerce,* unless all the other states should do the

same; and it is not very likely that *some* of the states will ever ask this favour.

(4.) "Congress cannot interfere with the opening of rivers and canals; the making or regulation of roads, except post roads; building bridges; erecting ferries; building light-houses, etc."—In one case, which may very frequently happen, this proposition also fails; for if the river, canal, road, bridge, ferry, etc. be common to two states, or a matter in which they may be both concerned, and consequently must both concur, then the interference and consent of Congress becomes absolutely necessary; since it is declared in the constitution that "no State shall, without the consent of Congress, enter into any *agreement* or *compact* with another State."

(5.) "The elections of the President, Vice President, senators and representatives are exclusively in the hands of the States—*even as to filling vacancies.*" This, in one important part, is not true—for, by the 2d article, "in case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of the said office, the same shall devolve on the Vice-President, *and the Congress may by law provide for the case of removal, death, etc. both of the President and Vice President,* declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected; but no such election is provided for by the constitution, till the return of the periodical election, at the expiration of the *four years* for which the former president was chosen. And thus may the great projects of this supreme magistrate of the United States be exercised, *for years together,* by a man who, perhaps, never had one vote of the people for any office of government in his life.

(6.) "Congress cannot interfere with the constitution of any state."—This has been often said, but alas! with how little truth! since it is declared in the 6th article that "this constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties, etc. shall be the supreme law of the land, and *every state,* shall be bound thereby—any thing in the *constitution* or laws of any state to the contrary notwithstanding."

3.13.4 But, sir, in order to form a proper judgment of the probable effects of this plan of general government on the sovereignties of the several states, it is necessary also to take a view of what Congress *may,* constitutionally, do, and of what the states *may* not do. This matter, however, the above writer has thought proper to pass over in silence: I would therefore beg leave, in some measure, to supply this omission, and if in any thing, I should appear to be mistaken I hope he will take the same liberty with me that I have done with him—he will correct my mistake.

3.13.5 1. Congress may, even in time of peace, raise an army of 100,000 men, whom they may canton through the several states, and billet out on the inhabitants, in order to serve as necessary instruments in executing their decrees.

2. Upon the inhabitants of any state proving refractory to the will of Congress, or upon any other pretence whatsoever, Congress may call out even all the militia of as many states as they think proper, and keep them in actual service, without pay, as long as they please, subject to the utmost rigor of military discipline, corporal punishment, and death itself not excepted.

3. Congress may levy and collect a capitation or poll tax, to what amount they shall think proper; of which the poorest taxable in the state must pay as much as the richest.

4. Congress may, under the sanction of that clause in the constitution which empowers them to regulate commerce, authorize the importation of slaves, even into those states where this iniquitous trade is, or may be prohibited by their laws or constitution.

5. Congress may, under the sanction of that clause which empowers them to lay and collect *duties* (as distinct from imposts and excises) impose so heavy a stamp-duty on newspapers and other periodical publications, as shall effectually prevent all necessary information to the people through these useful channels of intelligence.

6. Congress may, by imposing a duty on foreigners coming into the country, check the progress of its population; and after a few years they may prohibit altogether, not only the emigration of foreigners into our country, but also that of our own citizens to any other country.

7. Congress may withhold, as long as they shall think proper, all information respecting their proceedings from the people.

8. Congress may order the elections for members of their own body, in the several states, to be held at what times, in what places, and in what manner they shall think proper. Thus, in Pennsylvania, they may order the elections to be held in the middle of winter, at the city of Philadelphia; by which means the inhabitants of nine tenths of the state will be effectually (tho constitutionally) deprived of the exercise of their right of suffrage.

9. Congress may, in their courts of judicature, abolish trial by jury, in civil cases, altogether; and even in criminal cases, trial by a jury of the vicinage is not secured by the constitution—A crime committed at Fort-Pitt may be tried by a jury of the citizens of Philadelphia.

10. Congress may, if they shall think it for the "general welfare," establish an uniformity in religion throughout the United States. Such establishments have been thought necessary, and have accordingly taken place in almost all the other countries in the world, and will, no doubt, be thought equally necessary in this.

11. Though I believe it not generally so understood, yet certain it is, that Congress may emit *paper money*, and even make it a legal tender throughout the United States, and, what is still worse, may, after it shall have depreciated in the hands of the people, call it in by taxes, at any rate of depreciation (compared with gold and silver) which they may think proper.

For though no state can emit bills of credit, or pass any law impairing the obligation of contracts, yet the Congress themselves are under no constitutional restraints on these points.

12. The number of representatives which will compose the principal branch of Congress is so small as to occasion general complaint; Congress, however, have no power to encrease the number of representatives, but may reduce it even to one fifth part of the present arrangement.

13. On the other hand—No state can call forth its militia even to suppress any insurrection or domestic violence which may take place among its own citizens—This power is, by the constitution, vested in Congress.

14. No state can compel one of its own citizens to pay a debt due to a citizen of a neighbouring state. Thus a Jersey-man will be unable to recover the price of a turkey, sold in the Philadelphia market, if the purchaser shall be inclined to dispute, without commencing an action in one of the federal courts.

15. No state can encourage its own manufactures either by prohibiting, or even laying a duty on the importation of foreign articles.

16. No state can given relief to insolvent debtors, however distressing their situation may be; since Congress will have the exclusive right of establishing uniform laws on the subject of bankruptcies throughout the United States; and the particular states are expressly prohibited from passing any law impairing the obligation of contracts.

Deliberator.

1. The three essays by A Freeman appeared in the *Pennsylvania Gazette* 23 January, 30 January, 6 February 1788; and in the *Pennsylvania Packet* 25 January, 31 January, and 7 February 1788. Addressed to the Minority of the Convention of Pennsylvania, they were a sober attempt to show that the states and their governments were necessary to the execution of the new Constitution itself; that the states were left with vast powers, far exceeding those of any mere administrative subdivisions; and that the Constitution was not intended to and would not in fact result in an entire consolidation of the United States into one government.

The Fallacies of the Freeman Detected by A Farmer

(PHILADELPHIA) FREEMAN'S JOURNAL
April 1788

This essay by A [Pennsylvania] Farmer is a good, strongly argued piece, more theoretical than most of the Anti-Federalist essays, and containing a substantial discussion of the principles of true federalism, largely patterned after Montesquieu. Like Deliberator, this author is replying to the essays of A Freeman (Tench Coxe), which contend that the new Constitution provides for a genuine federal government.[1] The main argument is that a truly federal republic is one in which the constituent parts exercise sovereign powers, but that the states under the Constitution will exercise only ministerial powers. A Farmer divides his essay into six parts. He explains "the nature of sovereignty" (3.14.2–5), "of a federal republic" (3.14.6–8), and "of a consolidated government" (3.14.9–10). His scheme then calls for discussions of "the nature of ministerial agency" and the "address to the minority," which are treated somewhat less systematically in the course of an examination of the powers of the federal government under the new Constitution (3.14.11–13) and the powers left to the states (3.14.14–19). The essay ends with some general observations on the unwisdom of relying on the virtue of rulers, on the illegal character of the proceedings and proposals of the Philadelphia Convention, and on the haste and impropriety of Federalist activities in Pennsylvania and elsewhere.

Like several of the Pennsylvania Anti-Federalist pieces, A Farmer's essay appeared almost simultaneously in the *Freeman's Journal* (16 April and 23 April 1788) and the *Independent Gazetteer* (18 April and 22 April 1788). It is reprinted here from the former.

1. See above, Deliberator 3.13 intro. n. 1.

Some weeks since there was published in the Carlisle Gazette an Address to the Minority of the late Convention of this State, under the signature of a *Freeman*, which I then supposed had been written by some well-meaning person of that place, who had not yet entered the porch of political knowl- 3.14.1

edge, who was unacquainted with the nature of sovereignty, and incapable of distinguishing ministerial agency from the exercise of sovereignty; I therefore took no especial notice of it, until happening to see a Philadelphia Newspaper, I found the Address had originated there, and was ascribed to a gentleman who is far from being ignorant, as I had candidly supposed the author to be, but who hath habituated himself to presume much upon the supposed ignorance of the people, and whose expectations of future support and grandeur hath probably been very influential in framing and promoting the proposed system of government:[1]—Upon this discovery, I read the Address again with more attention, and resolved to communicate, thro' your useful paper, the result of my observations thereon. I do not, however, design to answer the Address in detail, but to establish and explain such general principles as may assist people in judging for themselves, and have a tendency to detect the sophistry which characterises the performance. In order to do this, I shall explain,

First, The NATURE of SOVEREIGNTY.

Second, Of a FEDERAL REPUBLIC.

Third, Of a CONSOLIDATED GOVERNMENT.

Fourth, The NATURE of MINISTERIAL AGENCY.

Fifth, Examine the ADDRESS to the MINORITY (the occasion of these Enquiries.)

Sixth, Conclude with some GENERAL OBSERVATIONS on the TIMES.

3.14.2 I return to the *first* then: From the very design that induces men to form a society that has its common interests and to promote and secure which it ought to act in concert, it is necessary that there should be established a public authority, to order and direct what ought to be done by each individual as he stands in relation to the society itself, or to the individual members thereof; and this public authority consisting of that portion of natural liberty which each member surrenders to the society to be exercised for the common advantage, is the sovereignty which is often called political authority. If this sovereignty or political authority be vested in and exercised by the whole people, as in some of the ancient republics, or if it be delegated to representatives chosen by the people from among themselves, as in modern times, the government is called a democracy. If on the contrary the sovereignty be in a particular class of citizens who have not a common interest with the people at large, or body of the nation, it is called an aristocracy;[2] and if in a single person, a monarchy or despotism; and these three kinds may be variously combined and modified as in the British government and others, but every nation that governs itself by its own laws, let the form of government be what it may, is a sovereign state.

3.14.3 Sovereignty therefore consists in the understanding and will of the political society, and this understanding and will is originally and inherently in the people; the society having rested it where and in what manner it pleases, he or they to whom it is delegated is the sovereign and is thus vested with the

political understanding and will of the people for their good and advantage solely.

3.14.4 The power of making rules or laws to govern or protect the society is the essence of sovereignty, for by this the executive and judicial powers are directed and controuled, to this every ministerial agent is subservient, and to this all corporate or privileged bodies are subordinate: this power not only regulates the conduct, but disposes of the wealth and commands the force of the nation. To keep this sovereign power therefore in due bounds hath fundamental laws, which we call constitutions and bills of rights, been made and declared. Scarcely hath the wisdom of man, matured by the experience of ages, been able with all the checks, negatives and balances either of ancient or modern invention to prevent abuses of this high sovereign authority.

3.14.5 Here I may possibly be misunderstood; it may perhaps be objected, that in Great Britain the *King* is called the Sovereign, and that he is an executive and not legislative officer. True, the King of Great Britain is the Supreme Executive of the nation, but it is not this alone that constitutes him a Sovereign; he hath a negative over the Legislative, the laws are made by and with his consent, and are called the King's Laws; he calls, prorogues and dissolves his Parliament when he pleases; the Parliament indeed so manage, that the necessity of the case obliges him to convene them frequently, but he is not obliged to do it by the Constitution; so that, properly speaking, it is the King and Parliament of Great Britain which is sovereign.—However, if the Legislative authority were to be distributed in various portions, that man, or body of men, who should be vested with the sole and uncontrouled power of taxation, would eventually become the Sovereign, for whoever can command our whole property has the means in his power of ruling us as he pleases, because (as Montesquieu says) "sovereignty necessarily follows the power of taxation. ["][3]

(*To be Continued.*)

(*Continued from our last.*)

3.14.6 *Secondly*. I shall proceed to define a FEDERAL REPUBLIC:— A Federal Republic is formed by two or more single or consolidated republics, uniting together by a perpetual confederacy, and without ceasing to be distinct states or sovereignties; they form together a federal republic or an empire of states. As individuals in a state of nature surrender a portion of their natural liberty to the society of which they become members, in order to receive in lieu thereof protection and conveniency; so in forming a federal republic the individual states surrender a part of their separate sovereignty to the general government or federal head, in order that, whilst they respectively enjoy

internally the freedom and happiness peculiar to free republics, they may possess all that external protection, security, and weight by their confederated resources, that can possibly be obtained in the most extended, absolute monarchies.[4]

3.14.7 The peculiar advantages and distinctive properties of a federal republic are, that each state or member of the confederation may be fully adequate for every local purpose, that it may subsist in a small territory, that the people may have a common interest, possess a competent knowledge of the resources and expenditures of their own particular government, that their immediate representatives in the state governments will know and be known by the citizens, will have a common interest with them, and must bear a part of all the burdens which they may lay upon the people, that they will be responsible to the people, and may be dismissed by them at pleasure; that therefore the government would be a government of confidence and possess sufficient energy without the aid of standing armies, that the collectors of the revenue would at least have the bowels of citizens, and not be the offscourings of Europe, or other states who have no interest in, or attachment to the people; that if one or more of the states should become the prey of internal despotism, or foreign foes, the other states may remain secure under the protection of their own state government; that if some popular and wealthy citizen should have influence enough to attempt the liberties of one state, he might be stopped in his career by the interposition of the others, for his influence could not be equally great in all the states; that if the general government should fail, or be revised or changed, yet the several state governments may remain entire to secure the happiness of the citizens; and that the members of a confederated republic may be encreased to any amount, and consequently its external strength without altering the nature of the government, or endangering the liberty of the citizens.

3.14.8 The perfection of a federal republic consists in drawing the proper line between those objects of sovereignty which are of a general nature, and which ought to be vested in the federal government, and those which are of a more local nature and ought to remain with the particular governments; any rule that can be laid down for this must vary according to the situation and circumstances of the confederating states; yet still this general rule will hold good, viz. that all that portion of sovereignty which involve the common interest of all the confederating states, and which cannot be exercised by the states in their individual capacity without endangering the liberty and welfare of the whole, ought to be vested in the general government, reserving such a proportion of sovereignty in the state governments as would enable them to exist alone, if the general government should fail either by violence or with the common consent of the confederates; the states should respectively have laws, courts, force, and revenues of their own sufficient for their own security; they ought to be fit to keep house alone if necessary;

if this be not the case, or so far as it ceases to be so, it is a departure from a federal to a consolidated government; and this brings me to the next particular, which is to shew what is meant by a consolidated government.[5]

Thirdly. The idea of a CONSOLIDATED GOVERNMENT is easily understood, 3.14.9
where a single society or nation forms one entire separate government, and possess the whole sovereign power; this is a consolidated or national government. Whether a government be of a monarchical, aristocratical or democratical nature, it doth not alter the case, it is either a federal or a consolidated government, there being no medium as to kind.—The absoluteness of a despotic sovereignty is often restricted by corporate bodies, who are vested with peculiar privileges and franchises—and by a just distribution of the executive and ministerial powers; but although these may contribute to the happiness of the people, yet they do not change the nature of the government. Indeed, monarchies can never form a federal government; they may enter into alliances with each other; for monarchy cannot be divested of a competent proportion of sovereignty to form a general government without changing its nature. It is only free republics that can completely and safely form a federal republic; I say free republics, for there are republics who are not free, such as Venice, where a citizen carrying arms is punished with instant death, and where even the nobles dare not converse with strangers, and scarcely with their friends, and are liable by law to be put to death secretly without trial—or Poland which, in much the same words that are expressed in the new system, is by a league with the neighbouring powers guaranteed to be forever independent and of a republican form; yet a writer of their own says, that the body of the people are scarcely to be distinguished from brutes; and again he says, we have reduced the people of our kingdom by misery to a state of brutes; they drag out their days in stupidity, &c.[6] Free republics are congenial to a federal republic. In order that a republic may preserve its liberty, it must not only have a good form of government, but it must be of small extent; for if it possess extensive territory, it would be ruined by internal imperfection. The authority of government in a large republic does not equally pervade all the parts; nor are the political advantages equally enjoyed by the citizens remote from the capital as by those in the vicinity; combinations consequently prevail among the members of the legislature, and this introduces corruption and is destructive of that confidence in government, without which a free republic cannot be supported; besides, the high influential trusts which must be vested in the great officers of state, would at particular times endanger the government, and are necessarily destructive of that equality among the citizens, which is the only permanent basis of a republic; in short, the diversity of the situation, habits, manners, and interests of the people in an extensive dominion, subjects the government to a thousand accidents, which would embarrass a republican government. The experience of nations and the nature of things,

sufficiently prove, that the government of a single person, aided by armies and controuling influence, is necessary to govern a large consolidated empire.

3.14.10 And on the other hand, if the territory be small, the republic is liable to be destroyed by external force, therefore, reason and observation points out a confederation of republics, as the only method to preserve internal freedom, together with external strength and respectability.—Small republics forming a federal republic on these principles, may be resembled to divers small ropes plaited together to make a large and strong one, if the latter is untwisted, the small ropes are still useful as such, but if the former are untwisted, they are reduced to hemp, the original state.

3.14.11 To apply these principles to our present situation without respect to the proposed plan of government; in order to render the federal government adequate to the exigencies of the confederating states, it is necessary not only that the general government should be properly constructed in its forms, but that it should be vested with powers relative to all the federal objects of government, these objects are not only the powers of making peace and war, &c. but also with the power of making treaties respecting commerce, regulating and raising revenues therefrom, &c. to make requisitions of money when necessity requires it, from each of the states, and a certain well described power of compelling delinquent states to pay up their quota of such requisitions. Perhaps if each state had its own share of the domestic debt quotaed, so as they might each pay their own citizens, the general revenues would be sufficient for the other demands of the union in times of peace, if the government itself be not made too expensive by too great a number of officers being created. Congress ought, however, to have all powers which cannot be exercised by one state, without endangering the other states, such as the power of raising troops, treating with foreign nations, &c.—The power of levying imposts, will, by the particular states, be irregularly exercised, and the revenue in a great degree lost or misapplied, therefore, it ought not to be left with the states, but under proper checks, vested in the general government. All these the minority were amongst the foremost willing to have vested in the federal head, and more than this, had never been asked by Congress, nor proposed by the greatest advocates for congressional power, nor is more than this consistent with the nature of a federal republic. When the existing confederation was adopted, powers were given with a sparing hand, and perhaps, not improperly at that period, until experience should point out the discriminating line with sufficient experience, well knowing that it is easy for a government to obtain an encrease of power when common utility points out the propriety, but that powers once vested in a government, however dangerous they may prove, are rarely recovered without bloodshed, and even that awful method of regaining lost liberty is seldom effectual. It is now however evident that the power of regulating commerce, being of a general nature, ought to belong to the

general government, and the burthen of debt incurred by the revolution hath rendered a general revenue necessary, for this purpose imposts upon articles of importation present themselves, not only as a productive source of revenue, but as a revenue for which the governments of the particular states are for well known reasons, imcompetent.—The danger of entrusting a government so far out of the people's reach as Congress must necessarily be, strongly impressed the public mind about four or five years since, but now a conviction of the advantage and probable safety of such a measure, pervades almost every mind, and none are more willing for putting it in operation, under proper guards, than the opposers of the new system; they are also willing to admit what the majority of the states may judge proper checks in the *form* of the general government, as far as those checks, or the distribution of powers and responsibility of those who be vested with those powers, may be consistent with the security of the essential sovereignty of the respective states. The minority of the convention[7] (who I really believe, in their address, express the serious sentiments of the majority of this state) opposed vesting such powers in Congress as can be most effectually exercised by the state governments in a full consistency with the general interests of the confederating states, and which, not being of a general nature, are not upon federal principles, objects of the federal government, I mean the power of capitation, or poll tax, by which the head, or in other words, the existence of every person is put in their power by the new system as a property, subject to any price or tax that may be judged proper; I do not mean to say that this implies the power of life and death, although it certainly implies the power of selling the property, or if none is to be had, of imprisoning or selling the person for a servant, who doth not chuse, or is not able to pay the poll tax; the minority also objected to vesting Congress with power to tax the property, real and personal of the citizens of the several states, to what amount, and in what manner it may please, without any check or controul upon its discretion; also to the unlimitted power over the excise; if this could extend only to spirituous liquors as is usual with us, the danger would be less, but the power of excise extends to every thing we eat, drink, or wear, and in Europe it is thus extensively put in practice. Under the term duties, every species of indirect taxes is included, but it especially means the power of levying money upon printed books, and written instruments.

The Congress, by the proposed system, have the power of borrowing money to what amount they may judge proper, consequently to mortgage all our estates, and all our sources of revenue. The exclusive power of emmitting bills of credit is also reserved to Congress. They have, moreover, the power of instituting courts of justice without tryal by jury, except in criminal cases, and under such regulations as Congress may think proper to decide, not only in such cases as arise out of all the foregoing powers, but in the other cases which are enumerated in the system. 3.14.12

3.14.13 The absolute sovreignty in all the foregoing instances, as well as several others not here enumerated, are vested in the general government, without being subject to any constitutional check or controul from the state governments.

3.14.14 It remains to examine the nature of the powers which are left with the states, and on this subject it is not necessary to follow *Freeman* through the numerous detail of particulars with which he confuses the reader. I shall examine only a few of the more considerable. The *Freeman* in his 2d Number, after mentioning in a very delusory manner divers powers which remain with the states, he says we shall find many other instances under the constitution which require or imply the existence or continuance of the sovereignty and severalty of the states; he as well as all the advocates of the new system, take as their strong ground the election of senators by the state legislatures, and the special representation of the states in the federal senate, to prove that internal sovereignty still remains with the states; therefore they say that the new system is so far from annihilating the state governments, that it secures them, that it cannot exist without them, that the existence of the one is essential to the existence of the other.[8] It is true that this particular partakes strongly of that mystery which is characteristic of the system itself; but if I demonstrate that this particular, so far from implying the continuance of the state sovereignties, proves in the clearest manner the want of it, I hope the other particular powers will not be necessary to dwell upon.

3.14.15 The state legislatures do not chuse senators by legislative or sovereign authority, but by a power of ministerial agency as mere electors or boards of appointment; they have no power to direct the senators how or what duties they shall perform; they have neither power to censure the senators, nor to supercede them for misconduct. It is not the power of chusing to office merely that designates sovereignty, or else corporations who appoint their own officers and make their own bye-laws, or the heads of department who chuse the officers under them, such as commanders of armies, &c. may be called sovereigns, because they can name men to office whom they cannot dismiss therefrom. The exercise of sovereignty does not consist in chusing masters, such as the senators would be, who, when chosen, would be beyond controul, but in the power of dismissing, impeaching, or the like, those to whom authority is delegated. The power of instructing or superceding of delegates to Congress under the existing confederation, hath never been complained of, altho' the necessary rotation of members of Congress hath often been censured for restraining the state sovereignties too much in the objects of their choice. As well may the electors who are to vote for the president under the new constitution, be said to be vested with the sovereignty, as the state legislatures in the act of chusing senators. The senators are not even dependent on the states for their wages, but in conjunction with the federal representatives establish their own wages. The

senators do not vote by states, but as individuals. The representatives also vote as individuals, representing people in a consolidated or national government; they judge upon their own elections, and, with the senate, have the power of regulating elections in time, place and manner, which is in other words to say, that they have the power of elections absolutely vested in them.

3.14.16 That the state governments have certain ministerial and convenient powers continued to them is not denied, and in the exercise of which they may support, but cannot controul the general government, nor protect their own citizens from the exertions of civil or military tyranny, and this ministerial power will continue with the states as long as two-thirds of Congress shall think their agency necessary; but even this will be no longer than two-thirds of Congress shall think proper to propose, and use the influence of which they would be so largely possessed to remove it.[9]

3.14.17 But these powers, of which the *Freeman* gives us such a profuse detail, and in describing which he repeats the same powers with only varying the terms, such as the powers of officering and training the militia, appointing state officers, and governing in a number of internal cases, do not any of them separately, nor all taken together, amount to independent sovereignty; they are powers of mere ministerial agency, which may, and in many nations of Europe, are or have been vested, as before observed, in heads of departments, hereditary vassals of the crown, or in corporations; but not that kind of independent sovereignty which can constitute a member of a federal republic, which can enable a state to exist within itself if the general government should cease.

3.14.18 I have often wondered how any writer of sense could have the confidence to avow, or could suppose the people to be ignorant enough to believe, that, when a state is deprived of the power not only of standing armies (this the members of a confederacy ought to be) but of commanding its own militia, regulating its elections, directing or superceding its representatives or paying them their wages; who is, moreover, deprived of the command of any property, I mean source of revenue or taxation, or what amounts to the same thing, who may enact laws for raising revenue, but who may have these laws rendered nugatory, and the execution thereof superceded by the laws of Congress. This is not a strained construction, but the natural operation of the powers of Congress under the new constitution; for every object of revenue, every source of taxation, is vested in the general government. Even the power of making inspection laws, which, for obvious conveniency, is left with the several states, will be unproductive of the smallest revenue to the state governments; for, if any should arise, it is to be paid over to the coffers of Congress;—besides, the words "to make all laws necessary and proper for carrying into execution the foregoing powers, &c." give, without doubt, the power of repelling or forbidding the execution of any tax law whatever that may interfere with or impede the exercise of

the general taxing power, and it would not be possible that two taxing powers should be exercised on the same sources of taxation without interfering with each other. May not the exercise of this power of Congress, when they think proper, operate not only to destroy those ministerial powers which are left with the states, but even the very forms? May they not forbid the state legislatures to levy a shilling to pay themselves, or those whom they employ, days wages? The state governments may contract for making roads (except post-roads) erecting bridges, cutting canals, or any other object of public importance; but when the contract is performed or the work done, may not Congress constitutionally prevent the payment? Certainly they may do all this and much more, and no man would have a right to charge them with breaking the law of their appointment. It is an established maxim, that wherever the whole power of the revenue or taxation is vested, there virtually is the whole effective, influential, sovereign power, let the forms be what they may: By this armies are procured, by this every other controuling guard is defeated. Every balance or check in government is only so far effective as it hath a controul over the revenue.

3.14.19 The state governments are not only destitute of all sovereign command of, or controul over, the revenue or any part of it, but they are divested of the power of commanding, or prescribing the duties, wages, or punishments of their own militia, or of protecting their life, property or characters from the rigours of martial law. The power of making treason laws is both a flower[10] and an important defence of sovereignty; it is relative to and inseparable from it; to convince the states that they are consolidated into one national government, this power is wholly to be assumed by the general government.[11] All the prerogatives, all the essential characteristics of sovereignty, both of the internal and external kind, are vested in the general government, and consequently the several states would not be possessed of any essential power, or effective guard of sovereignty.

3.14.20 Thus I apprehend, it is evident that the consolidation of the states, into one national government (in contradistinction from a confederacy) would be the necessary consequence of the establishment of the new constitution, and the intention of its framers—and that consequently the state sovereignties would be eventually annihilated, though the forms may long remain as expensive and burthensome remembrances, of what they were in the days when (although labouring under many disadvantages) they emancipated this country from foreign tyranny, humbled the pride, and tarnished the glory of royalty, and erected a triumphant standard to liberty and independence.

3.14.21 It is not my present object to decide, whether the government is a good or a bad one, it is only to prove in support of the minority, that the new system does not in reality, whatever its appearances may be, constitute a federal but a consolidated government.—From the distinguishing characteristics of these two kinds of government which I have stated, some assistance

perhaps may be derived in judging which of them would be most suitable to our circumstances, and the best calculated to promote and secure the liberty and welfare of these United States.

A few general observations shall conclude this essay. It is commonly said by the friends of the system, that the dangers which we point out are imaginary; that we ought to depend more upon the virtue of those who shall exercise those powers; that we talk as if we supposed men would be possessed of a daemon as soon as they should be vested with the proposed powers, &c. I shall in answer thereto join with a sensible reasoner in saying, that I will not abuse the new Congress until it exists, nor then until it misbehaves, nor then unless I dare; but it is a fact, that all governments that have ever been instituted amongst men, have degenerated and abused their power, and why we should conceive better of the proposed Congress than of all governments who have gone before us, I don't know; it is certainly incumbent on the supporters of this system, first to prove either that the uniform testimony of history, and experience of society, is false, or else that the new system will have the divine influence to inspire those who exercise the powers which it provides, with wisdom and virtue in an infallible degree. Surely the conduct of the framers and promoters of the new constitution, do not present mankind as more worthy of confidence now, than they have been in other periods of society. For proof of this let us examine facts. The legislature of the various states, elected members for a federal convention, without having authority for that purpose from their constituents; this gave no alarm, as necessity perhaps justified the measure, but how dangerous is the smallest precedent of usurped power, for the general convention when met, far out did the example—they were strictly bound by the law of their appointment to revise the confederation; the additional powers with which it ought to have been vested were generally understood, and would have been universally submitted to. This convention not only neglected the duty of their appointment, but assumed a power of the most extraordinary kind, they proceeded to destroy the very government which they were solemnly enjoined to strengthen and improve, and framed a system (to say no worse of it) that was destructive not only of the form, but of the nature of the government whose foundations were laid in the plighted faith and whose superstructure was cemented with the best blood of the United States. The legislature of this state, whose leading members were also self-chosen members of the general convention, no sooner had it in their power, than notwithstanding the solemn trust reposed in them, and still more solemn oath to preserve the constitution of this state inviolate, proceeded upon the expected last day of their session to call a convention, in order to adopt the proposed system of government before the people could be acquainted with it; and to carry this into execution, they added violence to perfidy, and by the aid of mob compelled members, sanctified by their presence, that usurped exertion of power, which their faith and trust obliged them to

3.14.22

discountenance. The consequence was, that about one-sixth of the citizens only obeyed the irregular call of the assembly, and elected members to the state convention: one-third of those members, and who were chosen by nearly one-half of the voters who did elect, voted against the adoption of the new constitution, and being refused the right of entering their testimony on the minutes, laid their conduct and their reasons before their constituents. About five out of six of the people, whether disdaining to obey a call which neither the general convention or assembly were authorised to make, or whether being taken by surprise, they were not sufficiently informed to act with decision, and therefore did not choose to act at all: I cannot tell, but so it is, that they have not yet publicly declared their sentiments for, nor have done any thing in favor of the proposed system: In this situation Pennsylvania hath adopted the system. It is a very serious question, whether supposing nine states had agreed to it in this manner, the system would be practicable, whether general confidence would not be necessary unless we had greater resources. In addition to Pennsylvania, Georgia, Delaware, New-Jersey, and Connecticut, have also adopted the system; these states are not only small, but in a high degree delinquent, and there is no provision made in the new constitution to compel delinquent states or persons to make up their deficiencies. The convention of Massachusetts have adopted the system with a solemn disapprobation, they have pointed out amendments on the same parchment with the act of ratification, and have solemnly enjoined those who may be the first deputies in the new Congress, to exert their every endeavours to have these amendments made part of the constitution, and to add weight to them, they have officially requested Pennsylvania and the other states to concur in the propositions of amendment. The New-Hampshire convention have, on motion of the friends of the system, adjourned until June, in order to prevent an immediate rejection, which otherwise was unavoidable, the adjournment was carried by only three voices. At present there is and will for some months be a solemn and serious pause, a time of deliberation, the result of which will fill an important page in the history of human society. For my own part I think the heaviest clouds are dispersed, and the gloomy darkness admits the chearing rays of hope, which promise meridian splendour to the sun of liberty. Most of those who were from the best motives friends to the system, have penetrated the shade of mystery in which it was wrapped, they see the snares, and discover the delusions with which it is replete, they see that every other system of government whether good or bad, is easy to be understood, but that this system excels all of the kind which hath come to their knowledge in darkness and ambiguity; they have been informed too, that this mysterious veil was the fruit of deliberation and design.

3.14.23 Whilst posts are prevented from carrying intelligence, whilst newspapers are made the vehicles of deception, and dark intrigue employs the avaricious office-hunters, who long to riot on the spoils of their country, the great

body of the people are coolly watching the course of the times, and determining to preserve their liberties, and to judge for themselves by the principles of reason and common sense, and not by the weight of names.

A Farmer.

1. The author is probably referring to Centinel, who attributed the essays of A Freeman to James Wilson, apparently incorrectly. See above, Deliberator 3.13 intro. n. 1.

2. Cf. Publius' definition of faction as "a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens or to the permanent and aggregate interests of the community." *The Federalist* no. 10, 57.

3. This passage has not been located in Montesquieu's writings.

4. James Wilson made arguments very much like this, in both the Constitutional Convention and the Pennsylvania ratifying convention. Farrand I, 166 (8 June) and McMaster and Stone 227. For other Federalist statements of this kind see Federal Farmer XVII, 2.8.204 n. 123. References to Anti-Federal opposition to consolidation are collected in A Plebeian 6.11.15 n. 9.

5. A Farmer adds usefully to the Anti-Federalist discussion of federalism with his notion of a capacity in the states to keep house alone, if necessary. Of course, the great difficulty remains of a possible conflict between this principle and the principle of resting the protection of the common interests on the general government. Cf. Brutus VI, 2.9.80 n. 56; Monroe 5.21.17 n. 8. For other Anti-Federalist discussion of the meaning of federalism see Federal Farmer 1, 2.8.10 n. 9.

6. John Adams, *Defence* I, letter 22 (*Works* IV, 373).

7. See above, 3.11.

8. A Freeman goes so far as to argue that "Every state can always give its dissent to foederal bills, as each has a *vote* in the Senate secured by the constitution. Hence it appears, that the State governments are not only intended to remain in force within their respective jurisdictions, but they are always to be known to, and to have their voices, *as states*, in the foederal councils." *Pennsylvania Gazette* 30 January 1788. For Federalist arguments that the states will not be destroyed see Centinel II, 2.7.36 n. 16.

9. See Federal Farmer X, 2.8.133 n. 84.

10. In their reprinting of this essay McMaster and Stone change this to "power" (McMaster and Stone 543), but both the *Freeman's Journal* and the *Independent Gazetteer* have "flower," which is probably what the author intended.

11. A Freeman assumes, on the contrary, that the states would continue to have the power to make treason laws. "So *independent* will the state governments remain, that their laws may, and in some instances will, be *severer* than those of the union. Treason against the United States, for instance, cannot be attended with confiscation and corruption of blood; but by the existing laws of all the states, the *unoffending families* of attainted persons, stripped of all hereditary rights, and condemned to the bitter portion of extreme poverty, are left without their friend and parent, to meet the trials of the world alone: An awful monument of the *sovereign and avenging power* of their native state. Let the Representative or senator who may meditate the annihilation of the government of his state duly consider this, before it be too late." *Pennsylvania Gazette*, 6 February 1788.

Essay by None of the Well-Born Conspirators

(PHILADELPHIA) FREEMAN'S JOURNAL
23 April 1788

None of the Well-Born Conspirators denies that the advocates of the new Constitution are "federalists" in the proper sense, though their use of the term, which can also mean "conspirators," ironically points to their true character, which is conspirators against the rights and privileges of the many.

3.15.1 In public disquisitions, especially political controversies, one of the parties generally adopt some *cant word or phrase*, whereby they may be distinguished from their opponents; and what renders the circumstance remarkably curious, the *word or phrase* is nineteen times out of twenty wrong applied. Thus in the party politics of Britain, under one administration *candor* was their *shibbolith*, when the most *abusive, uncandid*, and *dirty-mouthed* scoundrels in the kingdom were the favorites of *court;* under another, *economy*, was the watch-word, yet *profuseness* and *prodigality* in public concerns, was then at their *no plus ultra;* again *national honor*, was bazed about, when not a fragment of *honor, principle*, or even *national courage* could be traced at court; this was in Lord North's ever memorable administration. Now in an exact agreement with this plan, one of our American political parties, are incessantly bellowing out, *federalism, federal measures, federal gentlemen*, etc. etc.[1]

3.15.2 If the words, Federal, Federalism, etc. are to be taken in their general and common acceptations, as derived from Foedas, a league, or covenant, entered into for the mutual advantage of all; there cannot be found a greater abuse of words than in this instance; for our modern federalists, namely, the advocates of the new constitution, evidently aim at nothing but the elevation and aggrandizement of a few over the many. The *liberty, property* and every social comfort in life of the yeomanry in America, are to be sacrificed at the *altar* of tyranny. *Federalism* then taken in this sense must imply something very remote from its original natural import; it must, (and truly there is no help for saying it) signify a league entered into against the sacred liberties of

the people; that is in plain terms a conspiracy; and this is the fifth signification of the word Foedas, given by Ainsworth in his excellent Latin dictionary.[2] Perhaps the consciences of the conspirators in the *dark conclave* urged them to assume a name which might be in some measure a key to disclose their perfidy. Conscience is a stern arbiter, and often compels us to witness against ourselves. Accompanied by such a faithful monitor the abettors of despotism adopted an epithet that should, when perfectly understood, be the true index to their base intentions. Take the word Federalism directly or indirectly, and it amounts neither to more nor less in its modern acceptation than a conspiracy of the *Well-born few*, against the sacred rights and privileges of their fellow citizens.

None of the Well-Born Conspirators.

1. For other Anti-Federal discussions of the terms federalist and anti-federalist see Martin 2.4.43 n. 12; Federal Farmer I, 2.8.10 n. 9.

2. Robert Ainsworth, *Thesaurus Linguae Latinae Compendiarius: or, A Compendious Dictionary of the Latin Tongue* (London 1736).

The Government of Nature Delineated or An Exact Picture of the New Federal Constitution by Aristocrotis

Carlisle 1788

"The Government of Nature Delineated" is an exaggerated satire, yet there are several unusual and telling arguments. And if the essay's language, grammar, and spelling are crude, the mind behind it is keener than those behind some of the better-mannered pieces. Aiming at, although not himself of, the vulgar, Aristocrotis treats the theme of government "according to nature" as the Federalists see it; and he is particularly interesting on the issues of a natural aristocracy (3.16.3,5), the purposes of the congressional power to raise taxes (3.16.6–8), and religion (3.16.14–15). The piece was printed as a pamphlet in 1788 (in Carlisle, by Kline and Reynolds) apparently (from references in the appendix) in March or April.

Truth exists abstracted from the mind;
And nature's laws are laws tho' men be blind

Pope.[1]

Wisdom crieth aloud, and Understanding lifteth up her voice.

Bible.[2]

DEDICATION

To his serenity the right respectable, most honourable highly renowned J[AME]S W[ILSO]N, political hackney writer to the most lucrative order of the bank, patronee of the most illusstrious R[OBER]T M[ORRI]S, and principal fabricator of the New Constitution.

Sir,

As your distinguished docility to the well-born, and the partial friendship of the great man, your patron, hath lugged you into all the honorary missions and dignified appointments of the nation, these several years past, and turned the eyes of all the full-blooded gentry in America towards you, as the only person fitted by nature to organize the government upon true despotic principles, I therefore beg leave to offer this small sacrifice to your vanity (an innate virtue of all our fraternity), upon the altar of adulation. It is true, the unwearied assiduity, and indefatigable zeal with which you served your friends, and pushed forward the rising grandeur of our party hath procured you the hatred of the people; but you know, Sir, to be hated by the vulgar is a compliment to your understanding, a mark of honour. Let me congratulate you, illustrious sir, on the nigh prospect of having all your numerous lucubrations, unremitted studies, and well concerted schemes happily realized beyond your most sanguine expectations, as an ample reward for all your services and sufferings, the time of your deliverance draweth nigh; the reparation of your shattered fortune, and your emancipation from a state of servile dependance upon bankers and brokers is just at hand; the adoption of the constitution is making rapid progress, and it is hoped will soon receive the finishing stroke, and then sir, you may take an everlasting farewell of poverty. The great influx of treasure from every corner of the land, into the ten miles square, will fill your coffers, and if possible, satiate the cravings of your pecuniary appetite. Now, as in times past, you have been a willing instrument, and ready minion to others; so then, in their turn, others will cringe at your nod, and bow at your image, will beg and pray to participate a share of the pensions, perquisites, sinecures and salaries, with all the tribe of lucrative offices, which will then be at your disposal. 3.16.1

I would entreat you, dear sir, that when you arrive at the summit of your desires, you would deign to look back to your former condition, and make some provision for the relief of your insolvent brethen in time to come: that you would procure congress to constitute the *ten miles square* into a Sanctum-Sanctorum, a place of refuge for well born bankrupts, to shelter themselves and property from the rapacity of their persecuting creditors. You know, sir, in the capital of your native country, there is an asylum similar to this, of great utility to unfortunate debtors. As I have selected you from the whole group of illustrious names which embellished the new constitution, for the patron of my first essay, and have honoured you with this public dedication; it is to be hoped, when you come to your kingdom, you will remember these marks of respect—I remain, sir, with great solicitude for your elevation. 3.16.2

Aristocrotis.

3.16.3 The present is an active period; Europe is in a ferment breaking their constitutions, America is in a similar state, making a constitution—For this valuable purpose a convention was appointed, consisting of such as excelled in wisdom and knowledge, who met in Philadelphia last May. For my own part, I was so smitten with the character of the members, that I had assented to their production, while it was yet in embrio; and I make no doubt but every good republican did so too; but how great was my surprize, when it appeared with such a venerable train of names annexed to its tail, to find some of the people under different signatures; such as *Centinel, Old Whig, Brutus, etc.*, daring to oppose it, and that too with barefaced arguments, obstinate reason and stubborn truth. This is certainly a piece of the most extravagant impudence to presume to contradict the collected wisdom of the United States; or to suppose a body, who engrossed the whole wisdom of the continent, was capable of erring. I expected the superior character of the convention would have secured it from profane sallies of a plebeian's pen; and its inherent infaliability, debarred the interference of impertinent reason or truth. It was too great an act of condescension to permit the people, by their state conventions, "to assent and ratify," what the grand convention prescribed to them; but to enquire into its principles, or investigate its properties, was a presumption too daring to escape resentment. Such licentious conduct practised by the people, is a striking proof of our feeble governments, and calls aloud for the pruning knife, viz. the establishment of some proper plan of discipline. This the convention, in the depth of their united wisdom hath prescribed, which when established, will certainly put a stop to the growing evil. A consciousness of this, is, no doubt, the cause which stimulates the people to oppose it with so much vehemence; they deprecate the idea of being confined within their proper sphere; they cannot endure the thoughts of being obliged to mind their own business, and leave the affairs of government to those whom nature hath destined to rule. I say nature, for it is a fundamental principle, as clear as an axiom, that nature hath placed proper degrees and subordinations amongst mankind, and ordained a few* to rule, and many to obey.—I am not obliged

*If any person is so stupidly dull as not to discern who these few are, I would refer such to nature herself for information.—Let them observe her ways and be wise. Let them mark those men whom she hath endued with the necessary qualifications of authority; such as the dictatorial air, the magisterial voice, the imperious tone, the haughty countenance, the lofty look, the magestic mien. Let them consider those whom she hath taught to command with authority, but comply with disgust, to be fond of sway, but impatient of controul; to consider themselves as Gods and all the rest of mankind as two legged brutes. Now it is evident that the possessors of these divine qualities must have been ordained by nature to dominion and empire; for it would be blasphemy against her supreme highness to suppose that she confers her gifts in vain. Fortune hath also distinguished those upon whom nature hath imprinted the lineaments of authority. She hath heaped her favours and lavished her gifts upon

to prove this principal; because it would be madness in the extreme to attempt to prove a self-evident truth; but with all due submission to the infaliable wisdom of the grand convention, let me presume to examine whether they have not, in the new plan of government, inviolably adhered to this supreme principle.—The exhorbitant power, which the people of this country possess, of electing their rulers, is directly repugnant to this superlative principle of nature, and tends to the subversion of all order and good government; for they may and often do advance those men to be rulers, whom nature had ordained for subjects, and to neglect the natural rulers. This is a gross inversion of the law of nature, and ought to be cashiered; but the vulgar opinion is so strong in favour of this unnatural practice, that it would be dangerous to divest them of it all at once. It might enflame their turbulent minds, and excite them to commit some outrageous action, in support of what they have been taught to consider as their "natural, inherent, and unalienable rights."—The venerable convention foresaw this, and accomodated their plan to humour these mistaken notions of the people, so far as was consistent with the honour, dignity and rights of the more illustrious descended, whose title to rule is founded on the law of nature.

In article first, section first, of the new plan, it is declared, "that all legislative powers herein granted, shall be vested in a congress of the united states; which shall consist of a senate"—very right, quite agreeable to nature; "and house of representatives"—not quite so right—This is a palpable compliance with the humours and corrupt practices of the times—but what follows in section 2d is still worse: "the house of representatives shall be composed of members chosen every second year, by the people of the several states": this is a most dangerous power, and must soon produce fatal and pernicious consequences, were it not circumscribed and poised by proper checks and ballances: but in this is displayed the unparalleled sagacity of the august convention; that when such bulwarks of prejudice surrounded the evil, so as to render it both difficult and dangerous to attack it by assault and storm, they have invested and barricaded it so closely as will certainly deprive it of its baneful influence and prevent its usual incroachments;—they have likewise stationed their miners and sapers so judiciously, that they will certainly, in process of time, intirely reduce and demolish this obnoxious practice of popular election. There is a small thrust given to it in the body of the conveyance itself. The term of holding elections, is every two years; this is much better than the detestable mode of *annual* elections, so fatal to energy; however, if nothing more than this were done, it would still remain an insupportable inconvenience; but in section the 4th it is provided, that congress by law may alter and make such reg- 3.16.4

those very persons whom nature delighteth to honour: indeed instinct hath taught those men that authority is their natural right, and therefore they grasp at it with an eagerness bordering on rapacity.

ulations with respect to the times, places, and manner of holding elections, as to them seemeth fit and proper: this is certainly a very salutory provision, most excellently adapted to counter-ballance the great, and apparently dangerous concessions made to the plebians in the first and second sections, with such a prudent restriction as this they are quite harmless: no evil can arise from them, if congress have only the sagacity and fortitude, to avail themselves of the power they possess by this section: for when the stated term (for which the primary members was elected) is nigh expired, congress may appoint next election to be held in one place in each state; and so as not to give the rabble needless disgust, they may appoint the most central place for that purpose. They can never be at a loss for an ostensible reason, to vary and shift from place to place until they may fix it at any extremity of the state it suits. This will be the business of the senate, to observe the particular places in each state, where their influence is most extensive, and where the inhabitants are most obsequious to the will of their superiors; and there appoint the elections to be held. By this means, such members will be returned, to the house of representatives (as it is called) as the president and senate shall be pleased to recommend, and they, no doubt, will recommend such gentlemen only as are distinguished by some peculiar federal feature; so that unanimity and concord will shine conspicuous through every branch of government. This section is ingeniously calculated, and must have been intended by the convention to exterminate electioneering entirely; for by putting the time of election in the hands of congress, they have thereby given them a power to perpetuate themselves when they shall find it safe and convenient to make the experiment. For though a preceding clause says, "that representatives shall be chosen for two years, and senators for six years"; yet this clause being subsequent annuls the former, and puts it in the power of congress, (when some favourable juncture intervenes) to alter the time to four and twelve years. This cannot be deemed an unconstitutional stretch of power, for the constitution in express terms, puts the time of holding elections in their power, and certainly they are the proper judges when to exert that power: thus by doubling the period from time to time, its extent will soon be rendered coeval with the life of man; and it is but a very short and easy transition from this to hereditary succession, which is most agreeable to the institutions of nature, who in all her works, hath ordained the descendant of every species of beings to succeed its immediate progenitor, in the same actions, ends and order.

3.16.5 The indefatigable labourious ass, never aspires to the honours, or assumes the employment of the sprightly warlike steed, nor does he ever pretend that it is his right to succeed him in all his offices, and dignities, because he bears some resemblance to the defunct in his figure and nature. The lamma, though useful enough for the purposes for which he was intended by nature, is every way incompetent to perform the offices of the

elephant; nor does he ever pretend to usurp his elevated station. Every species of beings, animate and inanimate, seem fully satisfied with the station assigned them by nature; but perverse, obstinate man, he alone spurns at her institutions, and inverts her order,* he alone repines at his situation, and endeavours to usurp the station of his superiors. But this digression has led me from the subject in hand. I was treating of the powers congress possesses over elections. I have already discussed this point so far as the times and places are concerned. The next object that presents itself is the power which the new constitution gives to congress to regulate the manner of elections. The common practice of voting at present is by ballot; by this mode it is impossible for a gentleman to know how he is served by his dependant, who may be possessed of a vote; therefore this mode must be speedily altered for that of viva voce, which will secure to a rich man all the votes of his numerous dependants and friends and their dependants. By this means he may command any office in the gift of the people, which he pleases to set up for. This will answer a good end while electioneering exists; and will likewise contribute something towards its destruction. A government founded agreeable to nature must be intirely independant; that is, it must be beyond the reach of annoyance or controul from every power on earth. Now in order to render it thus, several things are necessary.

1st. The means of their own support must be within the immediate reach 3.16.6
of rulers: for this purpose they must possess the sole power of taxation. As this is a principal article, it ought, in all things to have pre-eminence; and therfore the convention has placed it in front. "The congress shall have power to lay and collect taxes [,] duties, imposts and excises," so that they shall never be at a loss for money while there is a shilling on the continent, for their power to procure it is as extensive as their desires; and so it ought, because they can never desire any thing but is good and salutary; for there is no doubt but the convention will transfer their infallability to the new congress, and so secure them from doing evil. This power of taxation will answer many valuable purposes, besides the support of government. In the first place, in the course of its operation, it will annihilate the relicks of the several state legislations; for every tax which they may lay, will be deemed by congress an infringement upon the federal constitution, which constitution and the laws of congress being paramount to all other authority, will of consequence nullify every inferior law, which the several states may think proper to enact, particularly such as relate to taxes; so that they being deprived of the means of existence, their pretended sovereignties will gradually linger away.

2dly. It will create and diffuse a spirit of industry among the people; they 3.16.7

*This is only to be understood of the inferior class of mankind; the superior order have aspiring feelings given them by nature, such as ambition, emulation, etc. which makes it their duty to persevere in the pursuit of gratifying these refined passions.

will then be obliged to labour for money to pay their taxes: there will be no trifling from time to time, as is done now; the new government will have energy sufficient to compel immediate payment.[3]

3.16.8 3dly. This will make the people attend to their own business; and not be dabbling in politics—things they are entirely ignorant of; nor is it proper they should understand. But it is very probable that the exercise of this power may be opposed by the refractory plebians, who (such is the perverseness of their natures) often refuse to comply with what is manifestly for their advantage; but to prevent all inconveniency from this quarter the congress have power to raise and support armies. This is the second thing necessary to render government independent. The creatures who compose these armies, are a species of animals, wholly at the disposal of government; what others call their natural rights they resign into the hands of their superiors, even the right of self-preservation (so precious to all other beings) they entirely surrender, and put their very lives in the power of their masters: so that they having no rights of their own to care for, they become naturally jealous and envious of those possessed by others, they are therefore proper instruments in the hands of government, to divest the people of their usurped rights. But the capital business of these armies will be, to assist the collectors of taxes, imposts, and excise, in raising the revenue; and this they will perform with the greatest alacrity as it is by this they are supported; but for this they would be in a great measure useless; and without this they could not exist.

3.16.9 4thly.[4] To render government entirely independent, they must have the sole and absolute command of the militia without restriction or reserve, either as to time or place, principle or conscience; and with this power the constitution hath amply furnished them—see article 1st sect. 8. "the congress shall have power to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions, to provide for organising, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the united states." By this clause the militia is divided into two classes, viz. active and inactive; the active militia will be those employed "in the service of the united states," or in other words in the service of congress; they will consist of young men chiefly, who will not be attached to any particular place, on account of their families: or such eccentric genius's as by their superior address or daring spirit may gain an ascendency over the minds of the vulgar, and so become the heads of liberty factions.

3.16.10 Such persons as these will best suit the purpose of government; and if they are judiciously culled and picked, will compose a very respectable army; from which many great advantages may result to goverment. 1st. They will assist, in conjunction with the standing army, to quell insurrections that may arise in any part of the empire on account of pretensions to support liberty, redress grievances, and the like. 2dly. This

power will enable congress to fulfill their engagements with foreign nations, their allies; should they stipulate in the treaty of alliance, to furnish a number of troops (in consideration of a certain sum of money) to be employed in the service of these allies, when they are engaged in war, the active militia will always be ready. Such treaties as these will likewise grow into a lucrative branch of commerce: the Swiss Cantons find their accounts in a traffic somewhat similar, and the prince of Hesse Cassel, and other German princes who are excellent financiers, raise a great part of their revenues by such dealings.

3.16.11 Now, the very letter of the above quoted sections gives congress such a power as this; and in article 6th it is declared, "That all treaties made, or which shall be made under the authority of the united states; viz. by the president and two-thirds of the senators, [see art. 2d. sec. 2d][5] shall be the supreme law of the land." Another clause says, "that congress is to provide for calling forth the militia to execute the laws of the land"; therefore the militia, by virtue of these powers given to congress may be transported to Europe, Africa or Asia, to execute the treaties of congress, because they are the "supreme laws of the land." Although there is nothing in this constitution, but what bears an exact resemblance to nature, yet there is no feature or lineament in the whole portrait pleases me equal to this. It is nature itself in minature. With what heavenly ideas must the framers of these articles have been inspired; how artfully and ingeniously they have conveyed to congress the absolute disposal of their subjects. It is true they have reserved to the several states the business of training the militia, according to the discipline prescribed by congress. By this reservation, the states are constituted drill-sergeants and fuglemen to train up soldiers for the general government; an employment too mean and servile for the dignified congress; but every way suitable to the quality of the discarded states, or deposed sovereigns.

3.16.12 The second class or inactive militia, comprehends all the rest of the peasants; viz. the farmers, mechanics, labourers, etc. which good policy will prompt government to disarm. It would be dangerous to trust such a rabble as this with arms in their hands. They might employ them in opposing the supreme laws of the land instead of employing them to execute them. 4thly To render government independent, the people must be divested of all the privileges they have wrested from their rulers in times of anarchy and confusion. In modern times the people for the most part have these privileges arranged together in one instrument, which commonly serves as a preliminary to their constitution—this instrument, they call their bill of rights.*

*Dr. Rush, in the state convention, amongst many other wise and learned sayings, hath the following remarkable observation, "I am happy sir, to find that the convention hath not disgraced this constitution with a bill of rights"[6]—whether ought Pennsylvania to reward such candid declarations with a suit of tar and feathers, or with a hempen neck-lace.

These rights are claims which the people have extorted from weak, timid, irresolute rulers—However the grand convention in framing the new constitution, hath omitted the dangerous ceremony, and left it in the power of congress, to irradicate every vestage of so daring an encroachment. One particular article provided for in these bills of rights, is the liberty of the press, which the people pretend ought never to be restrained, altho' it is undeniable that it has ever been the vehicle of slander, and the source of innumerable evils; it hath filled the world with seditions, insurrections, rebellions, conspiracies, murders, heresies, and the most dangerous innovations of every sort; wherever it is tolerated it is impossible to divest the people of those dangerous privileges, which they have usurped in time of turbulence and disorder; through this channel they will receive early intelligence of the schemes of government, and be ready on the slightest offence, to unite in support of what they deem their natural and unalienable rights; so that it might prove difficult for the best appointed army, that congress could possibly raise or support, to repel their fury, or reduce them to obedience; but as there is no provision made for its security in the new frame of government, congress may abolish it at pleasure, which they will soon find it their interest to do, and its own native licentiousness will furnish them with reasons plausible enough to form a preamble for the act; as none but friends of government will then have an opportunity of communicating their sentiments to the public, or displaying their genius: so none but they will care to acquire sentiments, or cultivate genius. Learning will then flourish in its native soil, and science run in its proper channel; for a knowledge of letters among the vulgar is the bane of good government. Another privilege which the people possesses at present, and which the new congress will find it their interest to deprive them of, is trial by jury—for of all the powers which the people have wrested from government, this is the most absurd; it is even a gross violation of common sense, and most destructive to energy. In the first place it is absurd, that twelve ignorant plebians, should be constituted judges of a law, which passed through so many learned hands;—first a learned legislature after many learned animadversions and criticisms have enacted it—Second, learned writers have explained and commented on it.—Third, learned lawyers twisted, turned and new modeled it—and lastly, a learned judge opened up and explained it. Yet after all these learned discussions, an illiterate jury (who have scarce a right to think for themselves instead of judging for others) must determine whether it applies to the fact or not; and by their verdict the learned judge must be governed in passing sentence; and perhaps a learned gentleman be cast in an action with an insignificant cottager.

3.16.13 Secondly. Common sense recoils at the very idea of such a pernicious practice as this, because it makes no difference between the virtuous and the vicious, the precious and the vile; between those of noble birth, and illustrious descent, and those of base blood, and ignoble obscure

pedigree—for an ignorant stupid jury, cannot discern the merit of persons—it is the merits of the cause they examine; which is just reversing the question, and beginning at the wrong end. Thirdly. This custom is fatal to energy, for tho' a law should be expressed in the most pointed terms, a jury may soften and mitigate, and in a great measure destroy the spirit of it. The lawyers also suffers by this practice; because, there being no appeal from the verdict of the jury with respect to the fact—the action therefore, often ends in the same court in which it originated, but where no jury interferes an appeal lies to a higher court, where higher fees must be given to lawyers, and greater numbers of them employed; and so much better chance for them to amass fortunes.

[It appears as if some discerning lawyer indicted that nice clause in the constitution, which gives to the continental supreme court an appelate jurisdiction, both as to law and fact; it seems so happily calculated to their advantage.][7]

There are many other rights claimed by the people besides these mentioned; but as they are of little consequence, I shall leave the discussion of them to the new congress themselves, who no doubt will be quick sighted enough to discern them, and prudent enough to provide for their removal. But before I conclude, I must take notice of an incumbrance upon government, which have been more general in its operation than any yet mentioned; viz. religion. There has been but few nations in the world, where the people possessed the privilege of electing their rulers; of prefixing a bill of rights to their constitutions, enjoyed a free press, or trial by jury; but there was never a nation in the world whose government was not circumscribed by religion. It intermingled itself so much with the Jewish system, that it is difficult to distinguish between some of the functions of the magistrates and those of the priests. In some stages of their commonwealth, the high priest was also the supreme civil magistrate. Religion had also a decisive influence in the Grecian and Roman systems of jurisprudence; their augurs could in many cases put a negative on the decrees of their senates; and countermand the orders of their consuls and dictators.—In our own times, the most absolute rulers in the world, find their power abridged by religion. The grand signior possesses an authority very similar to the principle of nature which I have stated; yet his power is limitted by religion;—for wherever it interposes, the will of the sovereign must submit to its decrees: "When the koran hath prescribed any religious rite; hath enjoined any moral duty; or hath confirmed by its sanction any political maxim. The command of the sultan cannot overturn that which an higher authority hath established."[8] Even the Venetian government, which of all other seems to be formed on the best model, (though much inferior to our new plan) is nevertheless embarrassed with religion; but what need I mention particulars, since every government in the world, as I observed before, has, in a lesser or greater degree felt this inconvenience. Indeed it seems to have

3.16.14

formed an essential part of them; such a part as could not be expunged without annihilating the whole systems; and though this might have been done, yet the shallow brains of those antiquated legislators, could not devise a possibility of avoiding the same radical evil in any new system they could frame; so that this direful incumbrance has hitherto proved too powerful for the united efforts of all the legislators and philosophers that ever appeared in the world to conquer. But what is the world to the federal convention! but as the drop of a bucket, or the small dust in the balance! What the world could not accomplish from the commencement of time till now, they easily performed in a few moments, by declaring, that "no religious test shall ever be required as a qualification to any office, or public trust; under the united states." This is laying the ax to the root of the tree; whereas other nations only lopped off a few noxious branches. This is purifying the fountain; the streams must of course be pure. By this provision the convention hath prudently removed the distemper from the head, and secured it from contamination.—The certain method to preserve the members from catching the infection. Religion, is certainly attended with dangerous consequences to government: it hath been the cause of millions being slaughtered, whose lives and services might have been of use to their masters; but in a peculiar manner the christian religion, which has these several centuries past prevailed over a great part of Europe, and is professed by a great many of the vulgar in this country, is of all others the most unfavourable to a government founded upon nature; because it pretends to be of a supernatural divine origin, and therefore sets itself above nature. Its precepts are likewise so rigid and severe, as to render it impossible for any gentleman of fashion or good breeding to comply with them in any sense, without a manifest violation of decorum, and an abandonment of every genteel amusement and fashionable accomplishment; but another capital objection against this singular system of religion is, that it prohibits slavery, which is so essential to government, that it cannot exist, with any degree of energy, without it, for all the subjects of a good government ought to be slaves in a political sense; or as they were anciently termed, vassals; that is, their persons and property must be entirely at the will and disposal of their masters; which is ingeniously provided for in the new constitution, under the articles of taxation and discipline of the militia.

3.16.15 The congress must certainly extirpate from their dominions such a religion as this that is an enemy to so many good things. By this means the clergy may be annihilated,* who have always been an ambitious, aspiring

*When first I perused this construction, I expected the clergy, to a man, would have opposed it; but in this I am happily deceived; they are the most strenuous advocates it has got; this appeared to me unaccountable, that an order of men, ever jealous of their own power and interest, should favour a constitution which would eventually destroy both; but I presume they have secret assurance that one or two denominations of clergy, are to have fixed stipends established under the new constitution. This, they expect will relieve them from their state of dependance they are

and restless set of men, ever grasping at honours and distinctions, which is the unalienable prerogative of those of illustrious descent: they also by their address and cunning, gain an ascendency, and assume an authority over the people, which is only proper for the rulers to possess; but perhaps it may be urged that some sort of religion is necessary to awe the minds of the vulgar, and keep them in subjection to government. I grant, weak, feeble governments, such as our present systems, may stand in need of the visionary terrors of religion for their support; but such an energetic government as the new constitution, disdains such contemptible auxiliaries as the belief of a Deity, the immortality of the soul, or the resurrection of the body, a day of judgment, or a future state of rewards and punishments.[9] Such bug-bears as these are too distant and illusory to claim the notice of the new congress. The present state of punishments, which will be within their immediate reach to inflict, will answer the end infinitely better. But if some religion must be had, the religion of nature will certainly be preferred by a government founded upon the law of nature.—One great argument in favour of this religion is, that most of the members of the grand convention are great admirers of it; and they certainly are the best models to form our religious, as well as our civil belief on. This religion also admits of proper degrees and distinctions amongst mankind; but the other does not; for it commands to call no man upon earth master or lord. From these remarks, I think it evident, that the grand convention hath dexterously provided for the removal of every thing that hath ever opperated as a restraint upon government in any place or age of the world. But perhaps some weak heads may think that the constitution itself will be a check upon the new congress; but this I deny, for the convention has so happily worded themselves, that every part of this constitution, either bears double meaning, or no meaning at all; and if any concessions are made to the people in one place, it is effectually cancelled in another; so that in fact this constitution is much better and gives more scope to the rulers than they durst safely take if there was no constitution at all; for then the people might contend that the power was inherent in them, and that they had made some implied reserves in the original grant; but now they cannot, for every thing is expressly given away to government in this plan. Perhaps some people may think that power, which the house of

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now in. It is natural for them to wish something surer for a living, than the good will of the people, their hearers. It is very well to amuse them with such alluring stories as these, while their services is needed. Working on their avarice and ambition is the sure way to engage them; and when the constitution is once established, and they have no more useful, but rather hurtful, sound policy will dictate evasions plausible enough to disengage gentlemen from the accomplishment of their promise; and the most noisy and dangerous of them, may have their mouths stopped, by bestowing sinecures on them in the civil, military, or naval department: such as the collector of taxes, excise, or impost duties: this will suit them better than their present employments; for preaching is a great restraint upon gentlemen of modern morality.

representatives possesses, of impeaching the officers of government will be a restraint upon them; but this entirely vanishes, when it is considered that the senate hath the principal say in appointing these officers, and that they are the sole judges of all impeachments. Now it would be absurd to suppose that they would remove their own servants for performing their secret orders perhaps. For the interest of rulers and the ruled will then be two distinct things. The mode of electing the president is another excellent regulation, most wisely calculated to render him the obsequious machine of congress. He is to be chosen by electors appointed in such manner as the state legislators shall direct: but then the highest in votes cannot be president, without he has the majority of all the electors; and if none have this majority, then the congress is to chuse president out of the five highest on the return. By this means the congress will always have the making of the president after the first election; so that if the reigning president pleases his masters, he need be under no apprehensions of being turned out for any severities used to the people, for though the congress may not have influence enough to procure him the majority of the votes of the electoral college, yet they will always be able to prevent any other from having such a majority, and to have him returned among the five highest, so that they may have the appointing of him themselves.

3.16.16 All these wise regulations, proves to a demonstration, that the grand convention was infaliable. The congress having thus disentangled themselves from all popular checks and choices; and being supported by a well disciplined army and active militia, will certainly command dread and respect abroad, obedience and submission at home; they will then look down with awful dignity and tremendous majesty from the pinnacle of glory, to which fortune has raised them upon the insignificant creatures, their subjects, whom they have reduced to that state of vassalage and servile submission, for which they were primarily destined by nature. America will then be great amongst the nations* and princess amongst the provinces: her fleets will cover the desarts of the ocean and convert it into a popular city; and her invincible armies overturn the thrones of princes. The glory of Britain** shall fall like lightning before puissant America; when she ariseth to shake

*That is if we may credit the prognostications with which our federal news-papers and pamphlets daily teem.

**Britain, once the supreme ruler of this country, but her authority was rejected; not as a great many believe, because her claims was tyrannical and oppressive; but because her dominion excluded those from monopolizing the government into their own hands, whom nature had qualified to rule. It is certainly no more than the natural right of rulers "to bind their subjects, in all cases whatsoever."[10] This power is perfectly synonimous with that clause in the constitution, which invests congress with power to make all laws ["]which shall be necessary and proper for carrying into execution the foregoing powers and all other powers," etc. and that which says "the constitution, laws, and treaties of congress shall be the supreme law of the land; any thing in the constitutions or laws of any of the states to the contrary notwithstanding." But nothing less would satisfy Britain, than a power to bind the natural rulers as well as subjects.

the nations, and take vengeance on all who dare oppose her. O! thou most venerable and august congress! with what astonishing ideas my mind is ravished! when I contemplate thy rising grandeur, and anticipate thy future glory! Happy thy servants! happy thy vassals! and happy thy slaves, which sit under the shade of thy omnipotent authority, and behold the glory of thy majesty! for such a state who would not part with ideal blessings of liberty? who would not chearfully resign the nominal advantages of freedom? the dazzling splendour of Assyrian, Persian, Macedonian and Roman greatness will then be totally eclipsed by the radient blaze of this glorious western luminary! These beautiful expressions, aristocracy, oligarchy, upon which the popular odium hath fixed derision and contempt, will then resume their natural emphasis; their genuine significance will be perfectly understood, and no more perverted or abused.

I shall now suggest a few directions to my worthy friends, the inventors and advocates of this admirable constitution—1st. that the people may be brought speedily to "assent and ratify" this constitution, they must have very short time given them for consideration;* it may take well enough with them while they know it only by report, but if time and leasure is allowed them to examine it, they will surely reject it. 2dly. everything like argument in its defence must be carefully avoided, and instead thereof, the profound wisdom of the convention, the great men of which it was composed, particularly the names of a Washington and a Franklin, must be rung in the people's ears: it must be declared a crime bordering on blasphemy, to say any thing against the production of such men as these, and if any thing is wrote concerning it, it must be panegyrick, eulogium, or rhapsody; but by all means avoid reasoning, or you will betray the good cause in which you are engaged. 3rdly. All who presume to speak or write against this constitution, must be branded as enemies to their country and to the union of the states; to impress this upon the minds of the vulgar, they must be termed antifederalists,** all their personal faults must be searched out and exposed; 3.16.17

*Our friends in Pennsylvania and some other states, have wisely anticipated this advice, and thereby carried their favourite scheme. But I am sorry to find that Virginia and several other states have given too much time for the plebeians to scrutinize and cavil; which may perhaps disconcert the whole plot, so artfully contrived.

**I hope none of my friends will imagine that I wish for federal union, because I have called the new plan of government the FEDERAL CONSTITUTION. I assure my friends (by whose interest I expect to receive my share of the loaves and fishes when they are dividing after the constitution is established) I abhor every idea of a federal union; I am decidedly for an incorporate or consolidated union; and I am sensible that this sort of union is effectually secured by the new constitution, the only system capable to exalt the rulers and reduce people; but I have applyed the word federal to the constitution, to chagrin the vulgar, who are enthusiastically fond of it; and as few of them are capable to distinguish betwixt the name and the thing, they may be brought to addopt it under this plausible sanction; also by calling the constitution federal, we can apply the odious term antifederalists to our opponents with more propriety.

and the people must be warned not to listen to their reasoning on the subject, as they are interested persons, being either officers of government, or expectants of offices, and that their opposition arises from sinister views, and selfish motives, and not from a conviction of its evil: but beware of encountering their arguments, or you will certainly expose this darling constitution to popular execration. 4thly. The people must be told, that the revenue of the nation will be chiefly raised by impost under the new constitution, and that internal taxation will seldom if ever be recurred to; this will amuse them in the mean time while they possess the power, but we hope congress will have more wisdom than to verify this prophecy, as it would be very injurious to the interest of our well beloved brother Robert Morris, and all our brethren in high life throughout the nation: a land, but in particular a high poll-tax, will be the most effectual method of collecting the finances; some other articles, such as stamp duties; a tax on candles, leather, soap, etc. may turn to a very good account; and the money raised from the sale of the active militia to foreigners, will be no contemptable source of revenue. 5thly. All communication between the people of the different states must as much as possible be prevented—therefore our own friends must be posts and postmasters, and they must have full power to break open all packets, letters, and papers of every sort, and if they contain any thing against the new constitution they must be suppressed, if not closed up again and sent to the persons to whom they are directed; and it is requested of all our trusty friends throughout the country, that they intercept all papers, which come in their way; examine their contents, and if possible destroy them, if they contain any thing against this glorious plan. 6thly. [11] The militia must be disarmed; for this purpose all the public arms must be called in, upon pretence of having them cleaned; this will not only deprive our enemies of using them against us, but they will be ready to put in the hands of our friends, or men raised by them for the establishment of the constitution if coercion is necessary. 7thly. The distress of the people must be magnified as much as possible; they must be told that they are ruined and miserable, that they are all bankrupts; and that all these calamities is occasioned by their feeble governments (although in fact it is by their own extravagance); and that the new plan will effectually relieve all their wants, and redress all their grievances; although in reality it must be their own industry and economy; but this they must not know for the present. 8thly. They must be told that the new congress will immediately pay off all the debts of the union; but if they ask you how? you must evade the question the best way you can; for if you tell them the truth, that it will be by levying high taxes on themselves, they will be sure to spurn your argument and constitution too. 9thly. The highly and elevated station, to which this will raise America amongst the nations, must be held forth with great vehemence. The people are mighty fond of pomp and splendor, and will almost grant anything to raise their country to grandeur and magnificence. 10thly. They must

be told that anarchy will inevitably be the consequence, if they reject the proposed plan; for there are no more wise men on the continent capable to frame another system; and the same men which composed the late grand convention will not meet a second time. Finally, these directions, if strictly observed, may be of great utility; but they are not to be implicitly confided in. Standing armies are the most proper instruments, both for maintaining and establishing a good government; therefore to secure all beyond a doubt, a standing army must be speedily provided; for this purpose application must be made to our good ally, the French king, to furnish us with a number of troops; and so as not to alarm the people too soon, they may be landed with a pretence to invade Canada. His majesty must also be instructed to demand troops of congress, to assist in this expedition, according to the treaty of alliance. Ten or twenty thousand could be raised in a thrice; and I am confident our friend Robert, and all our other monied friends, bankers and brokers, will supply the necessary demands of money, they may easily be got ready to take the field against next summer, or fall. It could be no loss if they were not needed, they would be so many ready made soldiers for the new congress, who would, no doubt, purchase them at a high price, and the French troops might return in peace to their own country.

APPENDIX

Since writing the foregoing strictures, I have seen Martin's information to the house of delegates of the state of Maryland.[12] This arch enemy has let out secrets that certainly never was intended to be discovered; he hath with uncommon audacity, deserted the great convention, and exposed its intestines to public view; yet I cannot think he has destroyed its infaliability; all he has told, only proves that the majority were no patriots, nor lovers of their country; and what of all that; we can prove they were lovers of themselves; and that self-love is the noblest passion of the soul, and the best motive that human actions can spring from. Now if the grand convention acted uniformly from the best motive, self-love, were stimulated by the noblest desires, self-agrandisement, and influenced by the choicest principles, self-preservation, there can be no doubt of their infaliability. This truth being established, it necessarily follows, that it is gross prophanity and unpardonable crime for faliable creatures to presume to scrutinize their work, or arraign their production, before the bar of their corrupt depraved reason. The centinel in his 16th number,[13] has also discovered a secret of some importance; viz. that the expost facto clause, in connection with several others, screens, what he calls public defaulters, from being obliged to refund the millions they owe the public, and secure the delinquent states from being called upon for their arrears due to the continental treasury! How this fiend discovered the intention of this important clause I cannot

3.16.18

divine. It was veiled over so nicely with a semblance of liberty, that I expected it would ride its quarantine without being observed: but nothing can escape the penetrating eye of this wicked centinel. I wish some means were devised to silence him.—Money, and the promise of lucrative offices has a fascinating influence; and has hitherto been of great service to our cause; many have been bought off whose opposition would certainly have injured us. I wish every stratagem were tried of this nature to allure the centinel to join us, or at least to be silent: he has done great mischief, and is still doing more; and he seems to possess such a determined spirit as not to be intimidated by threats. The people seem very much alarmed at the tendency of the expost facto clause.

3.16.19 Several of the Philadelphia papers teem with pieces exposing the principal public defaulters; but I hope the present Congress will not be induced by this to commit such a piece of cruelty, as to call them to account, and oblige them to refund the sums they owe. If, they postpone it till the new government is established, they can then settle them decently without any injury to themselves: nor can the public complain of fraud or injustice done them, since they have tacitly given their consent to it, by ratifying the new constitution. The provision made in the constitution for cancelling the public debts, was certainly dictated by the first principle of nature, viz. self-preservation; the most influential members in the convention being public defaulters, were impelled to take this step for their own security; and who in their senses can blame them for providing for their own safety, when it was in their power. I am happy to find that the system of intrigue and chicane on which our whole scheme was founded, is still carried on with success all over the continent. The directions I have suggested has been anticipated I find by our friends; by this means six conventions have been lugged in to adopt the plan;—although I don't like the idea of amendments which Massachusetts has introduced; it may be attended with bad consequences; other states may follow the example, and so spoil the whole plot; that such a fatal catastrophe may be prevented, we ought to employ our whole skill, and bend our whole manoeuvres. The adjournment of New Hampshire Convention, is very alarming; yet I hope that state may be brought to reason: a few donations might answer a good end. I long for the asset of nine states; we could then settle all disputes by applying the ultimo ratio regum, as General Washington expresses it,[14] this is the most effectual mode of reasoning; may we speedily have it in our power.

Finis.

1. The source of this epigraph has not been found.
2. Proverbs 8:1.
3. Cf. the comments by Oliver Ellsworth in the Connecticut ratifying convention, Elliot II, 191.

4. This point, like the previous one, is headed "3dly" in the original, presumably a printer's error.

5. Brackets in original.

6. "Sir, I consider it as an honor to the late convention, that this system has not been disgraced with a bill of rights; though I mean not to blame or reflect upon those states which have encumbered the constitution with that idle and superfluous instrument. One would imagine, however, from the arguments of the opposition, that this government was immediately to be administered by foreigners—strangers to our habits and opinions, and unconnected with our interests and prosperity. These apprehensions, Sir, might have been excused while we were contending with Great Britain; but at this time they are applicable to all governments, as well as that under consideration; and the arguments of the honorable member are, indeed, better calculated for an Indian council-fire than the meridian of this refined and enlightened convention" (30 November 1787). McMaster and Stone 295. Rush's argument is that security for the people is to be found not in written agreements but in an adequate representation and a balance in the legislative body. For other Federalist arguments against a bill of rights see Mason 2.2.1 n. 1; [*Maryland*] *Farmer* II, 5.1.18 n. 12.

7. Brackets in original. See Democratic Federalist 3.5.6 n. 6.

8. The source of this quotation has not been found.

9. Cf. George Washington, "Farewell Address," Washington, *Writings* XXXV, 229–30; letter from James Madison to Thomas Jefferson, 24 October 1787, Madison, *Writings* (ed. Hunt) V, 17–41. For other Anti-Federalist and Federalist discussions of religion see Turner 4.18.2 n. 2.

10. This is of course the language of the Declaratory Act of 1766. On American glory see Henry 5.16.2 n. 11.

11. This point, like the previous one, is headed "5thly" in the original; presumably this was a printer's error and I have renumbered this and the remaining points.

12. See Martin 2.4.

13. See Centinel XVI, 2.7.167–70.

14. For a full discussion of Washington's remarks see An American 4.20.2 n. 2.

The Complete Anti-Federalist

The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 4

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Contents

VOLUME FOUR

Massachusetts and New England

Contents of Other Volumes vii
A Note on Cross References xi
Works Frequently Cited xiii

Introduction 3
4.1 Anon., "A confederation, for purposes merely national . . ." (*Massachusetts Gazette* 9 October 1787) 5
4.2 A Letter from a Gentleman in a Neighbouring State, to a Gentleman in this City (*Connecticut Journal* October 1787) 7
4.3 Essays of John DeWitt (Boston *American Herald* October–December 1787) 15
4.4 Essays by Vox Populi (*Massachusetts Gazette* October–November 1787) 41
4.5 William Symmes, Letter to Capt. Peter Osgood, Jr. (15 November 1787) and Speech in Massachusetts Convention (22 January 1788) 54
4.6 Letters of Agrippa (*Massachusetts Gazette* November 1787–February 1788) 68
4.7 Essay by A Federalist (*Boston Gazette* 26 November 1787) 117
4.8 Essay by One of the Common People (*Boston Gazette* 3 December 1787) 120
4.9 Essays by Candidus (Boston *Independent Chronicle* December 1787–January 1788) 124
4.10 Essay by Cornelius (*Hampshire Chronicle* December 1787) 138
4.11 Essay by Poplicola (*Boston Gazette* 24 December 1787) 147
4.12 Essays by Helvidius Priscus (Boston *Independent Chronicle* and *Massachusetts Gazette* December 1787–February 1788) 151
4.13 Letters of A Republican Federalist (*Massachusetts Centinel* December 1787–February 1788) 162
4.14 Essay by Samuel (Boston *Independent Chronicle* 10 January 1788) 191

4.15	Essays by Hampden (*Massachusetts Centinel* January–February 1788)	198
4.16	Letter from A Customer (Portland, Maine, *Cumberland Gazette* March 1788)	202
4.17	Essays by A Farmer (New Hampshire *Freeman's Oracle* January–June 1788)	204
4.18	Charles Turner, Speeches in the Massachusetts Ratifying Convention (17 January and 6 February 1788)	217
4.19	Letter from The Yeomanry of Massachusetts (*Massachusetts Gazette* 25 January 1788)	223
4.20	Essay by An American (Boston *American Herald* 28 January 1788)	226
4.21	Letter from A Bostonian (Boston *American Herald* 4 February 1788)	229
4.22	Address by A Watchman (*Worcester Magazine* February 1788)	231
4.23	A Friend to the Rights of the People, Anti-Foederalist, No. I; and A Friend to the Republic, Anti-Foederalist, No. II (New Hampshire *Freeman's Oracle* 8 February 1788)	234
4.24	Letter by David (*Massachusetts Gazette* 7 March 1788)	246
4.25	Essay by A Newport Man (*Newport Mercury* March 1788)	250
4.26	Consider Arms, Malichi Maynard, and Samuel Field, Reasons for Dissent (*Hampshire Gazette* April 1788)	255
4.27	Essay by Phileleutheros (*Hampshire Gazette* May 1788)	267
4.28	Observations on the New Constitution, and on the Federal and State Conventions, by A Columbian Patriot (Boston 1788)	270

Contents of Other Volumes

VOLUME ONE

Foreword by Joseph Cropsey
Preface by Murray Dry
Prefatory Notes by Herbert J. Storing

What the Anti-Federalists Were *For*

1 Introduction
2 Conservatives
3 The Small Republic
4 Union
5 The Federalist Reply
6 The Aristocratic Tendency of the Constitution
7 Complex Government
8 Bill of Rights
9 Conclusion
The Articles of Confederation, Keyed to the Principal Anti-Federalist Discussions
The Constitution of the United States, Keyed to the Principal Anti-Federalist Discussions

VOLUME TWO

PART I

Objections of Non-Signers of the Constitution

2.1 Elbridge Gerry (3 November 1787)
2.2 George Mason (1787)
2.3 Robert Yates and John Lansing (14 January 1788)
2.4 Luther Martin (1788)
2.5 Edmund Randolph (10 October 1787)

PART 2

Major Series of Essays at the Outset

2.6 Cato (September 1787–January 1788)
2.7 Centinel (October 1787–April 1788)
2.8 The Federal Farmer (1787 and 1788)
2.9 Brutus (October 1787–April 1788)

VOLUME THREE

Pennsylvania

3.1 William Findley (28 September 1787)
3.2 Minority of the Pennsylvania House of Representatives (4 October 1787)
3.3 An Old Whig (October 1787–February 1788)
3.4 Montezuma (17 October 1787)
3.5 A Democratic Federalist (17 October 1787)
3.6 A Federal Republican (1787)
3.7 John Humble (29 October 1787)
3.8 An Officer of the Late Continental Army (6 November 1787)
3.9 Philadelphiensis (November 1787–April 1788)
3.10 Alfred (13 December 1787)
3.11 Minority of the Convention of Pennsylvania (18 December 1787)
3.12 William Penn (January 1788)
3.13 Deliberator (20 February 1788)
3.14 A Farmer (April 1788)
3.15 None of the Well-Born Conspirators (23 April 1788)
3.16 Aristocrotis (1788)

VOLUME FIVE

PART 1

Maryland

5.1 A Farmer (February–April 1788)
5.2 A Farmer and Planter (April 1788)
5.3 Samuel Chase (April 1788)
5.4 Minority of the Maryland Ratifying Convention (May 1788)
5.5 John Francis Mercer (April or May 1788)

PART 2

Virginia and the South

5.6 Richard Henry Lee (16 October 1787)
5.7 Cato Uticensis (17 October 1787)
5.8 A Proposal for Reviving Christian Conviction (October 1787)
5.9 A Georgian (15 November 1787)
5.10 Cato (November–December 1787)
5.11 Tamony (9 January 1788)
5.12 Rawlins Lowndes (January 1788)
5.13 Republicus (February and March 1788)
5.14 The Impartial Examiner (February–June 1788)
5.15 Brutus (14 May 1788)
5.16 Patrick Henry (June 1788)
5.17 George Mason (4 June 1788)
5.18 Denatus (11 June 1788)
5.19 A Delegate Who Has Catched Cold (June 1788)
5.20 Sentiments of Many (18 June 1788)
5.21 James Monroe (1788)

Volume Six

PART 1

New York

6.1 Cincinnatus (November–December 1787)
6.2 A Son of Liberty (8 November 1787)
6.3 Brutus, Jr. (8 November 1787)
6.4 An Observor (19 November 1787)
6.5 A Citizen (24 November 1787)
6.6 A Countryman from Dutchess County (November 1787–February 1788)
6.7 A Countryman (December 1787–January 1788)
6.8 Sidney (February–March 1788)
6.9 Sydney (June 1788)
6.10 Albany Antifederal Committee (26 April 1788)
6.11 A Plebeian (1788)
6.12 Melancton Smith (June 1788)
6.13 George Clinton (June–July 1788)

Contents of Other Volumes

PART 2

Conclusion

6.14 Mercy Warren (1805)

Volume Seven

Index

A Note on Cross References

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.6.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 above. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

Works Frequently Cited

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Crosskey, *Politics and the Constitution*	William W. Crosskey, *Politics and the Constitution in the History of the United States* (Chicago 1953)
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Documentary History of the Constitution	*A Documentary History of the Constitution of the United States of America, 1786–1870; Derived from the Records, Manuscripts, and Rolls Deposited in the Bureau of Rolls and Library of the Department of State* (Washington, D.C., 1894–1905)
Elliot	*The Debates of the State Conventions on the Adoption of the Federal Constitution, as Recommended by the General Convention at Philadelphia in 1787*, 2d ed., ed. Jonathan Elliot (Philadelphia 1866)
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Farrand	*The Records of the Federal Convention of 1787*, ed. Max Farrand (New Haven 1911–37)
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McMaster and Stone	*Pennsylvania and the Federal Constitution, 1787–1788*, ed. John Bach McMaster and Frederick D. Stone (Published for the Subscribers by the Historical Society of Pennsylvania, 1888)
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Massachusetts and New England

Introduction

As winter wore on, the focus of debate moved northward. By January 1788 five states had ratified the Constitution—Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut—all with comparative ease and in four cases unanimously or nearly so.[1] But among these only Pennsylvania was a major state, and there the opposition was unreconciled to defeat. The Massachusetts convention was to meet on 14 January; and an unfavorable decision there would strengthen the opponents of the Constitution in the remaining states, while giving encouragement to the adamant Pennsylvania Anti-Federalists.

The contest over ratification in Massachusetts was preceded by a decade of factional contention, leading to civil disturbances and culminating in the famous Shays Rebellion.[2] The rebellion centered in western Massachusetts, where the economic depression following the dislocation of the war was most severe, where hard currency was scarce, and where the courts and lawyers were a target of popular resentment. Opposition to the Constitution was centered in this western part of the state, but there was a distinct lack of leadership. Few of the eastern Anti-Federalists, who provided essays and pamphlets read all over the country, were elected to the ratifying convention, where the Anti-Federalists, while strong in numbers, had no spokesmen able to contend with the Federalists.[3] To a striking extent the Anti-Federalist delegates in democratic Massachusetts were preoccupied with a rather undifferentiated fear of abuse of power and trickery from the propertied and educated classes.

When the ratifying convention met, there was, from all accounts, a majority opposed to ratification; yet after close to a month of debate a sufficient number of delegates changed their minds to give the Federalists a small majority. The Federalists, proceeding cautiously, succeeded in securing clause-by-clause consideration of the Constitution, fearing (and apparently with good reason) that an early vote would go against them. In this they were aided by Samuel Adams, who, although generally thought to be unfriendly to the Constitution, threw his considerable weight on the side of full deliberation and, in one of his few speeches at the convention, supported clause-by-clause consideration. John Hancock, governor of Massachusetts and president of the convention, also provided crucial support. Popular, vain, and extremely sensitive to currents of opinion, Hancock was prevented by a genuine but manageable illness from occupying the chair until the issues and the lines of division had begun to come into focus. When he did appear, Hancock pro-

posed a group of amendments to the Constitution, which Samuel Adams endorsed. The statements of both men were, probably deliberately, somewhat ambiguous about whether the amendments were to be a condition of ratification or merely recommendatory. As debate continued, sentiment for ratification increased, with the Federalists supporting recommendatory amendments; and neither Hancock nor Adams pressed for conditional ratification. Whatever their motives (a much-canvassed question), Hancock's and Adams' actions were of the utmost importance in securing ratification in the crucial state of Massachusetts and in introducing recommendatory amendments. This proved to be the compromise used to secure ratification in other states, tempering the opposition of the Anti-Federalists while maintaining the integrity of the Constitution.

On 6 February 1788 the Constitution was adopted by the Massachusetts convention by the narrow margin of 187 to 168, and the recommendatory amendments were agreed upon. Several Anti-Federalists who had voted against the Constitution rose to express their acceptance of the majority determination.[4] In marked contrast to events in Pennsylvania, opposition largely ceased in Massachusetts once the Constitution was adopted.

1. See John A. Munroe, *Federalist Delaware, 1775–1815* (New Brunswick, N.J., 1954); Richard P. McCormick, *Experiment in Independence: New Jersey in the Critical Period, 1781–1789* (New Brunswick, N.J., 1950); William W. Abbot, "The Structure of Politics in Georgia, 1782–1789," *William and Mary Quarterly* January 1957; Kenneth Coleman, *The American Revolution in Georgia, 1763–1789* (Athens, Ga., 1958); Bernard C. Steiner, "Connecticut's Ratification of the Federal Constitution," *Proceedings of the American Antiquarian Society* n.s. 25 (1915): 70–127.

2. For background in Massachusetts, see Richard B. Morris, "Insurrection in Massachusetts," in *America in Crisis*, ed. Daniel Aaron (New York 1952); George R. Minot, *The History of the Insurrection of Massachusetts* (Boston 1810); Samuel Eliot Morison, "Struggle over the Adoption of the Constitution of Massachusetts, 1780," Massachusetts Historical Society, *Proceedings* 50 (1917): 353–411; Anson Ely Morse, *The Federalist Party in Massachusetts to the Year 1800* (Princeton 1909); David H. Fischer, "The Myth of the Essex Junto," *William and Mary Quarterly* April 1964.

3. Thus *Centinel* regrets that in Massachusetts "the cause of liberty has been so weakly, although zealously advocated—that its champions were so little illuminated." Centinel XV, 2.7.166. See generally Samuel Bannister Harding, *The Contest over the Ratification of the Federal Constitution in the State of Massachusetts* (New York 1896).

4. The New Hampshire convention met on 13 February; opposition was similar in character and strength to that in Massachusetts, and the Federalists, fearing defeat, succeeded in gaining a postponement of the convention until the middle of June. Joseph B. Walker, *Birth of the Federal Constitution* (Boston 1888).

Anon.
"A confederation, for purposes merely national . . ."

MASSACHUSETTS GAZETTE
9 October 1787

The following remarks are interesting chiefly because they are identified by William W. Crosskey as containing one of the rare attacks on the power of Congress to regulate commerce and as supporting his view that the power to regulate commerce among the several states was intended to include all commercial intercourse in the United States.[1] The remarks were reprinted rather widely and elicited two replies discussed by Crosskey (one of which flatly contradicts his thesis).[2]

1. *Politics and the Constitution* I, 188.
2. Ibid., pp. 188–89.

The following remarks are handed to us by a correspondent as being very serious difficulties in the way of the new confederation, notwithstanding the pains which have been taken to prove, that it could not contain any thing wrong.

A confederation, for purposes merely national, would undoubtedly be exceedingly beneficial to these states. Every one should, however, be indulged in a free, but decent, examination of every proposed form. 4.1.1

In general, publick business would go on smoothly when the mode of doing it is conformable to the habits of the people, and when employment is found for their activity.[1] Let us upon these principles review the newly proposed federal constitution.

The several states are to be represented by a small number of persons, who, during the long period for which they are to be chosen, will be invested with almost every branch of legislative authority, and will generally reside without the states represented by them. 4.1.2

Their authority will extend not only to the foreign commerce but to the internal economy of the states. They are to keep up armies within the states at all times, and to have the sole power of calling the militia into service, excepting the case of foreign invasion. The states therefore lose the right of compelling the obedience of their own subjects.

4.1.3 No state will be able to pay its debts otherwise than by a dry tax; imposts and excises being applied wholly to continental purposes. The several states are not allowed to certify their own debts, even without making their bills a tender.

Titles of land in many cases are to be tried by a continental court. This gives the national government unequal authority in different states, and creates different interests. Some states will lose their whole jurisdiction over real estates; and the large state of Vermont will be excluded from the union.[2]

4.1.4 These are great difficulties and ought to be well weighed before the system is adopted, which will forever put it out of our power to remedy them, otherwise than by force of arms. Our people are every day coalescing under a wise and moderate, but firm, government. Let us not hastily divide them.

Thanks are due to the gentlemen who have come so near the truth in a matter of such importance to us all. But it will probably be found necessary to have this system carefully revised and corrected, before it will be perfect, and be likely to promote the happiness of any state in the union; as it does not at present conform to their established habits.

1. A writer signing himself "Convention" replied: "Is this *antifederalist* to be informed at this time of day, that the 'habits' of the citizens of America are very dissimilar?—And that this is owing in a great measure to the disuniting and discordant principles of the separate Constitutions of the States, and the want of a federal Government?—It is in vain to expect a *national trait* in our characters, or a similitude of *habits*, but as the effect of a *national efficient government*—Virtue or good habits are the result of good laws—and from the excellent American Constitution those *habits* will be induced, that shall lead to those *exertions, manufactures* and *enterprizes*, which will give a scope to the American genius, and 'find employment for their activity.' " *Massachusetts Centinel* 13 October 1787. See the similar exchange below, Federalist 4.7.1 n. 1.

2. See the discussion by Curtis, *Constitutional History* I, 538–44.

A Letter from a Gentleman in a Neighbouring State, to a Gentleman in this City

CONNECTICUT JOURNAL
17 and 24 October 1787

In this rather superficial criticism, A Gentleman from Massachusetts covers many standard Anti-Federal objections concerning the aristocratic principle and tendency of the new Constitution; the inadequate representation; the unconstitutional method of ratification; and the dangerous power of Congress to regulate federal elections, to tax, to dispose of territories belonging to the states, to establish unnecessary inferior courts, to establish armies, and to use the militia to enforce the laws. More significant and interesting is his discussion of the complexity and mystery of the Constitution, especially in the provisions dealing with slavery (4.2.8–9). A Federalist satire and reply was printed in the *Connecticut Journal* on 24 and 31 October.

Dear Sir,

I received your favour of the 24th ult. inclosing the doings of the Convention at *Philadelphia*, directed to his excellency the president of Congress in three days after the date, which favour I should have highly prized, had you not at the same time, enjoined it upon me, to make my objections to them (if any I had) and likewise that I would point out, any alterations that may be made in our present articles of confederation, which will better secure the natural rights, privileges, and liberties of human nature, and at the same time, effectually support the authority and dignity of the states, and public faith. I now sit down to perform the *first part* you have enjoined upon me, but with great reluctance, for reasons I shall assign in my next, which I esteem the most arduous task you have assigned me, which you claim as a debt due both to the public and yourself. 4.2.1

My objections to the doings of our honourable Convention are *many*, you must excuse me if I do not mention one half of them—I must be concise—shall mention only those which I conceive are CAPITAL, and would first observe *generally*.—The form of government prescribed is too COMPLEX, 4.2.2

couched in terms, in many instances *doubtful* as though there was some *art* used to cover the full extent of the powers delegated, to be easily understood, by all who ought to accept or reject the same—and that the form of government recommended, most probably will be attended with greater expence than can be supported by an infant country, exhausted of her wealth by the late war, and impoverished by our own follies and luxuries since the peace, and the loss of our trade, the recovery of which, there is not the least prospect, as restraints are laid upon it, by all the powers in *Europe*, which however I look upon, a circumstance much in our favour, as it will gradually serve to disconnect us from the nations of Europe, for I have no desire we should import either foreign LUXURIES or foreign VICES.

4.2.3 A gradual decay of our trade, must gradually increase our own manufacturers—which must encrease industry, which will have a powerful influence to reform our morals; nothing will promote *industry* so powerfully, as *necessity*, unless it is crampt by an arbitrary sovereign and despotic government. No man will work with that chearfulness for his *lord*, as he will when he knows his earnings are his own, nor do I think this *three branch'd* government, will sit easily on the minds of the *people*, whose peace and quiet must be consulted, or we shall have trouble. The *populace* or *multitude* as they are now called in *contempt*, when we first opposed British tyranny, were complimented by the *patriots* of that day, in *halls* and under liberty poles, as being the fountain and origin from whence *all power* was derived, will not sit easy under any government, where they are deprived of *all power*, or so fettered in the exercise of what little power is left in their hands, as will do them but little service. The chief agents in this new form of government planned out by *Convention*, assume the *humble title* of *president, senate*, and *representatives*, but really are vested with the powers of *King, Lords*, and *Commons*, and although the government seems to be *elective*, their stations will be secured as ample, I humbly conceive, as though they were made *hereditary*, as the rights of the electors appear to be so much fettered, as to leave but little power in the hands of the people.—My *particular objections* are first to the third paragraph in Sect. 2. Art. I, which is in the following words—"Representatives and *direct taxes*, shall be apportioned among the several states, which *may be included in this union*, according to their respective numbers, which shall be determined, by adding to the whole number of *free persons*, including those bound to service for a term of years, and excluding *Indians* not taxed, *three fifths of all other persons*." Was not this form of words thus uncouthly used to avoid using the word *Negroes?* It certainly looks as though the word *Negroes* was omitted from some *design*, it cannot be from any fear of offending that nation of *Africans*. Why must that man that has 500 slaves in our southern states, where slaves are looked upon only as *personal property*, have 300 of them exempted from *capitation*, while an inhabitant of the northern states, possessed of the same number of horned cattle, horses and hogs, be obliged

to pay for the whole number? They are all considered as *chattles.* But to proceed, "The number of representatives shall not exceed *one* for every thirty thousand, but each state shall have at least *one representative:* and until such enumeration shall be made, the state of New-Hampshire shall be permitted to chuse *three*, Massachusetts *eight,* Rhode-Island and Providence Plantations *one,* Connecticut *five,* New-York *six,* New-Jersey *four,* Pennsylvania *eight,* Delaware *one,* Maryland *six,* Virginia *ten,* North-Carolina *five,* South-Carolina *five,* and Georgia *three.*" My objections to this part of the paragraph, are, that the representation is by far too small, to transact the business of so large an empire, our state assemblies may be annihilated, having nothing to do of importance; the power of taxation being vested in Congress, all other business may be transacted in our town meetings.—A large representation has ever been esteemed by the best whigs in Great-Britain, the best barrier against *bribery* and *corruption,* and yet we find a *British king,* having the disposition of all places, civil and military, & an immense *revenue,* SQUEEZED out of the very mouths of his wretched subjects, is able to corrupt the parliament, to vote him any supplies he demands, to support armies, to defend the prerogatives of his crown, and carry fire & sword by his fleets and armies; to desolate whole provinces in the *eastern world,* to aggrandize himself, and satisfy the avarice of his tyrannical subjects.

No wonder our American ambassador, struck with the *brilliancy* of the British court, where every thing around St. James's wears the appearance of wealth, ease, and plenty, should imagine a *three branched legislature* only can produce these effects, and make the subjects happy, should write a book in favour of such a government,[1] and send it over for the *illumination* of this western world; if this is the sole fruit of his embassy, America will not *canonize* him for a saint on account of his services, when they have experienced the consequences of such a kind of government as he has planned out. In order to have formed a right judgment, he should have looked into the *ditches* which serve for graves for many of the human race—under *hedges* which serve as dreary habitations for the living—into the *cottages* of the poor and miserable, and critically examine with how much parsimony the mechanicks, the day labourers, cottagers and villagers live in order to support their *high pampered lords,* before he had wrote a *book* to persuade his country to persue the same road to greatness, splendor and glory, and have reflected in his own mind, whether he could wish to see that country which gave him birth, reduced to the same situation.—By this arrangement of representation it seems this large and extensive empire which in half a century will probably be double in number to the inhabitants of Great-Britain, will be governed by 68 representatives, of which six of the northern states will be represented by 27 ONLY, and the southern states by 41.[2] No marvel that three fifths of the *slaves* are exempted from capitation in taxation. 4.2.4

4.2.5 The commons of England if my memory serves me, consists of 5 or 600 or upwards, yet the king of Great-Britain, if we may believe their own writers, has it in his power by *places* and *pensions*, to corrupt a majority of his *commons*, that his ministers can carry any vote they think proper to propose, to support the *dignity* of his crown, and *rapaciousness* of his ministers.

4.2.6 Therefore should Congress at any future period grow *haughty, insolent* and *oppressive*, they will have it in their power by *places* and *pensions*, which they are amply enabled to establish by the sale of the western lands, which by this Constitution is wholly resigned into the hands of Congress, to be at their disposal, which will be sufficient to corrupt a house of representatives, double in number to the Commons of Great Britain. I now would make my objection to Sec. 4th which is in these words, "The *times, places*, and *manner* of holding election for *senators*, and *representatives* shall be prescribed in each state by the legislature thereof; but the Congress may at any time alter or make such regulations, except as to the place of chusing senators." The plain meaning and understanding of which I take to be this, that Congress gives liberty to the assemblies of each state, to make such regulations respecting the *time, place*, and *manner* of chusing *senators* and *representatives*. But if they do not improve it to their liking, they can alter it at pleasure, except the place of choosing. This is a most *liberal* and *extensive favour*, granted to the assemblies of these state, which Congress can again at any time at pleasure revoke; therefore it will be prudent to use that liberty, and choose such *senators* as shall be acceptable to Congress, or they may expect pretty soon to have such rules prescribed them, as to the *time* and *manner*, as will better comport with the views and designs of Congress, when moddled according to their NEW PLAN—prescribed by Convention. Passing over many lessor matters I proceed to Sec. 7, which is in these words, "All bills for raising a *revenue* shall originate in the house of *representatives;* but the SENATE may propose or concur with amendments as on other bills." I would here only observe that the *Commons* of *Great Britain* will not suffer the house of *Lords* to make the least alteration in a money bill, however the crown has found means to corrupt a sufficient number of the Commons to draw forth the *blood* and *treasure* of the nation. I now proceed to Sec. 8, in these words, "The Congress shall have power to lay and collect taxes, duties, and excises to pay the debts, and provide for the common defence and general welfare of the United States."—And the second paragraph of the 3d Sec. Art. 4th, contains these words, "The Congress shall have power to *dispose of*, and make all needful rules and regulations, respecting the *territory* and *other property* belonging to the United States." By the first recited paragraph, we vest Congress with full power to lay and collect by their own authority what *taxes, duties*, and *excises* they please, and by the second we surrender into the hands of Congress all the western territory, of larger extent I conceive than the kingdoms of Great

Britain and Ireland, the richness of the soil, let those who have seen it declare. But so concise, and so ample a conveyance of such a extent of territory, couched in such smooth and easy language I never before read. I was so struck with the elegance of the stile, I never once thought of it being a conveyance of land, until I had read it over three or four times.

Now I submit it to the good sense of the people of these states, whether it 4.2.7
is prudent we should make so liberal and extensive a grant of *power* and *property* to any body of men in these United States, before they have ever informed the public, the amount of the public debt, or what the annual expences of the federal government is, or will be. It is now almost five years since the peace; and Congress has employed thirteen commissioners, at 1500 dollars per annum, as I am informed, to settle the public accounts, and we know now no more what the national debt is, than at the first moment of their appointment—nor do we know any more what is the amount of the annual expences of the federal government, than we do of the empire of China.[3] To grant therefore such an ample power of taxation, and the right of soil, to the amount of millions, upon the recommendation of this hon. Convention, without either knowing the amount of the national debt, or the annual expences of government, would not argue, in my opinion, the highest degree of prudence.

(*The remainder in our next.*)

(*Concluded from our last.*)

I also object to the 9th paragraph of Sec. 8th, which is in these words, "To 4.2.8
constitute tribunals, inferior to the Supreme Court." We have I humbly conceive law tribunals erected already, which are sufficiently expensive to exhaust the wealth of our richest citizens, and humbly implore, *Convention, Congress,* and the *assemblies* of the states, not to constitute any more. The *shortest,* the *cheapest,* and the *most expeditious* method to obtain distributive justice, between man and man, is to be prefered in any state, and the sooner that matter is taken up, by the several legislatures of the states, to shorten law processes, the better, and unless *speedily* effected we shall be *speedily* undone. My next objection is to the 12th paragraph of Sec. 8th, in these words, "To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years." A great deal of mischief may be done in two years, with *guns, swords,* and *bayonets,* and armies when once *raised,* it hath some times been found difficult to *disband.* I should therefore not think it prudent for Congress ever to raise an army merely to subdue *Wabash Indians,* or any one single tribe. Should there be a general combination of all the tribes, or the states be invaded by a foreign enemy, Congress by our present articles of Confederation, are vested with full powers to draw out the military force of the states, nor have the states

failed hitherto of complyance in this regard; but to limit them to two years, is an affront offered to the dignity of Congress, and appears as tho' we were affraid to trust the military force of the states in their hands, when there is just occasion. I take that to be one principal part of the business of Congress, to conduct the military arrangements of all the states, when judged necessary for the general safety. My next objection is to the 15th paragraph, which is in these words, "Congress shall have power to provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions." This looks too much like Baron Stuben's *militia,* by which a *standing army* was meant and intended;[4] I would only observe, to take the military force of the states out of the hands of their respective governors, is a manifest indignity offered to them, as they ever have had the sole and exclusive command of the militia of the respective states; I observe the expression used is, "*To execute the laws of the union.*" In fact it means, to convert the *militia* of the states, into a *standing army,* under the entire command and controul of Congress; and I would only observe further, *that government* and *those laws* which require a standing army to enforce them, ought not to be supported in any nation under heaven.[5] My next objection is to the first paragraph of Sec. 9th, in these words, "The *migration* or *importation* of such persons as any other states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year of 1808. But a tax or duty may be imposed on such importation not exceeding ten dollars for each person." Why this sentence should be couched in this *blind mysterious form of words,* unless again to avoid using the word *negroes,* I must leave those that drew it to explain?

4.2.9 But should think we have no right to complain of the *Algerines,* who live on the coast of *Africa* if they enslave the *Americans* whom they find sailing in those seas. If we will send our vessels across the *Atlantic,* of set design, to *purchase, kidnap,* and *decoy* the inhabitants of the more southern states of the globe.

That man that will give his vote to import *africans* for the space of 21 years, to drag out a miserable life in *slavery,* will vote to enslave the *Americans* at the end of that period.—The cry has been, *enlarge the powers of Congress*—enable them to *regulate trade;* but it seems this Convention will not permit Congress, to prevent the importation of *slaves* for 21 years yet to come.—The *seeming care* taken to cover the true intent, and meaning of this, and some other parts of the doings of that Convention, will be sufficient reason in my mind, not to vote for one single paragraph it contains.[6]

4.2.10 I shall make one short remark more on the 8th paragraph of this section, viz. "No title of NOBILITY shall be granted by the United States." Congress, in our articles of Confederation, have used the same precaution; nevertheless the officers of the army have incorporated themselves into a society known by the name of the CINCINNATI. The views of which society, have been fully laid open by the Honorable AEDAMUS BURKE of *South-Carolina,*[7]

which will, if neglected, finally terminate in NOBILITY. It was no doubt founded with those views, and if permitted to have their annual meetings in the manner they have begun, once in a year or oftner, it will be found they will not fail of the original design of their *voluntary incorporation*.—Not being able to pay the grant made to officers and army, we now pay the annual interest of their grant, being in the whole 99,000, which must till we are able to discharge the principal, be considered as a *pension*. The principal, I presume, never can be paid, but by the sale of the lands ceeded to the states by treaty.—Nor do they fail to put themselves in the most respectable light, upon all public occasions; I see they convened at New-Haven, at your public commencement, walked in *procession* with his excellency your Governour, President, Corporation, and Tutors of your College, and the Clergy of the state, and I observe were DUBBED, *the honorable society of the* CINCINNATI.

Omitting many other, perhaps very exceptionable—I will just make one observation on the 7th Art. which says, "The ratification of *nine states* shall be sufficient for the establishment of this constitution, *between the states so ratifying the same*." I would just recommend it to the members of our hon. Convention, to reconcile this 7th Art. with the 13th Art. of our Confederation, which says, "The articles of this Confederation shall be observed by every state, and the union be perpetual, nor shall any alteration at any time be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterward confirmed by the legislature of *each state*." It appears as tho' the Convention had wholly overlooked the 13th Art. of our Confederation. Another thing is obvious by this 7th Art. it seems as tho' the *nine southern states* had prepared their matters in such a manner, that they are ready prepared to dismiss the *four northern states*, if they do not think fit to adopt the doings of this Convention, and be ready organized to proceed without them, as tho' it was what they expected or desired.[8] The third paragraph in the second Sec. has a passage of the same complexion, in these words, "Representatives and direct taxes shall be apportioned among the several states, which MAY be *included* within this union." Thus I have only hinted at some of the doings of this Convention which I am able to understand; many other dark and mysterious parts of it, which are beyond my comprehension, I must leave to you and others to unfold.—One thing more, however, is beyond me, which I must mention. The assemblies of the states it seems, will not do to ratify or reject this new Constitution, but it must be done by a CONVENTION, chosen by the PEOPLE, under the recommendation of their legislatures. It is perhaps not so difficult to comprehend the meaning of this measure, as to explain it to the understanding of every one.—The other part you have assigned me, I shall attempt as soon as I can arrange my ideas properly.[9] In the mean time, I am, &c. Yours.

4.2.11

State of Massachusetts, Oct. 4th, A.D. 1787

1. John Adams, *Defence of the Constitutions of Government of the United States*. On Federalist visions of national glory see Henry, 5.16.2 n. 11.

2. The original apportionment, to which the writer is evidently referring, provided for 65 (not 68) representatives, 27 for the northern states as here defined (those above Pennsylvania) and 38 for the southern. The author seems to imply, incorrectly, that the representation cannot be increased as the population grows. See *The Federalist* nos. 55–58.

3. See Jensen, *New Nation* 377 ff.

4. See von Steuben's *A Letter on the Subject of an Established Militia* (New York 1784), Evans, *Early American Imprints* no. 18796.

5. The Federalist antagonist replied: "When the Congress resort to the militia, which is the body of the people, for the support, and execution of the laws of the union, it is done in confidence that the laws are just and good, and worthy of the support of the people, otherwise Congress can have no reason to expect support from that quarter." *Connecticut Journal* 31 October 1787. See Brutus IX, 2.9.110 n. 73.

6. The Federalist rejoinder was that "the constitution does every thing which a constitution could reasonably do. It provides for the interest of the southern states, and at the same time manifests to the world that slavery is inconsistent with the views and sentiments of this country, which error will be reformed as soon as it can be done consistent with the interest of the people." *Connecticut Journal* 31 October 1787. For references to other discussions of the slave trade, see Martin 2.4.15 n. 24.

7. Aedanus Burke, *Considerations on the Society or Order of Cincinnati* (1783), Evans, *Early American Imprints* nos. 17861–66.

8. On separate confederacies, see vol. 1 above, ch. 4 n. 2; Centinel XI, 2.7.142 n. 75; Henry 5.16.11 n. 25. "The oblique hint, lately given in public, that it would be adviseable to separate the four northern states from the rest, proves the author to be no real friend to the welfare of the country." *Connecticut Journal* 31 October 1787.

9. No second letter, treating desired amendments to the Articles of Confederation, seems to have been published.

Essays of John DeWitt

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While Samuel Bannister Harding may overstate the case when he describes the essays of "John DeWitt" as "constructed with consummate skill,"[1] they do carry a good deal of solid argument as well as rhetorical power.

John DeWitt begins with a picture of the very favorable political conditions in America, which stand in striking contrast to those of the rest of the world and which were only incidentally and temporarily disturbed by mistakes and imprudencies of the last year (4.3.1–3.2). While everyone admits that the powers of Congress are inadequate, there is no need for a hasty decision (4.3.2). The new government will not work miracles, for the excellence of any government depends on its administration (4.3.4). The Union must indeed be preserved and strengthened, but the broad aims should be to discourage all foreign importations; to encourage greater economy, industry, and self-sufficiency; and to pursue a politics of measures rather than men (4.3.5).

In the second essay the author emphasizes that the proposed Constitution, if adopted, will be practically permanent because of the extreme difficulty of amending it (4.3.6). While not making the absence of a bill of rights a major objection, John DeWitt denies James Wilson's contention that a bill of rights is unnecessary and inappropriate (4.3.7), and he provides one of the best Anti-Federalist discussions of the vexing question whether all powers not given to government are reserved or all powers not reserved are given (4.3.8). The essay ends with a long and comprehensive statement of objections to the Constitution, culminating in the charge that it will destroy the excellent constitution of Massachusetts (4.3.9).

In the third and fourth essays John DeWitt presents the heart of his objection to the Constitution. Considering both the Constitution itself and its advocates, he contends that this is not a government of genuine consent; it is in fact an aristocracy, possessing excessive powers, which is certain to swallow the state governments (4.3.10). His argument is that all men thirst for power; that consequently governments are organized into different branches which check each other; that the checks in the Constitution are

inadequate—the Senate is too powerful, representation in the Senate is unequal, the checks of the executive and the House of Representatives are weak—that the House is in any case not representative of the people, and is in fact an "Assistant Aristocratical Branch" (4.3.14); and that the powers to be given to the new government are excessive (4.3.12–14). The fourth essay contains a lengthy discussion of the power of internal taxation, its odiousness and ineffectiveness in general, especially in a government so large and so little representative, and the likelihood that this power will lead to arbitary and tyrannical government (4.3.20–23).

The last essay is taken up largely with a discussion of the Constitutional provisions relating to the militia and standing army, which betray a reluctance to trust the armed people and an intention to rule by military force (4.3.27–32). The paper contains some interesting remarks on the workings of a free, industrious society where the people are too busy to concern themselves much with the principles of their government but where, retaining the political power, they insist on receiving reasoned explanations and arguments from the knowledgeable few who concern themselves with such matters (4.3.24).

1. Harding, *Contest over Ratification* 24.

I

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.1 Whoever attentively examines the history of America, and compares it with that of other nations, will find its commencement, its growth, and its present situation, without a precedent.

It must ever prove a source of pleasure to the Philosopher, who ranges the explored parts of this inhabitable globe, and takes a comparative view, as well of the rise and fall of those nations, which have been and are gone, as of the growth and present existence of those which are now in being, to close his prospect with this Western world. In proportion as he loves his fellow creatures, he must here admire and approve; for while they have severally laid their foundations in the blood and slaughter of three, four, and sometimes, ten successive generations, from their passions have experience, every misery to which human nature is subject, and at this day present striking features of usurped power, unequal justice, and despotic tyranny, America stands completely systemised without any of these misfortunes.—On the contrary, from the first settlement of the country, the necessity of civil associations, founded upon equality, consent, and pro-

portionate justice have ever been universally acknowledged.—The means of education always attended to, and the fountains of science brought within the reach of poverty.—Hitherto we have commenced society, and advanced in all respects resembling a family, without partial affections, or even a domestic bickering: And if we consider her as an individual, instead of an undue proportion of violent passions and bad habits, we must set her down possessed of reason, genius and virtue.—I premise these few observations because there are too many among us of narrow minds, who live in the practice of blasting the reputation of their own country.—They hold it as a maxim, that virtues cannot grow in their own soil.—They will appreciate those of a man, they know nothing about, because he is an exotic; while they are sure to depreciate those much more brilliant in their neighbours, because they are really acquainted with and know them.

Civil society is a blessing.—It is here universally known as such.—The education of every child in this country tends to promote it.—There is scarcely a citizen in America who does not wish to bring it, consistent with our situation and circumstances, to its highest state of improvement.—Nay, I may say further, that the people in general aim to effect this point, in a peaceable, laudable, and rational way. These assertions are proved by stubborn facts, and I need only resort to that moment, when, in contest with a powerful enemy, they paid such an unprecedented attention to civilization, as to select from among themselves their different conventions, and form their several constitutions, which, for their beautiful theoretical structure, caught the admiration of our enemies, and secured to us the applause of the world.—We at this day feel the effects of this disposition, and now live under a government of our own choice, constructed by ourselves, upon unequivocal principles, and requires but to be well administered to make us as happy under it as generally falls to the lot of humanity. The disturbances in the course of the year past cannot be placed as an objection to the principle I advance.—They took their rise in idleness, extravagance and misinformation, a want of knowledge of our several finances, a universal delusion at the close of the war, and in consequence thereof, a pressure of embarrassments, which checked, and in many cases, destroyed that disposition of forbearance, which ought to be exercised towards each other. These were added to the accursed practice of letting money at usury, and some few real difficulties and grievances, which our late situation unavoidably brought upon us. The issue of them, however, rather proves the position for, a very few irreclaimables excepted, we find even an anxiety to hearken to reason pervading all classes—industry and frugality increasing, and the advantages arising from good, wholesome laws, confessed by every one.—Let who will gain say it, I am confident we are in a much better situation, in all respects, than we were at this period the last year; and as fast as can be expected, consistent with the passions and habits of a free people, of men who will think for themselves, coalescing, as a corre- 4.3.2

spondent observes in a late paper,[1] under a firm, wise and efficient government. The powers vested in Congress have hitherto been found inadequate.—Who are those that have been against investing them? The people of this Commonwealth have very generally supposed it expedient, and the farmer equally with the merchant have taken steps to effect it.—A Convention from the different States for that sole purpose hath been appointed of their most respectable citizens—respectable indeed I may say for their equity, for their literature, and for their love of their country.—Their proceedings are now before us for our approbation.—The eagerness with which they have been received by certain classes of our fellow citizens, naturally forces upon us this question: Are we to adopt this Government, without an examination?—Some there are, who, literally speaking, are for pressing it upon us at all events. The name of the man who but lisps a sentiment in objection to it, is to be handed to the printer, by the printer to the publick, and by the publick he is to be led to execution. They are themselves stabbing its reputation. For my part, I am a stranger to the necessity for all this haste! Is it not a subject of some small importance? Certainly it is.—Are not your lives, your liberties and properties intimately involved in it?—Certainly they are. Is it a government for a moment, a day, or a year? By no means—but for ages—Altered it may possibly be, but it is easier to correct before it is adopted.—Is it for a family, a state, or a small number of people? It is for a number no less respectable than three millions. Are the enemy at our gates, and have we not time to consider it? Certainly we have. Is it so simple in its form as to be comprehended instantly?—Every letter, if I may be allowed the expression, is an idea. Does it consist of but few additions to our present confederation, and those which have been from time to time described among us, and known to be necessary?—Far otherwise. It is a compleat system of government, and armed with every power, that a people in any circumstances ought to bestow. It is a path newly struck out, and a new set of ideas are introduced that have neither occurred or been digested.—A government for national purposes, preserving our constitution entire, hath been the only plan hitherto agitated. I do not pretend to say, but it is in theory the most unexceptionable, and in practice will be the most conducive to our happiness of any possible to be adopted:—But it ought to undergo a candid and strict examination. It is the duty of every one in the Commonwealth to communicate his sentiments to his neighbour, divested of passion, and equally so of prejudices. If they are honest and he is a real friend to his country, he will do it and embrace every opportunity to do it. If thoroughly looked into before it is adopted, the people will be more apt to approve of it in practice, and every man is a TRAITOR to himself and his posterity, who shall ratify it with his signature, without first endeavouring to understand it.—We are but yet in infancy; and we had better proceed slow than too fast.—It is much easier to dispense powers, than recall them.—The

present generation will not be drawn into any system; they are too enlightened; they have not forfeited their right to a share in government, and they ought to enjoy it.

4.3.3 Some are heard to say, "When we consider the men who made it, we ought to take it for sterling, and without hesitation—that they were the collected wisdom of the States, and had no object but the general good."[2]—I do not doubt all this, but facts ought not to be winked out of sight:—They were delegated from different States, and nearly equally represented, though vastly disproportionate both in wealth and numbers. They had local prejudices to combat, and in many instances, totally opposite interests to consult. Their situations, their habits, their extent, and their particular interest, varied each from the other. The gentlemen themselves acknowledge that they have been less rigid upon some points, in consequence of those difficulties than they otherwise should have been.—Others again tell you that the Convention is or will be dissolved; that we must take their proceedings in whole or reject them[3]—But this surely cannot be a reason for their speedy adoption; it rather works the other way. If evils are acknowledged in the composition, we ought, at least, to see whose shoulders are to bear the most; to compare ours with those of other States, and take care that we are not saddled with more than our proportion: That the citizens of Philadelphia are running mad after it, can be no argument for us to do the like:—Their situation is almost contrasted with ours; they suppose themselves a central State; they expect the perpetual residence of Congress, which of itself alone will ensure their aggrandizement: We, on the contrary, are sure to be near one of the extremes; neither the loaves or fishes will be so plenty with us, or shall we be so handy to procure them.

4.3.4 We are told by some people, that upon the adopting this New Government, we are to become every thing in a moment:—Our foreign and domestic debts will be as a feather; our ports will be crowded with the ships of all the world, soliciting our commerce and our produce: Our manufactures will increase and multiply; and, in short, if we STAND STILL, our country, notwithstanding, will be like the blessed Canaan, a land flowing with milk and honey. Let us not deceive ourselves; the only excellency of any government is in exact proportion to the administration of it:[4]—Idleness and luxury will be as much a bane as ever; our passions will be equally at war with us then as now; and if we have men among us trying with all their ability to undermine our present Constitution, these very persons will direct their force to sap the vitals of the new one.—

4.3.5 Upon the whole, my fellow countrymen, I am as much a federal man as any person: In a federal union lies our political salvation—To preserve that union, and make it respectable to foreign opticks, the National Government ought to be armed with all necessary powers; but the subject I conceive of infinite delicacy, and requires both ability and reflection. In discussing

points of such moment, America has nothing to do with passions or hard words; every citizen has an undoubted right to examine for himself, neither ought he to be ill treated and abused, because he does not think at the same moment exactly as we do. It is true, that many of us have but our liberties to lose, but they are dearly bought, and are not the least precious in estimation:—In the mean time, is it not of infinite consequence, that we pursue inflexibly that path, which I feel persuaded we are now approaching, wherein we shall discourage all foreign importations; shall see the necessity of greater oeconomy and industry; shall smile upon the husbandman, and reward the industrious mechanick; shall promote the growth of our own country, and wear the produce of our own farms; and, finally, shall support measures in proportion to their honesty and wisdom, without any respect to men. Nothing more is wanted to make us happy at home, and respectable abroad.

John DeWitt.

II

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.6 In my last address upon the proceedings of the Foederal Convention, I endeavored to convince you of the importance of the subject, that it required a cool, dispassionate examination, and a thorough investigation, previous to its adoption—that it was not a mere revision and amendment of our first Confederation, but a compleat System for the future government of the United States, and I may now add in preference to, and in exclusion of, all others heretofore adopted.—It is not TEMPORARY, but in its nature, PERPETUAL.—It is not designed that you shall be annually called, either to revise, correct, or renew it; but, that your posterity shall grow up under, and be governed by it, as well as ourselves.—It is not so capable of alterations as you would at the first reading suppose; and I venture to assert, it never can be, unless by force of arms. The fifth article in the proceedings, it is true, expressly provides for an alteration under certain conditions, whenever "it shall be ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by Congress."—Notwithstanding which, such are the *"heterogeneous materials from which this System was formed,"*[5] such is the difference of interest, different manners, and different local prejudices, in the different parts of the United States, that to obtain that majority of three fourths to any one single alteration, essentially affecting this or any other State, amounts to an absolute impossibility. The conduct of

the Delegates in dissolving the Convention, plainly speaks this language, and no other.—Their sentiments in their Letter to his Excellency the President of Congress are—That this Constitution was the result of a spirit of amity—that the parties came together disposed to concede as much as possible each to the other—that mutual concessions and compromises did, in fact, take place, and all those which could, consistent with the peculiarity of their political situation.[6] Their dissolusion enforces the same sentiment, by confining you to the alternative of taking or refusing their doings in the gross. In this view, who is there to be found among us, who can seriously assert, that this Constitution, after ratification and being practised upon, will be so easy of alteration? Where is the probability that a future Convention, in any future day, will be found possessed of a greater spirit of amity and mutual concession than the present? Where is the probability that three fourths of the States in that Convention, or three fourths of the Legislatures of the different States, whose interests differ scarcely in nothing short of every thing, will be so very ready or willing materially to change any part of this System, which shall be to the emolument of an individual State only? No, my fellow-citizens, as you are now obliged to take it in the whole, so you must hereafter administer it in whole, without the prospect of change, unless by again reverting to a state of Nature, which will be ever opposed with success by those who approve of the Government in being.

That the want of a Bill of Rights to accompany this proposed System, is a 4·3·7
solid objection to it, provided there is nothing exceptionable in the System itself, I do not assert.—If, however, there is at any time, a propriety in having one, it would not have been amiss here.[7] A people, entering into society, surrender such a part of their natural rights, as shall be necessary for the existence of that society. They are so precious in themselves, that they would never be parted with, did not the preservation of the remainder require it. They are entrusted in the hands of those, who are very willing to receive them, who are naturally fond of exercising of them, and whose passions are always striving to make a bad use of them.—They are conveyed by a written compact, expressing those which are given up, and the mode in which those reserved shall be secured. Language is so easy of explanation, and so difficult is it by words to convey exact ideas, that the party to be governed cannot be too explicit. The line cannot be drawn with too much precision and accuracy. The necessity of this accuracy and this precision encreases in proportion to the greatness of the sacrifice and the numbers who make it.—That a Constitution for the United States does not require a Bill of Rights, when it is considered, that a Constitution for an individual State would, I cannot conceive.—The difference between them is only in the numbers of the parties concerned; they are both a compact between the Governors and Governed, the letter of which must be adhered to in discussing their powers. That which is not expressly granted, is of course retained.

4.3.8 The Compact itself is a recital upon paper of that proportion of the subject's natural rights, intended to be parted with, for the benefit of adverting to it in case of dispute. Miserable indeed would be the situation of those individual States who have not prefixed to their Constitutions a Bill of Rights, if, as a very respectable, learned Gentleman at the Southward observes, "the People, when they established the powers of legislation under their separate Governments, invested their Representatives with every right and authority which they did not, in explicit terms, reserve; and therefore upon every question, respecting the jurisdiction of the House of Assembly, if the Frame of Government is silent, the jurisdiction is efficient and complete."[8] In other words, those powers which the people by their Constitutions expressly give them, they enjoy by positive grant, and those remaining ones, which they never meant to give them, and which the Constitutions say nothing about, they enjoy by tacit implication, so that by one means and by the other, they became possessed of the whole.—This doctrine is but poorly calculated for the meridian of America, where the nature of compact, the mode of construing them, and the principles upon which society is founded, are so accurately known and universally diffused. That insatiable thirst for unconditional controul over our fellow-creatures, and the facility of sounds to convey essentially different ideas, produced the first Bill of Rights ever prefixed to a Frame of Government. The people, altho' fully sensible that they reserved every tittle of power they did not expressly grant away, yet afraid that the words made use of, to express those rights so granted might convey more than they originally intended, they chose at the same moment to express in different language those rights which the agreement did not include, and which they never designed to part with, endeavoring thereby to prevent any cause for future altercation and the intrusion into society of that doctrine of tacit implication which has been the favorite theme of every tyrant from the origin of all governments to the present day.[9]

4.3.9 The proceedings of the Convention are now handed to you by your Legislature, and the second Wednesday in January is appointed for your final answer. To enable you to give that with propriety; that your future reflections may produce peace, however opposed the present issue of your present conduct may be to your present expectations, you must determine, that, in order to support with dignity the Foederal Union, it is proper and fit, that the present Confederation shall be annihilated:—That the future Congress of the United States shall be armed with the powers of Legislation, Judgment and Execution:—That annual elections in this Congress shall not be known, and the most powerful body, the Senate, in which a due proportion of representation is not preserved, and in which the smallest State has equal weight with the largest, be the longest in duration:—That it is not necessary for the public good, that persons habituated to the exercise of power should ever be reminded from whence they derive it, by a return to

the station of private citizens, but that they shall at all times at the expiration of the term for which they were elected to an office, be capable of immediate re-election to that same office:—That you will hereafter risque the probability of having the Chief Executive Branch chosen from among you; and that it is wholly indifferent, both to you and your children after you, whether this future Government shall be administered within the territories of your own State, or at the distance of four thousand miles from them.—You must also determine, that they shall have the exclusive power of imposts and the duties on imports and exports, the power of laying excises and other duties, and the additional power of laying internal taxes upon your lands, your goods, your chattels, as well as your persons at their sovereign pleasure:—That the produce of these several funds shall be appropriated to the use of the United States, and collected by their own officers, armed with a military force, if a civil aid should not prove sufficient:—That the power of organizing, arming and disciplining the militia shall be lodged in them, and this thro' fear that they shall not be sufficiently attentive to keeping so respectable a body of men as the yeomanry of this Commonwealth, compleatly armed, organized and disciplined; they shall have also the power of raising, supporting and establishing a standing army in time of peace in your several towns, and I see not why in your several houses:—That should an insurrection or an invasion, however small, take place, in Georgia, the extremity of the Continent, it is highly expedient they should have the power of suspending the writ of Habeas Corpus in Massachusetts, and as long as they shall judge the public safety requires it:—You must also say, that your present Supreme Judicial Court shall be an Inferior Court to a Continental Court, which is to be inferior to the Supreme Court of the United States:—That from an undue biass which they are supposed to have for the citizens of their own States, they shall not be competent to determine title to your real estate, disputes which may arise upon a protested Bill of Exchange, a simple note of hand, or book debt, wherein your citizens shall be unfortunately involved with disputes of such or any other kind, with citizens either of other States or foreign States: In all such cases they shall have a right to carry their causes to the Supreme Court of the United States, whether for delay only or vexation; however distant from the place of your abode, or inconsistent with your circumstances:—That such appeals shall be extended to matters of fact as well as law, and a trial of the cause by jury you shall not have a right to insist upon.—In short, my fellow-citizens, previous to a capacity of giving a compleat answer to these proceedings, you must determine that the Constitution of your Commonwealth, which is instructive, beautiful and consistent in practice, which has been justly admired in Europe, as a model of perfection, and which the present Convention have affected to imitate, a Constitution which is especially calculated for your territory, and is made conformable to your genius, your habits, the mode of holding your estates, and your particular interests, shall be reduced in its

powers to those of a City Corporation:—The skeleton of it may remain, but its vital principle shall be transferred to the new Government: Nay, you must go still further, and agree to invest the new Congress with powers, which you have yet thought proper to withhold from your own present Government.—All these, and more, which are contained in the proceedings of the Foederal Convention, may be highly proper and necessary.—In this overturn of all individual Governments, in this new-fashioned set of ideas, and in this total dereliction of those sentiments which animated us in 1775, the Political Salvation of the United States may be very deeply interested, but BE CAUTIOUS.

John DeWitt.

III

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.10 Civil liberty, in all countries, hath been promoted by a free discussion of publick measures, and the conduct of publick men. The FREEDOM OF THE PRESS hath, in consequence thereof, been esteemed one of its safe guards. That freedom gives the right, at all times, to every citizen to lay his sentiments, in a decent manner, before the people. If he will take that trouble upon himself, whether they are in point or not, his countrymen are obliged to him for so doing; for, at least, they lead to an examination of the subject upon which he writes.—If any possible situation makes it a duty, it is our present important one, for in the course of sixty or ninety days you are to approve of or reject the present proceedings of your Convention, which, if established, will certainly effect, in a greater or less degree, during the remainder of your lives, those privileges which you esteem dear to you, and not improbably those of your children for succeeding ages. Now therefore is unquestionably the proper time to examine it, and see if it really is what, upon paper, it appears to be. If with yours eyes open, you deliberately accept it, however different it may prove in practice from what it appears in theory, you will have nobody to blame but yourselves; and what is infinitely worse, as I have before endeavoured to observe to you, you will be wholly without a remedy. It has many zealous advocates, and they have attempted, at least as far as their modesty would permit, to monopolize our gazettes, with their encomiums upon it. With the people they have to manage, I would hint to them, their zeal is not their best weapon, and exertions of such a kind, artful attempts to seize the moment, do seldom tend either to elucidate

and explain principles, or ensure success. Such conduct ought to be an additional stimulous for those persons who are not its professed admirers, to speak their sentiments with freedom however unpopular.—Such conduct ought to inspire caution, for as a man is invariably known by his company, so is the tendency of principles known by their advocates—Nay, it ought to lead you to enquire who are its advocates? Whether ambitious men throughout America, waiting with impatience to make it a stepping stone to posts of honour and emolument, are not of this class? Whether men who openly profess to be tired of republican governments, and sick to the heart of republican measures; who daily ridicule a government of choice, and pray ardently for one of force, are not of the same class? And, whether there are not men among us, who disapprove of it only because it is not an absolute monarchy, but who, upon the whole, are among its advocates?—In such examinations as these, you cannot mispend a proportion of the sixty days.

All contracts are to be construed according to the meaning of the parties at the time of making them. By which is meant, that mutual communications shall take place, and each shall explain to the other their ideas of the contract before them.—If any unfair practices are made use of, if its real tendency is concealed by either party, or any advantage taken in the execution of it, it is in itself fraudulent and may be avoided. There is no difference in the constitution of government—Consent it is allowed is the spring—The form is the mode in which the people choose to direct their affairs, and the magistrates are but trustees to put that mode in force.—It will not be denied, that this people, of any under Heaven, have a right of living under a government of their own choosing.—That government, originally consented to, which is in practice, what it purports to be in theory, is a government of choice; on the contrary, that which is essentially different in practice, from its appearance in theory, however it may be in letter a government of choice, it never can be so in spirit. Of this latter kind appear to me to be the proceedings of the Foederal Convention—They are presented as a Frame of Government purely Republican, and perfectly consistent with the individual governments in the Union. It is declared to be constructed for national purposes only, and not calculated to interfere with domestic concerns. You are told, that the rights of the people are very amply secured, and when the wheels of it are put in motion, it will wear a milder aspect than its present one. Whereas the very contrary of all this doctrine appears to be true. Upon an attentive examination you can pronounce it nothing less, than a government which in a few years, will degenerate to a compleat Aristocracy, armed with powers unnecessary in any case to bestow, and which in its vortex swallows up every other Government upon the Continent. In short, my fellow-citizens, it can be said to be nothing less than a hasty stride to Universal Empire in this Western World, flattering, very flattering to young ambitious minds, but fatal to the liberties of the people. The cord is strained

4.3.11

to the very utmost.—There is every spice of the SIC. JUBEO possible in the composition. Your consent is requested, because it is essential to the introduction of it; after having received-confirmation, your complaints may encrease the whistling of the wind, and they will be equally regarded.

4.3.12 It cannot be doubted at this day by any men of common sense, that there is a charm in politicks. That persons who enter reluctantly into office become habituated, grow fond of it, and are loath to resign it.—They feel themselves flattered and elevated, and are apt to forget their constituents, until the time returns that they again feel the want of them.—They uniformly exercise all the powers granted to them, and ninety-nine in a hundred are for grasping at more. It is this passionate thirst for power, which has produced different branches to exercise different departments and mutual checks upon those branches. The aristocratical hath ever been found to have the most influence, and the people in most countries have been particularly attentive in providing checks against it. Let us see if it is the case here.—A President, a Senate, and a House of Representatives are proposed. The Judicial Department is at present out of the question, being separated excepting in impeachments. The Legislative is divided between the People who are the Democratical, and the Senate who are the Aristocratical part, and the Executive between the same Senate and the President who represents the Monarchical Branch.—In the construction of this System, their interests are put in opposite scales. If they are exactly balanced, the Government will remain perfect; if there is a prepondency, it will finally prevail. After the first four years, each Senator will hold his seat for the term of six years. This length of time will be amply sufficient of itself to remove any checks that he may have upon his independency, from the fear of a future election. He will consider that it is a serious portion of his life after the age of thirty; that places of honour and trust are not generally obtained unsolicited. The same means that placed him there may be again made use of; his influence and his abilities arising from his opportunities, will, during the whole term encrease those means; he will have a compleat negative upon all laws that shall be general, or that shall favor individuals, and a voice in the appointment of all officers in the United States.—Thus habituated to power, and living in the daily practice of granting favors and receiving solicitations, he may hold himself compleatly independent of the people, and at the same time ensure his election. If there remains even a risque, the blessed assistance of a little well-distributed money, will remove it.

4.3.13 With respect to the Executive, the Senate excepting in nomination, have a negative upon the President, and if we but a moment attend to their situation and to his, and to the power of persuasion over the human mind, especially when employed in behalf of friends and favorites, we cannot hesitate to say, that he will be infinitely less apt to disoblige them, than they to refuse him. It is far easier for twenty to gain over one, than one twenty; besides, in the one

case, we can ascertain where the denial comes from, and the other we cannot. It is also highly improbable but some of the members, perhaps a major part, will hold their seats during their lives. We see it daily in our own Government, and we see it in every Government we are acquainted with, however many the cautions, and however frequent the elections.

These considerations, added to their share above mentioned in the Executive department must give them a decided superiority over the House of Representatives.—But that superiority is greatly enhanced, when we consider the difference of time for which they are chosen. They will have become adepts in the mystery of administration, while the House of Representatives may be composed perhaps two thirds of members, just entering into office, little used to the course of business, and totally unacquainted with the means made use of to accomplish it.—Very possible also in a country where they are total strangers.—But, my fellow-citizens, the important question here arises, who are this House of Representatives? "A representative Assembly, says the celebrated Mr. Adams, is the sense of the people, and the perfection of the portrait, consists in the likeness."[10]—Can this Assembly be said to contain the sense of the people?—Do they resemble the people in any one single feature?—Do you represent your wants, your grievances, your wishes, in person? If that is impracticable, have you a right to send one of your townsmen for that purpose?—Have you a right to send one from your county? Have you a right to send more than one for every thirty thousand of you? Can he be presumed knowing to your different, peculiar situations—your abilities to pay publick taxes, when they ought to be abated, and when encreased? Or is there any possibility of giving him information? All these questions must be answered in the negative. But how are these men to be chosen? Is there any other way than by dividing the State into districts? May not you as well at once invest your annual Assemblies with the power of choosing them—where is the essential difference? The nature of the thing will admit of none. Nay, you give them the power to prescribe the mode. They may invest it in themselves.—If you choose them yourselves, you must take them upon credit, and elect those persons you know only by common fame. Even this privilege is denied you annually, through fear that you might withhold the shadow of controul over them. In this view of the System, let me sincerely ask you, where is the people in this House of Representatives?—Where is the boasted popular part of this much admired System?—Are they not couzin germans in every sense to the Senate? May they not with propriety be termed an Assistant Aristocratical Branch, who will be infinitely more inclined to co-operate and compromise with each other, than to be the careful guardians of the rights of their constituents? Who is there among you would not start at being told, that instead of your present House of Representatives, consisting of members chosen from every town, your future Houses were to consist of but ten

4.3.14

in number, and these to be chosen by districts?—What man among you would betray his country and approve of it? And yet how infinitely preferable to the plan proposed?—In the one case the elections would be annual, the persons elected would reside in the center of you, their interests would be yours, they would be subject to your immediate controul, and nobody to consult in their deliberations—But in the other, they are chosen for double the time, during which, however well disposed, they become strangers to the very people choosing them, they reside at a distance from you, you have no controul over them, you cannot observe their conduct, and they have to consult and finally be guided by twelve other States, whose interests are, in all material points, directly opposed to yours. Let me again ask you, What citizen is there in the Commonwealth of Massachusetts, that would deliberately consent laying aside the mode proposed, that the several Senates of the several States, should be the popular Branch, and together, form one National House of Representatives?—And yet one moment's attention will evince to you, that this blessed proposed Representation of the People, this apparent faithful Mirror, this striking Likeness, is to be still further refined, and more Aristocratical four times told.—Where now is the exact balance which has been so diligently attended to? Where lies the security of the people? What assurances have they that either their taxes will not be exacted but in the greatest emergencies, and then sparingly, or that standing armies will be raised and supported for the very plausible purpose only of cantoning them upon their frontiers? There is but one answer to these questions.—They have none. Nor was it intended by the makers they should have, for meaning to make a different use of the latter, they never will be at a loss for ways and means to expend the former. They do not design to beg a second time. Knowing the danger of frequent applications to the people, they ask for the whole at once, and are now by their conduct, teazing and absolutely haunting of you into a compliance.[11]—If you choose all these things should take place, by all means gratify them. Go, and establish this Government, which is unanimously confessed imperfect, yet incapable of alteration. Intrust it to men, subject to the same unbounded passions and infirmities as yourselves, possessed with an insatiable thirst for power, and many of them, carrying in them vices, tho' tinsel'd and concealed, yet, in themselves, not less dangerous than those more naked and exposed. But in the mean time, add an additional weight to the stone that now covers the remains of the Great WARREN and MONTGOMERY;[12] prepare an apology for the blood and treasure, profusely spent to obtain those rights which you now so tamely part with. Conceal yourselves from the ridicule of your enemies, and bring your New-England spirits to a level with the contempt of mankind. Henceforth you may sit yourselves down with propriety, and say, Blessed are they that never expect, for they shall not be disappointed.

John DeWitt.

IV

To the Free Citizens of the Commonwealth of Massachusetts.

Place the Frame of Government proposed, in the most favorable point of view, magnify the priviledges held forth to the people to their fullest extent, and enlarge as much as you please, upon the great checks therein provided, notwithstanding all which, there cannot remain a doubt in the mind of any reflecting man, that it is a System purely Aristocratical, calculated to find employment for men of ambition, and to furnish means of sporting with the sacred principles of human nature. The great object throughout, is the acquisition of property and power, and every possible opportunity has been embraced to make ample provision for supplying a redundancy of the one, to exercise the other in its fullest extent. They have engrossed to themselves the riches of America, and are carefully silent what use they intend to put them to. Powers are there granted, that shall give to persons, greater strangers, and perhaps greater enemies to you than the people of Great-Britain, the right of entry into your habitations without your consent, not a lisp being mentioned as to the mode or time when such powers shall be exercised. They have taken to themselves the Purse and Sword of your country. 4.3.15

Like the performance of a fine painter, the Senate is the subject of the piece painted.—The people with their priviledges, to an attentive observer, may be seen in the back ground, composing an insignificant part of the drapery, but their existence depends upon the freshness of the colours.—Frequent handling, a little exposure, and the smallest inroads of time upon these shades, will soon destroy them, and they will no longer be considered a part of the composition. If this is true—if in any future period, however distant, we are to be governed by One Branch, it surely behoves us to provide for an equal voice in that Branch, that our respective influence shall bear some small proportion to our respective contributions and numbers: Whereas in this System, equality is totally disregarded. Five pounds in the Senate has an equal voice with fifty, and about five hundred thousand of the inhabitants the same number of votes with the remaining three millions. Where then is the probability the rights of the people will find equal security? Is it not demonstrable that your burthens will be great in proportion as your influence in that body that imposes them is small? As it respects this Commonwealth, infinitely better would be our situation in a representation in the British Parliament. The terms offered us by our enemies to place us as we stood in 1763,[13] bear no comparison in their consequences, to those which would flow from the exercise of the powers of this Government by the Senate, as now constructed. If the same proportion in numbers and property had been observed in this Branch as in the House of Representatives (and no reason why it was not hath yet appeared, excepting what the celebrated 4.3.16

Southern gentleman is pleased to term a "*necessary compromise between contending interests*["]][14] however successful they might be hereafter in arrogating all the powers of government to themselves, or however severe in executing them, still one gleam of hope with the spirit of consolation would be found in the breast of the subject, that his grievances were proportionate to those of his neighbours; but in the present case, even this satisfaction is denied him—the uncertainty is not left him—his reason instanter convinces him it is not so.

4.3.17 It is idle to expect more virtue in an American than in an individual of any other nation.—That in opposition to all other countries, we are disposed in this, to live peaceably with each other, to consult our neighbours[']] interest equally with our own, and to do to others as we should wish they should do to us. This being the case, we should not want any government.—Human nature is the same in all parts of the world, bad is the best:[15] Education and example may tend to check or promote good or bad qualities, and encourage different degrees of vice. Some passions are more encreased by exercise in some countries than in others; but in all, the original stock is the same. We see in America the same vices, as abroad, and we are not backward in the practice of both wit and ingenuity in cultivating them. The pleasure of controul is palatable to all mankind without a single exception from the cradle to the throne. Let our peculiar situations be what they may, our proportion of happiness great, our domestic circles pleasing, our love of money unbounded, without a moment of suspence, still we are ready to risque the sacrifice of them all for a share in the exercise of power over our fellow creatures,—for the sake of governing others, instead of being governed ourselves; and the more we examine the conduct of those men who have been intrusted with the administration of governments, the more assured we shall be in our position, that mankind have perhaps in every instance abused the authority vested in them, or attempted the abuse of it. In considering the present Government before us, we therefore certainly ought to look upon those who are to put it in motion, as our enemies—to be careful what we give—to see what use it is to be put to—and where to resort for a remedy, if it is abused.—Every door unguardedly left open, they will take care we never shall hereafter shut—every link in the chain unrevitted, they will provide shall always remain so.—It is of the last importance we set out right, we never can return to our present situation so well prepared to set out again.

4.3.18 This institution once established will not wear wholly out for thousands of years.—It will not be easy for any single State to alter it by force of arms.—To guard against such attempts, will claim the earliest attention of our new Governours.

4.3.19 To you, my fellow-citizens, let me now appeal: To you, who do not expect immediately to taste the sweets that flow from unlimited power, who determine upon principles that are immutable, who are not warped by pri-

vate interest, and do not see through different mediums on different days—is there any among you who have had leisure to examine this Frame of Government, and without taking into consideration the powers granted therein, can say he approves of it—that he is pleased with the organization of the different branches, in their balances and their checks, that the people are fully and adequately represented, and let Human Nature be as depraved as Hell itself, (and we all know it is) yet the means provided to keep it within bounds are ample for the purposes?—I trust there is not one so passively disposed.—Indeed there cannot be, for it is grossly deficient in all these properties, it fails in a balance, and in a due seperation of the different departments—it totally fails in a fair, faithful, honest image of the people, and in an equality of representation, in the only powerful branch in it.—I feel a confidence that the good sense of the people of this Commonwealth, will secure a proper decision upon so important a subject. I feel animated, when I reflect, in what precious estimation they have held their liberties, from the settlement of their country to the present hour—with what ardour they have encountered distress, poverty and death, to preserve and secure them, and with what caution they have parted with even that proportion, which is necessary for the assistance of good order and society.—I go on further to contend, that though its frame was the best ever proposed to a people for their acceptance, and would last properly balanced for ages, yet powers are there given, more than are either fit or necessary in any case to be parted with.

The extent of our country, with all its striking features, while they conspire to promote a foederal union, are totally inconsistant with the plan of one Universal Empire, involving in it the destruction of the different State Governments.—I appeal to the most flaming zealots for the new Constitution, whether one of them, until the disclosure of the proceedings, entertained an idea, that the Convention would assume the power of internal taxation.—I dare affirm it was not lisped by an individual, throughout the whole Continent. Among all the conversations respecting the sending of members to that Convention; even the claim over the excises was not started.—It was on the contrary, a point universally conceded, that had the impost been vested in Congress by the States at the time proposed, with powers to collect it, there never would have been an occasion for a Convention. That foederal measures would have taken a favourable turn, and with the proceeds of that revenue, Congress would have been able to have supported her own household, paid the interest of her domestic debt, and the different instalments, and interest of her foreign. But now these same Gentlemen, despising every civil institution yet adopted in America, and finding the form of Government far more grateful to their ambitious spirits than they ever imagined, will tell you, that the existance of the Continent depends upon its adoption—that we are ruined and undone, if we do not cordially embrace it, but if we do, like the ingenious dentist, it will pull from the

4.3.20

breast of every citizen, all his jarring, malevolent passions, making us a wise, virtuous and wealthy people, and though they do not in plain words say that the millennium is to commence on its birth day; yet they describe to you, all the blessed effects expectant upon such an aera.

4.3.21 A dry tax is at all times odious.[16] It is not congenial to the feelings of a free people. It is a visible demand upon a man at noon day, of that which he prefers to his life. He is called upon, when the necessity of giving it to support the society he lives in, does not strike him so forceably;—he for ever parts with it with reluctance, and would never consent, but under a conviction, that it is absolutely necessary—that it is his proportion—that it will be properly applied, and is laid upon him by his neighbour, chosen by himself, whom he controuls, and who bears an equal share of the same burthen.—It is a science difficult in its nature, duly to assess it. A man must not only be knowing to the different circumstances of every individual, the value of his real and personal estate—but also must be without passions, without prejudices, without connections, making it his whole business. This not being the case, produces heart burnings, evasions, false oaths, unequal assessments, delays of payment, and finally, inability. These inconveniences are still increased by the mode of collecting the tax when so assessed. This trust is placed, in general, in persons who have neither knowledge or discretion equal to the importance of it. An opportunity is put into their hands to gratify all their little prejudices and resentments. They will unreasonably press upon one, and at the same moment indulge another. Unused to handle large sums of money, they cannot help fingering untill they think it their own—They missapply first a small proportion, one extravagance leads to another, until they are in arrears when called upon—and the honest and industrious are obliged again to contribute to supply their deficiencies.—This is the operation of a dry tax in its best situation; and it serves to demonstrate, that taxation and representation are inseperable—that they never can be laid upon the subject but by himself, or his representative, not treble refined, but resident in his vicinity, who shall be conversant both in his ability as to quantum, and propriety as to time. Even then they ought not be resorted to, but in the last extremity, for surely this Commonwealth will not be backward to testify, that notwithstanding they have made the experiment under the most promising circumstances, still woeful experience demonstrates the utter impossibility of raising and collecting monies sufficient for the use of government in such an odious, unequal manner. The five taxes past, in their consequences, have introduced idleness, dissipation, fraud, discontent, bankruptcies, unlawful speculations, stock-jobbing, and every other vice incident to our species, without supplying the Treasury with scarce a farthing.[17] Government have always demonstrated a disposition to ease the people in the payment as much as in their power, notwithstanding which no one single person is satisfied, Gov-

ernment itself almost destroyed in consequence, and the end proposed in no one shape answered. If then, my fellow citizens, it is so easily demonstrated that dry taxes are attended with such fatal consequences, when we impose them ourselves, that the evils accompanying the collection of them in the best given circumstances, over-balance all the advantages accruing from the monies raised by such collections.—What reason have you to suppose that a Continental tax will be more beneficial in its consequences, more equal in its assessments, and milder in its mode of collection. A man must be distracted to suppose so, for there are no avenues open for either of those consequences to flow through. In the first instance, the sum will be laid upon you by people that cannot be sufficiently acquainted with your country. A new set of Continental pensioned Assessors will be introduced into your towns, whose interest will be distinct from yours.—They will be joined by another set of Continental Collectors, still less principled and less adequate than the former. Attempts will be made by interested men upon their integrity, and instances of their deviations will be daily before your eyes.—At a distance from their employers and removed from the Seat of Government, you will see them exulting with ideas, that they can practice their oppression upon you with impunity, and in their rioting and debauchery they will squander the proceeds of your industry.—The extremes of tyranny are commonly at the extreme parts of the country governed. You must kiss the rod, or they will make you feel it.—According to the spirit of obedience which you manifest; to the ease with which you part with your money, so will the mode of assessing and collecting it be varied from time to time by your new masters. If one man shall not be competent, he shall be attended with an host.—Whether that host shall be the posse of your country or a file of armed soliders, shall depend upon circumstances. They are to determine, and you are to make no laws inconsistent with such determination, whether such Collectors shall carry with them any paper, purporting their commission, or not—whether it shall be a general warrant, or a special one—whether written or printed—whether any of your goods, or your persons shall be exempt from distress, and in what manner either you or your property is to be treated when taken in consequence of such warrants. They will have the liberty of entering your houses by night as well as by day for such purposes.—All these points are given in letter and in spirit to the New Constitution, and the subject has not a shadow of security that they will not be executed.—Nay, if they ever should mean to exercise the right of taxation at all, I affirm it can be done with success by them in no other way, but in an arbitrary manner, and by previously subduing the spirit and strength of this Commonwealth.

In forming our own Constitution, by persons having one common interest, we deemed it of consequence, to preface such powers, with the mode in which they should be exercised.—We thought it highly proper to declare 4.3.22

"That every subject had a right to be secured from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions—that all warrants were contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation, and if the order in the warrant to a civil officer, be not accompanied with a special designation," &c.[18] &c. &c.—These checks are omitted, however, in the present proceedings, and the sole reason why appears to be this, that the makers of them know the power itself to be improper, that the people would always be convinced of that impropriety, and would never submit, so long as they could resist.—That of course it must be collected without these checks, or not collected at all.

4.3.23 These are serious thoughts.—They may by some be called bugbears; but they will be verified in the future history of America, with a vengeance.—That it will be in five, ten or fifteen years is not probable. Your rulers will be too knowing, to be over hasty in a display of their strength; they will not loose ground so easily as the Court of Great-Britain did for want of a little well timed policy.—Your chains will be gradual, and gilded. But finally they will be as visible as the Summer's Sun in the Meridian. Where is the Government under Heaven, where every farthing is not taken from the people, that they possibly can part with.—It must be the case here. Their interest will point out to them the policy in accustoming you to contributions, and their curiosity will be early excited to make the experiment to constitute a thermometer for your feelings.—They will have a plausible pretext.—They will tell you your burthens will be less when you get out of debt, and that they are the effect of not adopting it sooner.—They have large demands upon them, and matters of moment to undertake. The officers of their Government will be encreased an hundred fold, and the liberality with which they have expended their money in salaries plainly evinces the improbability that there ever will be a great sum lying idle in their treasury.

John DeWitt.

(To be continued.)

V[19]

To the Free Citizens of the Commonwealth of Massachusetts.

4.3.24 The chief blessings of society, like individuals, are fond of association, and have a mutual dependence upon each other. They form links of one chain, and are all actuated by the same cause. Where freedom prevails, industry

and science there also prevail. Industry produces wealth, and science preserves freedom in purity. The majority of the people in all such countries become so active in their different pursuits, that they are deprived both of their time and opportunity to inform themselves of the principles of the government by which those great blessings are secured to them, and almost implicitly rely both for the explaining and for the enforcing of those principles upon the patriotism of those, their fellow-citizens, who labour but in the field of enquiry, and who spend their whole time in researches after knowledge. Thanks be to Heaven, that in America, that majority always retaining the power, the others have never dared to enforce their principles, without previous explanation, and it has become natural to mankind, wherever they have a system of any kind, a favorite, if it is as genuine and honest in principle, as in appearance, they leave no active powers of the mind unessayed, in elucidating, explaining and enlarging upon its benefits to those whom they wish should adopt it—all its good qualities are delineated, and every exertion is made to refute all objections offered against it, which exertions will be crowned with success, if the objections in themselves are futile, and will not bear the force of light and argument.

The malevolent passions of the heart are not called in, private faults of individuals are not raked from oblivion and magnified, invidious representations are not made, neither are the slanderous, envenomed darts of malice and envy hurled against those characters, who yesterday were deemed praiseworthy and held sacred for a series of obligations conferred by them upon their country, but to day are execrated with passion, because they do not in all points see as other men see. On the contrary, cool reasoning and dispassionate argument, are of themselves sufficient to build up such a system, to unravel all its mysteries, and to present to the people in expressive, legible colours, the blessings that will result from its adoption. Where this mode of conduct is not pursued by its advocates, where instead of cool reasoning upon the subject in question, artful evasions are presented, the system itself is winked out of sight, instead of dispassionate endeavours to remove difficulties arising in honest minds, which are offered with decency to the public in order to be refuted, those who make them are loaded with the opprobrious terms of *Insurgents, destroyers of all government, bankrupts, defaulters,* and *anti-federalists,* which is worse than *jacobitism:* Where, instead of promoting free discussions upon the most important subject ever before a community, attempts are made to fetter and suppress such discussions, by THREATENING the Printer and DROPPING the papers that contain them: Where, instead of coming forward like men, in the full exercise of reason, like fellow-citizens warmed with a patriotick ardour for their country, emulous to secure and preserve its sacred principles, and with proper weapons disarming their fellow-citizens of those objections, they blast and asperse their characters (the dernier resort of all supporters of a bad cause) I say the people have a fair, undoubted right to presume those

4.3.25

objections unanswerable, the system itself essentially defective, and that its advocates are, by their conduct, endeavouring not to reason, but to surprize the people into a hasty approbation of it.—

4.3.26 That this is the case with the supporters of the proceedings of the Foederal Convention, far be it from me to declare.—Judge, my fellow-citizens, for yourselves—examine the public prints from the promulgation of this Constitution. Objections there you will find in score—are they offered with decency? Do they attack men or measures? Are they answered in the same manner? And do you discover a desire in those who wish you to embrace this Government, to inform you of its principles, and the consequences which will probably ensue from such principles—why they have taken from you the sinews of your present government, and instead of revising and amending your Confederation; have handed you a new one, contrasted in the plenitude of its powers.—As you answer these questions, so you must make up your opinion upon that which is before you.

4.3.27 They have the power of "organizing, arming and disciplining the militia, and of governing them when in service of the United States, giving to the separate States the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." Let us enquire, why they have assumed this power, for if it is for the purpose of forming you into one uniform, solid body throughout the United States, making you respectable both at home and abroad—of arming you more compleatly and exercising you oftener—of strengthening the power which is now lodged in your hands, and relying upon you and you solely for aid and support to the civil power in the execution of all the laws of the New Congress, it certainly can be no where better placed under the restrictions therein mentioned, than in that body. But is this probable. Does the complection of the proceedings countenance such a supposition? When they unprecedently claim the power of raising and supporting standing armies, do they tell you for what purposes they are to be raised?—How they are to be employed?—How many they are to consist of, and where to be stationed?—Is this power fettered with any one of these necessary restrictions which will shew they depend upon the militia, and not upon this infernal engine of oppression to execute their civil laws. The nature of the demand in itself contradicts such a supposition, and forces you to believe that it is for none of these causes—but rather for the purpose of consolidating and finally destroying your strength, as your respective Governments are to be destroyed.

4.3.28 They well know the impolicy of putting or keeping arms in the hands of a nervous people, at a distance from the Seat of Government, upon whom they mean to exercise the powers granted in that Government.—They have no idea of calling upon the party aggrieved to support and enforce their own grievances. They are aware of the necessity of catching Samson asleep to trim him of his locks. It is asserted by the most respectable writers upon

Government, that a well regulated militia, composed of the yeomanry of the country have ever been considered as the bulwark of a free people; and, says the celebrated Mr. HUME, "without it, it is folly to think any free government will have stability or security—When the sword is introduced, as in our constitution (speaking of the British) the person entrusted will always neglect to discipline the militia, in order to have a pretext for keeping up a standing army; and it is evident this is a mortal distemper in the British parliament, of which it must finally inevitably perish."[20]—If they have not the same design, why do they wish a standing army unrestrained? It is universally agreed, that a militia and a standing body of troops never yet flourished in the same soil. Tyrants have uniformly depended upon the latter, at the expence of the former. Experience has taught them, that a standing body of regular forces, where ever they can be compleatly introduced, are always efficacious in enforcing their edicts, however arbitrary, and slaves by profession themselves, are "nothing loath" to break down the barriers of freedom with a *gout*.—No, my fellow-citizens, this plainly shews they do not mean to depend upon the citizens of the States alone to enforce their powers, wherefore it is their policy to neglect them, and lean upon something more substantial and summary. It is true, they have left the appointment of officers in the breast of the several States; but this to me, appears an insult, rather than a priveledge, for what avails this right, if they in their pleasure should choose to neglect to arm, organize and discipline the men over whom such Officers are to be appointed. It is a bait, that you might be led to suppose they did intend to apply to them in all cases, and to pay particular attention to making them the bulwark of this Continent.—And would they not be equal to such an undertaking?—Are they not abundantly able to give security and stability to your government as long as it is free? Are they not the only proper persons to do it? Are they not the most respectable body of yeomanry in that character upon earth? Have they not been deeply engaged in some of the most brilliant actions in America, and more than once decided the fate of armies? In short, do they not preclude the necessity of any standing army whatsoever, unless in case of invasion; and in that case it would be time enough to raise them, for no free government under Heaven, with a well disciplined militia was ever yet subdued by mercenary troups.[21]

The advocates at the present day, for a standing army in the New Con- 4.3.29
gress pretend it is necessary for the respectability of government. I defy them to produce an instance in any country, in the Old or New World, where they have not finally done away the liberties of the people:—Every writer upon government,—Lock, Sidney, Hamden, and a list of others have uniformly asserted, that standing armies are a solecism in any government; that no nation ever supported them, that did not resort to, rely on, and finally become a prey to them.—No Western Historians have yet been hardy enough to advance principles that look a different way. What histo-

rians have asserted, all the Grecian Republicks have verified.—They are brought up to obedience and unconditional submission.—With arms in their hands, they are taught to feel the weight of rigid discipline:—They are excluded from the enjoyments which liberty gives to its votaries, they, in consequence, hate and envy the rest of the community in which they are placed, and indulge a malignant pleasure in destroying those privileges to which they never can be admitted.—"Without them, says the Marquis of Beccaria, in every society there is an effort constantly tending to confer on one part the height of power, and to reduce the other to the extreme of weakness and misery, and this is of itself sufficient to employ the people's attention."[22] There is no instance of any government being reduced to a confirmed tyranny without military oppression; and the first policy of tyrants has been to annihilate all other means of national activity and defence, and to rely solely upon standing troops.—Repeated were the trials before the Sovereigns of Europe dared to introduce them upon any pretext whatever; and the whole record of the transactions of mankind cannot furnish an instance (unless the proceedings of the Convention may now be called a part of that record) where the motives which caused their establishment, were not completely disguised.—Pisistratus in Greece, and Dyonysius in Syracuse, Charles in France, and Henry in England, all cloaked their villainous intentions under an idea of raising a small body for a guard to their persons; and Spain, could not succeed in the same nefarious plan, until through the influence of the ambitious Priest, they were called upon to resist the progress of the Infidels. "Caesar, who first attacked the commonwealth with *mines,* very soon opened his *batteries.*"[23]—Notwithstanding all these objections to this engine of oppression, which are made by the most experienced men, and confirmed by every country, where the rays of freedom ever extended.—Yet in America, which has hitherto been her favorite abode—in this civilized territory, where property is valuable, and men are found with feelings that will not patiently submit to arbitrary controul—in this Western region, where, my fellow-countrymen, it is confessedly proper that you should associate and dwell in society from choice and reflection, and not be kept together by force and fear, you are modestly requested to engraft into the component parts of your Constitution , a STANDING ARMY, without any qualifying restraints whatever,—certainly to exist somewhere within the bowels of your country in time of peace. It is very true, that the celebrated Mr. Wilson, a member of the Convention, and who we may suppose breathes, in some measure, the spirit of that body, tells you, it is for the purpose of forming cantonments upon your frontiers, and for the dignity and safety of your country, as it respects foreign nations.[24] No man that loves his country could object to their being raised for the first of these causes, but for the last it cannot be necessary. GOD has so separated us by an extensive ocean from the rest of mankind, he hath so liberally endowed us with privileges, and so abundantly taught us to esteem them precious, it

would be impossible, while we retain our integrity and advert to first principles, for any nation whatever to subdue us. We have succeeded in an opposition to the most powerful people upon the globe; and the wound that America received in the struggle, where is it? As speedily healed as the track in the ocean is buried by the succeeding wave. It has scarcely stopped her progress, and our private dissentions only at this moment, tarnish the lustre of the most illustrious infant nation under Heaven.

4.3.30 You cannot help suspecting this gentleman, when he goes on to tell you, "that standing armies in time of peace, have always been a topic of *popular declamation*, but Europe hath found them necessary to maintain the appearance of strength in a season of the most profound tranquility."[25]—This shews you his opinion, and that he as one of the Convention, was for unequivocally establishing them in time of peace; and to object to them is mere popular declamation. But I will not, my countrymen, I cannot believe you to be of the same sentiment. Where is the standing army in the world, that, like the musquet they make use of, hath been, in time of peace, brightned and burnished for the sake only of maintaining an appearance of strength, without being put to a different use, without having had a pernicious influence upon the morals, the habits, and the sentiments of society, and finally, taking a chief part in executing its laws. But some say, that there is a controul over them, and that consists in the appropriation of monies for their support. Turn your attention to England, and see the popular part of this constitution by the influence of money, by the influence of military and revenue officers, brought gravely to give their annual assent to the existence of a standing army, and for monies to support it. It has long since been an insult on the good sense of that nation.

4.3.31 It may not be amiss to remind you of that swarm of revenue, excise, impost and stamp officers, Continental assessors and collectors, that your new Constitution will introduce among you. They will, of themselves, be a STANDING ARMY to you, and you will see them at your elections, active and industrious to secure the seats of those men who put them into office:—They will be very adequate to give you a surfeit of their company, to make you tired in meddling with government, and disposed to become indifferent about the exercise of it, without the blessed assistance of any military corps.—

4.3.32 Upon the whole, my countrymen, it appears to me, that this power as it now stands, is decidedly improper and dangerous. That Congress ought to have the power of raising armies when invaded by our enemies, is certain; that they ought not to have it for any other cause, is equally so. If they did not or do not mean to employ them in any other way, they ought in express terms to say so, in a Bill of Rights. They never ought to exist at all, but in subordination to civil authority. If the people are not in general disposed to execute the powers of government, it is time to suspect there is something wrong in that government, and rather than employ a standing army, they

had better have another; for, in my humble opinion, it is yet much too early to set it down for a fact, that mankind cannot be governed, but by force.

John De Witt.

1. This piece has not been found. For references to Federalist and Anti-Federalist discussions of the circumstances of the country in the 1780s, see Centinel IV, 2.7.91 n. 43; Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

2. See Federal Republican 3.6.5 n. 4.

3. See Centinel XI, 2.7.140 n. 74.

4. See Federal Farmer I, 2.8.1 n. 3; Candidus 4.9.18 n. 6; Poplicola, 4.11.1 n. 1.

5. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 146.

6. Farrand II, 666–67 (17 September).

7. See Mason 2.2.1 n. 1.

8. James Wilson, "Address," 6 October 1787, McMaster and Stone 145. See Federal Farmer IV, 2.8.50 n. 39.

9. See Agrippa VI, 4.6.23 n. 14.

10. John Adams, *Defence* I, preface (*Works* IV, 284). For other Anti-Federalist discussions of representation see Federal Farmer II, 2.8.15 n. 11.

11. *The Federalist* no. 49, and DeWitt V, 4.3.25.

12. Revolutionary figures killed in battle in 1775, the former at Bunker Hill, the latter at Quebec.

13. See Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Mass. 1967) 227–28.

14. James Wilson, "Address," 6 October 1787, McMaster and Stone 146.

15. The similarity here to the views of human nature expressed by Publius is striking. Cf. *The Federalist* nos. 6, 7, and 51. See Smith 6.12.34 n. 32.

16. Dry taxes are taxes on polls and estates. See James Sullivan to R. King, 28 September 1787 *The Life and Correspondence of Rufus King* I, 260.

17. See Jensen, *New Nation*, 307–9.

18. Massachusetts Constitution, 1780, Part I, Art. XIV.

19. A large portion of this essay (from 4.3.26 to the end) was reprinted anonymously in the *New York Journal* 28 January 1788.

20. David Hume, "Idea of a Perfect Commonwealth," *Essays, Moral, Political and Literary*.

21. According to Publius, "This doctrine in substance had like to have Lost us our independence. . . . The steady operations of war against a regular and disciplined army, can only be successfully conducted by a force of the same kind. . . . War, like most other things, is a science to be acquired and perfected by diligence, by perserverance, by time, and by practice." *The Federalist* no. 25, 161–62; on standing armies and militia, see generally nos. 24–29, and Brutus VIII, 2.9.97 nn. 66 and 67.

22. Beccaria begins *An Essay on Crimes and Punishments:* "In every human society, there is an effort continually tending to confer on one part the height of power and happiness, and to reduce the other to extreme of weakness, and misery. The intent of good laws is to oppose this effort, and to diffuse their influence, universally, and equally." There is no reference here to standing armies, and it appears that the New England writer has misunderstood Beccaria's argument. See Beccaria, *An Essay on Crimes and Punishments* (Philadelphia 1819), Introduction. On the editions of Beccaria's *Essay*, see Federal Farmer VII, 2.8.97 n. 61.

23. The source of this quotation has not been found.

24. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone, 145–46.

25. Ibid.

Essays by Vox Populi

MASSACHUSETTS GAZETTE
October–November 1787

Vox Populi provides a rather good statement of the very widespread Anti-Federal objection to the power of Congress to make or alter regulations fixing the times, places, and manner of holding elections (4.4.2–8). He also discusses at length and with a good deal of competence the alleged incompatibility between the constitution of Massachusetts, including the oath its officers are required to give, and the proposed federal Constitution (4.4.26–40). Other subjects treated are the basis of civil society in jealousy and distrust of other men (4.4.16), the significance of past neglect and violations of the Articles of Confederation (4.4.18–19), the possibility of adoption of the new Constitution by a very small number (4.4.14, 20), the undesirability of curtailing the states' rights to secure new forms of taxation (4.4.21), and the absence of a bill of rights (6.6.22–24). The author was, according to one of his critics, a member of the Massachusetts legislature.[1]

1. Cassius, Ford, *Essays* 18. Replies by Cassius and Examiner appeared in the *Massachusetts Gazette* during the following weeks. The former are printed in Ford, *Essays* 11–19.

I

As the proposed Federal Constitution is now before the impartial publick, 4.4.1
for their approbation or disallowance, I conceive it to be the *duty*, as well as the PRIVILEGE of each and every citizen of this commonwealth to investigate the matter fully, and ripen his mind for a suitable answer to the important question; and when he has thus furnished his own judgment, I conceive he has, at *least*, a right to hold up his sentiments to publick view, and throw all the light he is capable of before the publick; and in case of any doubt in his own mind with regard to said Constitution, or any part thereof, he may undoubtedly worth [throw?] such doubts before the publick, that they may be publickly taken up and obviated.

4.4.2 These things premised, I beg leave to lay before the candid publick the first clause in the fourth section of the first article of the proposed Constitution.—

"*The times, places and manner of holding elections, for senators and representatives, shall be prescribed in each state by the legislature thereof; but the* Congress *may, at any time, by law, make or alter such regulations—except as to the places of choosing senators.*"

By this clause, the *time, place* and *manner* of choosing representatives is *wholly* at the disposal of Congress.

4.4.3 Why the Convention, who formed the proposed Constitution, wished to invest Congress with such a power, I am by no means capable of saying; or why the good people of this commonwealth should delegate such a power to them, is no less hard to determine.—But as the subject is open for discussion, I shall make a little free inquiry into the matter.

And, first. What national advantage is there to be acquired by giving them such a power?

The only advantage which I have heard proposed by it is, to prevent a partial representation of the several states in Congress; "for if the time, manner and place were left wholly in the hands of the state legislatures, it is probable they would not make provision by appointing time, manner and place for election; in which case there *could* be no election, and consequently the federal government weakened."[1]

4.4.4 But *this* provision is by no means sufficient to prevent an evil of *that* nature; for will any reasonable man suppose, that when the legislature of any state, who are annually chosen, are so corrupt as to break thro' *that* government which they have formed, and refuse to appoint time, place and manner of choosing representatives—I say, can any person suppose, that a state, so corrupt, would not be full as likely to neglect, or even refuse, to choose representatives at the time and place and in the manner prescribed by Congress? Surely they would.—So it could answer no good national purpose on *that* account; and I have not heard any other national advantage proposed thereby.

4.4.5 We will now proceed, in the next place, to consider *why* the people of this commonwealth should vest Congress with such a power.—

No one proposes that it would be any advantage to the people of this state; therefore, it must be considered as a matter of indifference, except there is an opportunity for its operating to *their* disadvantage: in which case, I conceive it ought to be disapprobated.

4.4.6 Whether there is danger of its operating to the good people's disadvantage, shall now be the subject of our inquiry.—

Supposing Congress should direct, that the representatives of this commonwealth should be chosen all in one town, (Boston, for instance) on the first day of March—would not that be a very injurious institution to the good people of this commonwealth?—Would not there be at least nine-tenths of

the landed interest of this commonwealth intirely unrepresented? Surely one may reasonably imagine there would. What, then, would be the case if Congress should think proper to direct, that the elections should be held at the north-west, south-west or north-east part of the state, the last day of March? How many electors would there attend the business?—And it is a little remarkable, that any gentleman should suppose, that Congress could possibly be in any measure as good judges of the time, place and manner of elections as the legislatures of the several respective states.

These as objections I could wish to see obviated:—And I could wish the publick inquiry might extend to a consideration, whether or no it would not be more conducive, to prevent a partial representation, to invest Congress with power to levy such a fine as they might think proper on states not choosing representatives, than by giving them this power of appointing time, manner and place. 4.4.7

It is objected by some, that Congress could not levy, or, at least, could not *collect*, such a fine of a delinquent state. If *that* is the case, Congress could not collect any tax they might think proper to levy, nor execute any order whatever; but at any time any state might break through the national compact, dissolve the federal constitution, and set the whole structure afloat on the ocean of chaos. 4.4.8

It is, therefore, proposed to the publick to consider, whether the said clause in the fourth section of the first article can answer the only purposes for which it is said to have been provided, or any other which will prove any advantage either to the nation or state.

Vox Populi.

Boston, Oct. 29.

II

A Card.

Mr. *Vox Populi* presents his most respectful compliments to mr. *Examiner*,[2] returns him thanks for the *attention* he has paid his piece on the Constitution—is obliged to him for the candour he has discovered on the occasion, but is under the disagreeable necessity of informing him, that he apprehends he has done nothing towards obviating the doubts and scruples with which his mind was agitated with regard to the *proposed* Constitution. 4.4.9

Mr. *Examiner* was wholly right when he asserts *Vox Populi's* objections to the Constitution were founded on *jealousy* and *distrust;* for all *doubts, scruples* or *objections* against any *form* of government *whatever*, MUST, *in the nature of things*, be founded in *jealousy* and *distrust*, and NOTHING else. 4.4.10

Mr. *Examiner* doubtless imagined, that the introducing the reprobated

words, *jealousy* and *distrust*, would be fully sufficient to *silence* all *Vox Populi's* doubts, but he will be convinced to the *contrary* when he considers that *jealousy* and *distrust* are by no means so heinous things as some may imagine, for all governments in existence (however great *blessings* they are) *originated entirely* from *jealousy* and *distrust*, as did also all *deeds, bonds, receipts, notes, etc. etc. etc.*

And all Mr. *Examiner* has said on this subject, will apply with equal force against all the governments established in the world, and even against the *jealous* and *distrustful* practice of taking deeds, bonds, notes, etc.

4.4.11 Mr. *Examiner* proceeds rather to ridicule *Vox Populi's* scruples with regard to the proposed Constitution, by giving an instance where more *danger* lay, than in the article objected to by *Vox Populi:* but can he imagine *that* can be any reason why the constitution should be adopted?

4.4.12 *Vox Populi* had other objections against the Constitution, but he thought it was best to lay *one* before the publick at first and see how that would be obviated, and when he considers mr. Examiner's *abilities* as well as his inclination, he concludes it is not in his power (and consequently not in the power of any other) to do it.

4.4.13 Had Mr. Examiner obviated *Vox Populi's* objections against the aforesaid article, he would have proceeded to have asked Mr. Examiner's opinion with regard to the propriety or impropriety of nine states establishing a government on the *ruins* of the articles of confederation, which were made in Congress, and after nearly three years examination, were ratified and confirmed by every state; in which it is stipulated and agreed by each state with the whole, and by the whole with each state, that said articles of confederation "*shall be* inviolably *observed by* EVERY STATE; *and the* union *shall be* PERPETUAL, *nor shall any* alteration *at any time hereafter be made in any of them, unless such alteration be agreed to in a* CONGRESS *of the United States, and be afterwards confirmed by the legislature of* every state."[3] He would have asked Mr. Examiner, whether it is possible for any number of states *less* than the whole contracting number, to make any, the least alteration in said federal system, without being involved in the guilt of an open and avowed violation of a sacred federal constitution, *a total want of publick faith and destitution of national honour?* Whether a government founded expressly on the principles and idea of unanimity *can* be dissolved or materially altered by any number of the contracting parties short of the whole? And whether if any thing of that nature is carried into effect by any of the contracting parties, it can be considered in any other point of light than that of a revolt (not to say *rebellion*) against the national Constitution?

Monday morning.

4.4.14 N. B. Is it not possible that the proposed Constitution may be adopted as a system of federal government according to the proposals of the Convention

and have only 706,359 people in favour of it, and 2,346,340 people against it, or in that proportion?

Mr. Allen,

In your paper of this day, I find a piece signed *Examiner*, in which the writer makes a number of remarks on a *Card* which I did myself the honour to hand him, through the medium of your paper, of last Tuesday.[4] 4.4.15

How far his observations fall short of obviating the difficulties proposed in Card, is *cheerfully* submitted to the good sense of your readers, rather than undertake to be judge in that matter myself; but he will doubtless excuse me in making a few observations on his production, and lay them before the candid publick.

He is pleased to call government's originating *from* jealousy and distrust*, "A NEW IDEA;" but I shall challenge mr. Examiner to point out any other principle which could induce a *rational* person to make himself subject to civil government. If I was not *jealous* that some person would injure me in some way, what could I have to induce me to give up my *natural* liberty, and part with part of my natural rights? If I did not *distrust* the rectitude of my fellow-creatures' future conduct towards me, what advantage could I ever expect to reap from a system of jurisprudence? Are not all the advantages which a person can expect to derive from entering into a state of civil government (or at least all he ought to expect) of a negative nature? Are they not all comprehended in this one general idea, *a prevention of injuries from others?*—I think it is perfectly consistent with the most *finished* diffidence to answer in the affirmative. If that is the case, what kind of necessity, or even propriety, could there be in any person's making himself a subject of a civil government if he was not *jealous* somebody would injure him? 4.4.16

I next find him informing the world that I *assert*, "that no alteration can be made in the national government without the consent of all the states, because the confederation forbids it." Out of regard to the gentleman's nerves I shall forbear asking the Examiner to *quote* the passage, and shall content myself with proposing for his consideration this simple question—Is there no specifick difference between a quere and an assertion? 4.4.17

Mr. Examiner then proceeds to evince the contrary, and his argument therefor is full as *new* as my idea of the origination of government was.[5] It is needless to inform the publick, that, because the continental constitution has in some instances not been adhered to, therefore it ceases to be a crime to violate it—and implicitly charges all such as do not agree with him in this *logical* conclusion, with a destitution of *common sense*. If it would not be 4.4.18

*I make use of the word *from*, as that was the word in the *Card*, though mr. Examiner has thought proper to barter it away for the word *in*.—Perhaps he thought they were synonimous.

disagreeable to the *Examiner's* feelings I would just mention, that this ratiocination of his, puts me in mind of a certain clergyman who in company (by way of joke) asked an *Indian woman,* who was present bottoming chairs—"*How many commandments are there?*" "NINE," answered the old squaw. "Not but *nine!*" said the minister. "*No,* (rejoined the old native) *there was ten, but you and me broke one to pieces 'tother night, you know, so there is but* nine *left.*"

4.4.19 In order to set this matter in a just point of light, I will bring an instance, which will forcibly apply in this case. There is in this commonwealth a statute law against *murder*—Suppose that A. should, with *malice propense,* kill B.—is taken up for the crime—is committed to prison—is indicted by the grand inquest—is brought to the bar—the jury impanelled—the indictment is read—the attorney-general arranges the evidence, which is *plene* proof—opens the matter to the jury—adduces the law—and sits down—The counsel for the prisoner arises—"*May it please your honours, and you, gentlemen of the jury*—I am for the prisoner at the bar, etc.—the fact of killing I do not deny, neither do I wish to conceal that it was done with *malice propense,* but my ground of defence is very different—the law on which the indictment is founded, is obsolete, null and void; for it has been violated and broken more than one hundred times since it was enacted, and there remains no force or validity in it." The figure which such a pleader would make at the bar, mr. Examiner, *de facto,* makes on the political and logical theatre!

4.4.20 By the time mr. *Examiner* had got thro' the whole concatination of his stupendous reasoning, his *mental* powers, by some means, forgot to execute their proper functions, so far as totally to mistake, not only my *ideas,* but my *words,* also; for he tells the publick, that my "*last objection, that a small majority may choose the Congress,*" etc. whereas there was not a syllable about choosing Congress in the whole *card;* 'tis true I proposed this quere to his consideration. "*Is it not possible that the proposed constitution may be adopted as a system of federal government,* according to the proposals of the convention, *and have only* 706,359 *people in favour of it, and* 2,346,340 *against it, or in that proportion?* and I will now add, *and have every person's voice in the United States taken upon the matter?*" I proposed this question to set in a proper point of view the mode proposed by the convention for the acceptance of the constitution. I believe it is a maxim in politicks which will ever hold good, that no form of government ever ought to be accepted, unless a major part of the governed are in favour of it; and it is certain that no republican government ever can be established on any other principle; but according to the proposed plan, this federal system may be adopted by *nine* states, and the remaining *four* be unanimous against it; and at the same time these four dissenting states may be a considerable majority of the United States; and at the same time it is also possible that half the people in the approbating states, save nine, may be against it, which will

leave a majority of about 22 against seven, disapprobating the constitution; and yet (*amazing*) the constitution be established as a plan of federal government! Is this consonant to the most remote principle of a republican government?

While I am thus intruding on the indulgent patience of the publick, I beg they would forgive me in suggesting one thing to their minds, which I apprehend is closely *connected* with their welfare; I dare say they will indulge me. 4.4.21

In the course of the late war, this commonwealth has involved itself deeply in a state debt, the discharging of which is inseparably joined with every, the smallest degree of the publick faith and honour—and we find, by woful experience, that an expectation of discharging it with the proceeds of a dry tax on *polls* and *estates*, is a *baseless fabrick;* and our only hope of ever discharging it, must be founded on a *new system of taxation*, viz. a suitable impost and excise, as well on imports as other superfluities and luxurious articles: Is it not then expedient for the citizens of this state to pause a moment, and ask themselves the important question, does policy dictate that we should curtail ourselves of the right of taxing ourselves in the mode appearing most proper?—Must we be confined to a dry tax on polls and estates, when there is many of us now taxed beyond our present power to pay? When it is no strange sight to see a person taxed more than his whole estate is worth? Must we give up the right of taxing ourselves except in a certain mode which has already sunk the landed interest, the last resort of our wealth, forty *per cent.* and which if persisted in will soon sink it *ninety* if not *ninety-nine* per cent.? I think every idea of policy, *every principle of common sense*, forbids a measure so pregnant with *political perdition!* I appeal to the good sense of all rational intelligences, whether or not that an individual, who conducted his private concerns upon as uneconomical a system as this, would not be put under guardianship as *insane*. Heavens! will the good sense of the eagle-eyed citizens of Massachusetts ever permit them to divest themselves of the power of adopting their own mode of taxation! Will it ever permit them to be nearly confined to a certain mode which their own woful experience in accents not less majestick than thunder, tells them is altogether impossible to be carried into effect, without bringing inevitable destruction and the most consumate distress on a great part—yea the greater part of the community?

Vox Populi.

(*The remainder next Friday.*)

I could wish to stop here, and proceed no further, but I must renew my address to the publick's indulgence for liberty to make another address to my fellow-citizens, which is for them to consider, how it comports with 4.4.22

policy for them to establish a system of government entirely disconnected with a *bill of rights?*

I long sought for the reason why a bill of rights was omitted; at last I had the two following reasons assigned *viz.* first, *as the powers proposed to be vested in Congress were definite no bill of rights was necessary, for they could exercise no power but what is expressly given them by the constitution. The* other reason is, *because each state has a bill of rights of its own, a federal bill of rights must be wholly useless.*[6]

4.4.23 With regard to the first, it will apply with equal force to any constitution of government extant; we will take our own state's for instance, where we shall find the powers vested in the General Court are as *definite* as those proposed to be vested in Congress; yet, when the constitution was formed, it was deemed absolutely necessary that the people should be protected by an *explicit unequivocal bill of rights,* and the publick are desired to consider whether *that* was a piece of ill-judged policy or not; and if it was not, whether the *nature of things* has so changed since as to render it needless.

4.4.24 The second reason given why it was omitted, I think cannot have much greater force than the former; we may as well say, that because each state has a *constitution* of its own, that a continental constitution was unnecessary, as to say that because we have a *state* bill of rights a *continental* one is unnecessary. But let us consider what is our bill of rights, and what was its original design. If we consider its nature, we shall find it was constructed as a barricado to prevent our own General Court from infringing on certain rights which the people did not mean should be at the disposal of the legislature, and is simply a rule of conduct for our legislature. But what will Congress have to do with *our* bill of rights, any more than they will with the *rest* of our constitution? Will any person suppose that the *other parts* of our constitution will be any rule of *their* conduct? I should imagine if they do, it will curtail some part of the powers which it is meant, by the proposed constitution, they should exercise.

4.4.25 The virtuous and enlightened citizens are requested to pay that attention to this matter which the importance of its nature demands, and act thereon the part which to them shall appear becoming free men, who have hazarded their lives and fortunes to establish a government founded on the principles of genuine civil liberty and *undefiled republicanism.*

4.4.26 I cannot persuade myself to put an end to this piece without suggesting one thing more to my fellow-citizens—which is this, That whereas the proposed constitution, if it is adopted, will make material inroads in the present established constitution of this commonwealth, and rip up, and turn *topsy-turvy,* a considerable number of its constituent parts, it is highly deserving their consideration, whether such alterations can possibly, in the nature of things, be made in our constitution, in the method now proposed. In order to assist the good people in this consideration, let the following things be *carefully* attended to.

The constitution of the commonwealth of Massachusetts was founded on 4.4.27
the idea of two thirds of the inhabitants approving of the same, and accepting it as a system of government; and if any number short of two thirds accepted it, it was to be *null* and void. Accordingly, it was laid before the several towns for the people's approbation or rejectment; and the number of votes, pro and con. from the several respective towns, were taken and returned to the convention, who were appointed to do that business; and on a strict examination it was found to be ratified, accepted and recognized by two thirds of the people in the state, *in all its parts,* as a constitution and frame of government for this commonwealth, and was accordingly declared to be such.—And can it possibly be a serious question in the mind of any man, whether any body of men, whatever can legally or constitutionally dissolve said constitution, or any part thereof, except it is done with the same solemnity, and with as high a power, as it was made by? or, in other words, whether any number of our citizens, less than two thirds, *can,* consistent with any system of constitutional principles, dissolve or alter the same, or any part thereof? I must imagine that such a question exists in the mind of no rational man; for it is a maxim founded in the nature of things, that a thing cannot be unmade but by that same power that created it; and 'tis also an axiom in all systems of jurisprudence, that no obligation, deed, agreement, contract or engagement, can be dissolved or altered but by an instrument of as high a nature as that which constitutes it; and no act, ordinance or decree, can be reversed but by the *same* authority that enacted, made or determined it. And we may add to these *universally uncontroverted* principles of civil policy, the express provision made *in our constitution* for its revision, where expressly the consent of two thirds is made necessary to such an event.[7]

Let us examine for one moment, whether the proposed plan of *amend-* 4.4.28
ment (for such in the present instance it is proper to call it) involves in its nature any thing which is correspondent with the aforesaid principles of civil policy. This commonwealth contains about 340 towns, each town will undoubtedly send a delegate to the convention, who will there act the sentiments of a major part of his constituents, and the *majority* of the convention will decide on the matter, and their decision *may be* only a bare majority *of* a bare majority: so that the proposed constitution, essentially altering our state constitution, *may be* established in this state by a minority of *five* against a majority of *fourteen,* which has every feature of that worst of all governments, ARISTOCRACY.

Paying an impartial attention to the foregoing observations, I freely sub- 4.4.29
mit it to the candid publick, whether a ratification of the proposed federal constitution is not *wholly incompatible* with that allegiance which is due from each of our citizens to the commonwealth and the constitution thereof; more especially I would recommend it to the serious consideration of all in office under government, as well as all who *have been* since the inauguration

of our present constitution, how they *can reconcile their approbating* the proposed constitution, with that SOLEMN and UNEQUIVOCAL DECLARATION and OATH, which they, in the presence of God, made at their entering into office, and which is *registered in Heaven*, and *still* binding on them!

4.4.30 Let the publick reflect but a moment on the immense expense of treasure, toil, fatigue, hardship and danger, as well as blood, with which we last winter defended our *invaluable constitution*, and consider whether they will now reduce it to a *mere skeleton!* Let them further consider, that provided the alterations are made in our state constitution, which must be made in it if the proposed federal one is adopted, and if this is done only by a bare majority *of* a bare majority, I say let them consider in what respect such a revolution would differ from the *bold* and *unprovoked* one which was attempted to be made last winter!

4.4.31 But perhaps it may be asked, "if the proposals of the convention are so pregnant with mischief, how came the General Court to lay them before the publick?" I answer, the General Court acted merely officially in laying them before their constituents, according to the direction of Congress, the supreme council of the nation; and had the General Court withheld them from the community (whose servants they are) it would have been chargeable with arogating to itself the power of deciding on a question which only fell within the province of the people at large to determine upon, so that the General Court acted with the greatest propriety as well as constitutionality on the matter.

Vox Populi.

Nov. 9, 1787.

To the People of Massachusetts,

Fellow-Citizens,

4.4.32 At this all important crisis you should allow no object however great to divert your attention from the proposed system of federal government: now is its day of probation, but that day will soon expire, and you should work the work of the day while it is yet day, before the night cometh wherein no man can work; if you like the foolish virgins sleep till the midnight cry is heard, your applications after that will all prove fruitless.

4.4.33 The adoption of the proposed constitution ought not to be considered as a matter of indifference, *that* event will undoubtedly be very advantageous or injurious, and it is yours at present to investigate the matter fully, and determine on the matter according to the best judgment you are able to form on such an investigation; if you accept it you ought to be fully convinced it is for the best; if you reject you should do it from a conviction that it is not adapted to promote the publick good.

I have formerly invited your attention to the consideration of some of its parts, as well as some of the consequences which I conceived would result from its adoption; I now wish you to attend to the sixth article thereof, where you will find it is provided, *That the federal constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States shall be the* supreme law of the land, *and the* judges *in every state shall be* bound thereby, *any thing in the constitution or laws of any state to the* contrary *notwithstanding.—And the* members *of the several* state legislatures *and* all judicial and executive officers, *both of the United States and of the several states shall be bound by oath or affirmation to support this constitution.* 4.4.34

Here you have the *arcana* of federal blessings laid open before you. A part of the supreme law is to be such as *may be* diametrically opposed to the sentiments of every citizen of this state as well as the sentiments of your representatives and senators in the federal legislature, some of which may be made only by the president and two thirds of a *quorum* of the senate. 4.4.35

But is here not a difficulty involved in this matter which is rather hard of removal? Every officer[8] legislative, judicial or executive must be bound by oath or affirmation to support this constitution, and every such officer has taken or must take a solemn oath that he does ["]*truly and sincerely acknowledge, profess, testify and declare that the Commonwealth of Massachusetts* is, *and of right ought to be, a free sovereign and independent state.—and that he will bear true faith and allegiance to the said Commonwealth, and that he will defend the same against traiterous conspiracies and all hostile attempts whatsoever: and that no foreign prince, person, prelate, state, or potentate, hath or ought to have any jurisdiction, superiority, pre-eminence, dispensing authority or other power in any matter civil, ecclesiastical or spiritual, within this Commonwealth; except the authority and power which is or may be vested by their constituents in the Congress of the United States: and that no man, or body of men hath or can have any right to absolve or discharge him from the obligation of this oath, etc. and that he doth make this acknowledgment, etc. heartily and truly according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion or secret reservation whatsoever.*"[9] 4.4.36

How any *honest* man can take this oath almost every word of which is *emphatical* and the same hour perhaps take the other I must confess to me is truly paradoxical: In the first of which he swears *that this Commonwealth is, and of right ought to be, a free, sovereign and independent state, and that he will bear true faith and allegiance to it, and that no man or body of men can absolve him from that obligation.* In the other he swears he will support a constitution which (it appears to me) takes away every idea of *sovereignty* which is worth retaining. How these things can be reconciled is wholly beyond my conception. 4.4.37

4.4.38 Will any one pretend to say these two oaths are compatible, because there is an exception in the state oath of such power and authority as is or may be by their constituents vested in the Congress of the United States, which exception contains every thing comprehended in the proposed constitution which the last oath binds them to support? Is it possible that any person can advance any thing like this? I cannot suppose any *rational* person can, for these two reasons, *first* the epithet "*the Congress of the United States,*" at the fabricating said oath, etc. was a definite phrase, its construction and organization were universally understood, and was known to be a body of men annually chosen, and recallable at pleasure, consisting of one branch only, and was a thing essentially different from the complex body which is to go under the name in the new proposed constitution, and we should do well to bear in mind that the oath concludes, "And I do make this declaration, etc. according to the *common meaning and acceptation of the foregoing words,* etc.["] and I can see no help that can be obtained in this case from that proviso. But, *secondly,* if this matter was entirely got over, there would remain one which at least has the appearance of being insurmountable, for admitting the word Congress in the said oath to mean any thing and every thing which is called by that name, even then that exception could not be applied to any thing but *a Congress,* yet in the proposed constitution there is provision made for the exercise of power and authority within and concerning this commonwealth, and to which we are subject by an authority different from the Congress of the United States.

4.4.39 According to the proposed constitution, treaties are to be made by the president, with the advise of two thirds of the senate present, if there is present a quorum. The president and senate are to appoint the judges, etc. The president, in person, is a potentate, holding free and exclusive power to pardon. Viewing him in military point of light, we are all personally to be under his immediate command, and at his disposal, etc. etc. etc. All this, and more, is proposed, in the new constitution, to be authorities to which we and our state-rulers are to be subject, which is distinct from Congress; for the president, or the president and senate, cannot be Congress: for it is expressly declared and defined in the proposed constitution, that *Congress* shall consist of a senate and a house of representatives, and I cannot conceive of any other way to get clear of the difficulty, at present.

4.4.40 Paying suitable attention to these things, I leave it cheerfully with every person to judge, if any man can take and subscribe the two oaths, aforesaid, without being guilty of the most unequivocal perjury.[10]

If after a mature investigation of the subject, *that* should appear to be the case, it is left to the reflection of every one to picture in his own mind the eligibility of our circumstances, when the proposed constitution is adopted; and consider the precarious tenure by which they will all hold their lives, liberties and properties, if it is impossible for any person to be in any state

office over them, but such as are divested of the principles of honesty, and have reached the *ne plus ultra* of wickedness—*Perjury*.

These things, my fellow-citizens, are proposed for your consideration, and yours must be the consequence of the determination you make on the subject.

Vox Populi.

Boston, November 19.

1. This is probably not a quotation but a paraphrase of what Vox Populi considers to have been a typical Federalist argument. I have seen no Federalist claim that such state delinquency was probable, but many Federalists did argue that the possibility was properly guarded against in the Constitution. For major Federalist discussions of the regulation of elections for the Congress, see *The Federalist* nos. 59–61; Ford, *Essays* 30–31 (Cassius), 153 (The Landholder); Ford, *Pamphlets* 151–52 (An American Citizen), 227 (Aristides); McMaster and Stone 266 (Wilson), 272–73 (McKean). One Federalist, Noah Webster, writing as A Citizen of America, expressed disapproval of the power of Congress to alter state regulations of elections; Ford, *Pamphlets* 44. "This section cannot be too often repeated," said Centinel, and the Anti-Federalists endlessly criticized it. See Centinel I, 2.7.16; III, 27.73–74; V, 2.7.100–101; Martin 2.4.43; Cato VII, 2.6.47–48; Federal Farmer III, 2.8.25; XII, 2.8.161–65; IV, 2.9 51–54; Federal Republican 3.6.16; Pennsylvania Convention Minority 3.11.24–25; Symmes 4.5.2(3); Republican Federalist VII, 4.13.29; Friend to the Rights of the People 4.23.3(2); Republicus 5.13.14.

2. *Massachusetts Gazette* 2 November 1787. On the question of jealousy of government, see Smith 6.12.34 n. 32.

3. Art. XII.

4. This piece by Examiner appeared on 9 November 1787.

5. Examiner argued that "at this time to plead this, broken, neglected, and often violated system, to bar the adoption of a new and efficient government, appears to contradict every principle of common sense."

6. See Federal Farmer IV, 2.8.50 nn. 38, 39; Brutus II, 2.9.32 n. 23.

7. Constitution of Massachusetts, 1780, Part II, ch. VI, art. 10; Thorpe, *Federal and State Constitutions* III, 1911. Examiner replied: "A short, and I think, conclusive answer to all objections of this kind, is, that it is an established principle in all free governments, that a majority of the people have at all times a right to alter the laws or the constitution, when the welfare of the peoples shall require a change. This right should be exercised at all times with great wisdom, but if it should not, the right still remains." *Massachusetts Gazette* 20 November 1787.

8. The original reads "other."

9. Constitution of Massachusetts, 1780, Part II, ch. VI, art. 1: Thorpe, *Federal and State Constitutions* II, 1908–9.

10. Replying to this point, Cassius did not deny the incompatibility but asserted that it is irrelevant: "Can that shallow-pated scribbler suppose, that an oath, taken by rulers, to stand by a form of government adopted by the people, can be of any force or consideration, if the people choose to change that form of government for another more agreeable to their wishes?" *Massachusetts Gazette* 23 November 1787; Ford, *Essays* 17.

William Symmes

Letter to Capt. Peter Osgood, Jr.
15 November 1787

and

Speech in Massachusetts Convention
22 January 1788

Although the letter from William Symmes to Captain Peter Osgood, Jr., printed below was not, as his memorialist claims, "probably the earliest review made of the entire instrument,"[1] it is an early discussion of the Constitution, apparently uninfluenced by other men's opinion of the document. Symmes objects to the apportionment of direct taxes, which will encourage Southern luxury at the expense of the industry and economy of the North (4.5.2[1]). He objects to the discretion left to Congress in the exercise of virtually unlimited powers and to the extent of the judicial power. (4.5.2 [3–9, 12–13]). His comments on the presidency are especially keen, soberly anticipating the arguments for presidential prerogative to be made by Presidents Jackson and Lincoln (4.5.2 [10–11]). He supposes that most of the opposition will focus on the provision prohibiting states from emitting bills of credit and making tender laws, but he favors this prohibition, wishing only that it had been postponed (4.5.2 [8]). On the federal question Symmes is intriguingly ambiguous. He adds to the Anti-Federalist argument the telling points that the prohibition of interstate agreements without the consent of Congress and the guarantee of a republican form of government are inconsistent with a true federation of states (4.5.2 [9, 14]). At the same time, he objects to the provision for giving the states equal representation in the Senate (4.5.2[2]).

In his speech two months later in the Massachusetts Convention,[2] Symmes is concerned primarily with the unlimited taxing power of Congress. His arguments are noteworthy in the extent to which they attempt to meet the kind of defense of extensive national powers put forward, for example, by Publius in *The Federalist*. He reads the lesson of faction back at the Federalists (4.5.12); he explains the effects of time and precedent in extending and consolidating congressional powers (4.5.14); he exposes the weakness of the supposed restraints (4.5.15–19); and he argues the positive good of poverty, public and private (4.5.20).

Symmes was one of the delegates who was persuaded to support the Constitution in the compromise involving recommendatory amendments, and he explained his vote in a speech (not reprinted here) on 6 February 1788.[3]

1. The letter is taken from *Historical Collections of the Essex Institute* IV, no. 5 (October 1862) 211–17; the remark quoted was made by N. W. Hazen, "A Memorial Discourse on William Symmes, Esq.," delivered at Andover and North Andover in the winter of 1859–60, ibid. 198. This memorial is worth some attention on its own account as an example of thoughtful patriotic history and should be compared with the references in Impartial Examiner 5.14.22 n. 15.

2. *Debates, Resolutions, and other Proceedings of the Commonwealth of Massachusetts, Convened at Boston, on the 9th of January, 1788, and continued until the 7th of February following, for the purpose of assenting to and ratifying the Constitution recommended by the Grand Federal Convention* (Boston 1788) 97–103. The speech can also be found in the reprinting of these debates in Elliot II, 70–75 and in *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts, held in the Year 1788, and which Finally Ratified the Constitution of the United States* (Boston 1856) 169–75.

3. Elliot II, 172–74; *Debates and Proceedings* (1856) 277–78; *Debates, Resolutions, and other Proceedings* (1788) 207–8. Hazen probably exaggerates when he suggests that Symmes' shift may have been sufficient to determine the outcome in Massachusetts and, therefore, in the country as a whole. Hazen, "A Memorial Discourse" 203 ff.

Letter to Capt. Peter Osgood, Jr.

Andover, Nov. 15, 1787.

Dear Sir:

According to my promise, I sit down to sketch out my reasons for objecting against ye Federal Constitution. The essay will doubtless be imperfect, but I design it for your perusal only, and I can safely rely on your goodness for all necessary allowances. 4.5.1

I will consider the objectionable passages in course as they occur in the system, as well for your convenience as my own.

1st. The apportionment of taxes. 4.5.2

It appears to me that this will operate unequally against the Northern States. Let us suppose that two-fifths of the slaves in the five Southern States amount to at least 150,000 persons. What reason can be given, why, if taxes must be proportioned by population only, these should be rejected? That the profits of their labor are nothing? I deny the fact, for I believe that every negro that cultivates the valuable staples, Tobacco, Wheat, Rice, Indigo, he raises a greater profit to his master than any white can raise from his labor here. What then? That the Southern Nabob squanders it all in luxuries, so that the States are made, if anything, poorer? Very good; The Convention, then, have patronised luxury, and taxed industry and econ-

omy. But three-fifths include all the working slaves. Neither will this answer: for the Northern States are taxed as much for one infant, or a decrepid old man, as for a vigorous youth.

How, then, shall we be taxed? I say, not in proportion to actual wealth at present, but in proportion to a state's advantage for acquiring wealth. The soil and climate of Virginia are better than those of this state. The staples of Virginia are in high demand. Its rivers, the finest in the world. How rich might Virginia be? But Virginia is not rich. What then? Shall a man need no better excuse from taxes than Idleness? He will hardly pay his *private* debts so easily.

Taxes must certainly grow out of the ground. What, then, is there, more evident than that the best land and the best produce (supposing the advantage of commerce to be equal) should pay, (or, if you please, produce,) the most? And are not our long winters, in which we consume the labors of the summer, to be considered? No, but, yes, I beg pardon,—they *are* considered; We pay the more.

But 2. The Senate.

To what purpose is it that we have an equal representation in the House, if we are represented by States in the Senate? This is a great grievance in the present Congress. That little Delaware should weigh as much in all political debates as this State, is, in a government merely popular, quite ridiculous. Whose voice are we supposed to have in all public transactions? We *accurate* Republicans say, the voice of the people. Who are the people? We answer, the majority. But a majority of States may choose a President, &c. This is a close adherence to principles. "Two Senators from each State, and each Senator to have a vote." The present Congress mended and made worse! for now seven states are completed, when before it required the sanction of nine. But we shall have a proper House,—all will be right there. True! and that may be a good reason why we should not have a proper Senate. But I cannot see the force of it. Why any state should have more weight in one body than the other, let the Convention say. And yet poor Rhode Island was not there to speak for herself. I may speak of the duration of office in another place.

3. "Congress may make and alter the times, places and manner of holding elections, except the place of choosing Senators."

This is is a very complaisant exception indeed. The legislatures may sit where they please. It means this, if it means anything. And we are doubtless much obliged to the Convention for this decent privilege. But I presume the time of choosing Senators must be in the winter, for it will be too hot for a session in the summer at the Southward. And the place of choosing representatives may possibly be the county-town, or some place yet more remote. This would be very convenient. But the word *Manner*. Oh, it is an excellent word. It would not have been half so well, to have tied the hands

of the future Congress, by saying all elections shall be made by ticket, or as the several states shall please. No, the States are to be made sensible, how much this Congress is above them in all wisdom, even to the knowledge of a particular acre of ground. Nay, the Convention itself seems dazzled by the prospect of this wisdom, for they dared not prescribe it any rules. Now that the future Congress may be as wise as this Convention, I have no great reason to doubt, from anything that's past. But they will certainly have a great deal more power, and we shall shortly hear no more of *recommendations*. That they should make use of their power, to enlarge the privileges of the people, let any expect that will. Well, then, if they do not enlarge them, why make provision for *altering* them? That they may take them away? Oh, no, never suspect such a thing. What, then, shall we think of it? That the Convention were fools? Hardly. I see no way but to recur to the great wisdom of this future Congress. It will be a wise Congress: a very wise Congress. Here now is a way to get rid of every doubt. But why need the Convention to care how the members are chosen, if they are but sent? Oh, Sir, it will be a very wise Congress. Just as good an answer as that of the clown in "All's well that ends well," which was, to everything, "Oh, Lord, Sir!"

4. "The Houses to keep a journal, and to publish the same, excepting such parts as may *in their judgment* require secresy." Good again. A very wise Congress! The idea used to be, except private articles in foreign treaties, secret expeditions, &c. But this Constitution excels in the Laconic mode of speech, or rather perhaps the Convention were lazy, and could not conveniently go about to particularize either the rights of the people or the just prerogative of Congress. Who can complain, after this, that he knows nothing of public affairs, except the expenditure of the public money? If Congress, the convention say, [judge] it is best the people should not know, and indeed, if Congress are invested with all power, general knowledge might be inconvenient, as it would only produce discontents, and these might end in rebellion.

When the dark places in these journals are inspected by some young politician of future ages, who perchance may succeed his father in the National Council, what lessons may he not learn? There may he observe by what steps the form of government is imperceptibly changed: There by what process the genius of a free people is altered. But I say no more.

5. "Congress shall have power," &c., first clause.

"To lay," pretty well, when you read what and for what,—"taxes, imports, duties and excises," very well, and for *what ends?* "to pay the debts, and provide for the common defence and general *welfare* of the United States.["]

A more general dedition or surrender of all ye property in the United States to Congress could not perhaps have been framed.[1] Gentlemen, it is

all, all yours, to spend as you please, provided we may know how you spend it; and even then you may sink as many thousands as you please under the heads of incidental charges, secret services, &c. Take it all. I will paraphrase the whole of this passage in a short address from the States to Congress:

Gentlemen, Having chosen you to govern us, and believing that through all ages you will be a disinterested body, and will always spend money, if you can get it, with rigid economy, we give you full power to tax us.—And lest we should some of us prove refractory in the matter of payment, from some mistaken notion that you demand it too fast, we also give you full power to collect the taxes you lay, in the way most agreeable to yourselves; and we will pay all your collectors, deputies, and so forth, as you shall direct. And as you have power to contract debts for us to pay, you shall have all the money you want to pay them, and you shall have all you want to build forts, magazines, and arsenals; buy arms and ammunition; make war and peace, &c., and in short whatever you shall think will be in any degree for our good, you shall have money to do, and we will never trouble you with any enquiries into the motives of your conduct, always relying on your wisdom, with the most implicit confidence, and submitting our estates entirely to your disposal.

A very handsome donation! and when compared with the clause that throws all imposts and excises into the Continental treasury, produces a query how each state shall support its own government. By a dry tax, and one perhaps which cannot be collected, because the Federal Collectors must have the preference. So we must expect to be rid of State government as an expensive and useless thing; and then perhaps Congress will help us to a Federal Intendant, to save us the trouble of governing ourselves. But this may be more than my text will justify.

6. "To raise and support armies," &c.

That the Federal Head should have power to raise an army for some purposes, is perhaps quite necessary. Whether it is or not, the present Congress have such power. But here appears to be a fault, by no means singular, in this constitution, viz., the want of limitation. All is left to the discretion of Congress, and there is no bar against a standing army in time of peace. For though no appropriation of money to this use may be for a longer term than two years, yet this is long enough when the same appropriation may be continued for two years to the end of time. And we are to expect that this Congress will soon have such a system of policy as will bind their successors, either by the force of its obvious expediency, or by the danger of innovation, to persist in the same plan.

7. To exercise exclusive jurisdiction, &c.

I do not see so much of the terrible in this as some do, especially if the rest is granted. Congress will be secure from *little* mobs, and so it ought to be. It

will be delivered from the persecution of the State in which it resides, and so it ought to be. It may build accommodations for a court, which will be, as it ought to be, the property of the United States. And that a body so powerful ought to be handsomely lodged, I believe every foreigner will imagine. But how this clause came into the constitution I know not. I believe any state might grant what is here demanded, if the whole, to Congress, or any body corporate by consent of Congress.

8. "No state shall emit bills of credit, or make tender laws."

Here I suppose the principal weight of opposition will hang. The point itself is of consequence, but it will receive more from the prejudices of men in our *present embarrassed situation*. You know my sentiments are directly opposed to paper money, as they would be in almost every case in which we could want it. But the query is, whether every state shall be in a worse situation than any individual, who, if he has not the cash in hand, may give his promissory note? I think it ought not to be, unless the United States will promise to lend us money whenever we want it. But I should agree to this, that no bills of credit shall ever be a tender. This requisition would be not only just, but comformable to my notions of sound policy.

As to other tender laws, they are, in fact, but poor expedients, and such as a state may possibly need. It is really better to have some kind of tender law, than to be thrown into confusion. And a State is so much a better judge of its own circumstances, that I had rather see this regulation in the State than in the Federal constitution. Yet, unless it were in all, some States might impose upon others, and so justice would not be equally and universally done. I wish that the abolition of these abuses might be deferred, until we are in a more prosperous situation. I had rather that Congress should have power to say hereafter, when they shall cease, than that they should have leave immediately upon the adoption of any new system.

I omit the next sentence, because I don't at present understand what effect it will have on the private debt of each particular State.

9. "No State shall, without the consent of Congress, "enter into any compact or agreement with any other State."

If I understand this, it is a curious passage. What, may we not even *agree* together? If there be a suit in the Federal Court between two States, may they not, like private parties, agree? Or in a hundred other cases, of no Federal concern, may they not treat and settle their disputes? I must have mistaken these wise men. It cannot be so. To accuse the convention of folly would be gross. I dare say, that most of them had rather be accused of design.

10. The President may, with the advice of two-thirds of the Senate, who are present, make treaties, and with consent of the Senate, appoint embassadors," &c.

The Senate. Who are the Senate? Look back and you will see that a

majority is a quorum. This is fourteen, and two-thirds of fourteen are ten. The President and the Senators may make treaties; and the President and Senate by the same rule, i.e., eight Senators may appoint ambassadors, ministers, consuls, judges, and almost everybody else.

Where in God's name did they get this? From reason or from history? I fear, not from the former; and as to the latter, it has not come within my reading in any constitution where a republican form is *guarantied.* Are we then a commonwealth, and shall we have no voice in treaties? but our own President, or elected King? In four years' time (with good hope of another election,) cannot he pack a sufficient force to enable him to gratify his favorites, or sell his country? If this be not a servile adherence to the pattern of the King's privy Council of Great Britain, I confess I know not what is. Congress may declare war, indeed, but the President may make peace upon what terms he shall think proper. Is a peace of less consequence to a nation than war? Or is it ye more safe that this power should be given to one man? What is the privilege of declaring war compared with the power of making all kinds of treaties? If he make a bad treaty, what then? Why, he may be impeached, if anybody dares impeach him, before the very Senate that advised the measure. And if convicted, what? He shall be removed from his office, and perhaps disqualified to hold any other. And after this he may chance to lose his head by a trial at law, if the Judges, whom he has appointed, will bid the jury to convict him. And so, with a great deal of difficulty, for some (perhaps) irreparable detriment, we get the offender's head. Is there no better way than this? But I must not dwell longer.

11. "The President shall take care that the law be faithfully executed."

That there must be an Executive power, independent of the legislature, appears to have been generally agreed among the fabricators of modern constitutions. But I believe it has not until now been supposed essential that this power should be vested in a single person. The execution of the law requires as much prudence as any other department, and the pardoning or refusing to pardon offences, is a very delicate matter. Yet he has no council or assistant, no restraint.

But was ever a commission so *brief,* so *general,* as this of our President? Can we exactly say how far a faithful execution of the laws may extend? or what may be called or comprehended in a faithful execution? If the President be guilty of a misdemeanor, will he not take care to have this excuse? And should it turn against him, may he not plead a mistake! or is he bound to understand the laws, or their operation? Should a Federal law happen to be as generally expressed as the President's authority; must he not interpret the Act! For in many cases he must execute the laws independent of any judicial decision. And should the legislature direct the mode of executing the laws, or any particular law, is he obliged to comply, if he does not think it will amount to a faithful execution? For to suppose that the legislature can make laws to affect the office of President, is to destroy his independence,

and in this case to supersede the very constitution. Is there no instance in which he may reject the sense of the legislature, and establish his own, and so far, would he not be to all intents and purposes absolute?

12. "The Judicial Power, &c., shall extend to all cases between citizens of different States."

This seems a hardship on account of the appeal, which will carry men 600 miles, and cause them more expense than the matter in dispute may be worth. There is no reason why citizens of different States should not have as good a remedy against each other, as citizens of the same State, nor why a debtor in one state should have more cost than a debtor in the other. And supposing, that, to avoid cost, the appeal in this case should be taken away, (though by his constitution it cannot.) Yet this would be very unequal. I think this part of the judicial power not only grievous, but quite unnecessary; for disputes between inhabitants of different States have been hitherto very well determined in one of the States. And now all remedy for small dues is taken away in effect, for though judgment be obtained in the Superior Court, the debtor by appealing may discourage the creditor from any further pursuit.

13. "The Supreme Court shall have an appellate jurisdiction both as to law and fact, except," &c.

Except what? Here they are at it again! "with such exceptions and under such regulations as *Congress* shall make." A very wise Congress! This Convention have really saved themselves a great deal of labor by this presumption. I confess upon the principle, that there cannot be a fair trial before judges chosen by the State in which one of the parties resides, juries must also be excluded. But I deny the principle as too great a refinement. A Federal jury in the Supreme Court, but especially one from the vicinity, would be a chimera, if the court be stationary. But that the same men should be judges of the law and the fact, is against reason, and not congenial to a free government. Congress may make as many exceptions as they please. But to talk of regulating men's judgment of facts, would be to talk nonsense.

14. "The United States shall guarrantee to every State a Republican form of government."

Republics are either aristocratical or democratical: and the United States guarranty one of these forms to every State. But I disapprove of any guarranty in the matter. For though it is improbable, that any State will choose to alter the form of its government; yet it ought to be the privelege of every State to do as it will in this affair. If this regulation be admitted, it will be difficult to effect any important changes in State government. For the other States will have nearly as much to do with our government as we ourselves. And what Congress may see in our present constitution, or any future amendments, not strictly republican *in their opinions,* who can tell? Besides it is of no importance to any State how the government of any other State is administered, whether by a single magistrate or two, or by a king.

I therefore presume, that, as this clause meddles too much with the independence of the several States, so also it answers no valuable end to any or to the whole.

4.5.3 With regard to the Constitution taken into one view: It is a complete system of Federal government, every part of which is full of energy, and if it be established, I think it can never fail of being obeyed by the people; and no combination can ever be sufficiently extensive or secret to subvert it. There is some ambiguity in several important parts of it, which arises principally from the too general terms in which it is expressed. Too much is left perhaps for the future Congress to supply, which when supplied will be no part of the constitution. The States are strictly confined to their own business, and even these are not a little circumscribed. And the powers of all the Federal departments are very ample and adequate to their ends. In short, the system would make us formidable abroad, and keep us very *peaceable* at home, and, with some amendments, might do very well for us, if we would be contented to become citizens of America, and confuse the thirteen stripes, and change the stars into one glorious sun.[2]

Let us pause.

4.5.4 It is not in a few light strictures,—it is not, perhaps, in the most acute and methodical essay that the merits of this unexpected, this wonderful system, can be strictly defined. Reading cannot be applied, and experience is out of the question. Thus how much we may easily perceive, it is a great, almost a total, and probably a final change, with regard to every State. "To be, or not to be, that is the question." So great a revolution was never before proposed to a people for their consent. In a time of profound peace, that a matter of such infinite concern should be submitted to general debate throughout such an empire as this, is a phenomenon entirely new. Let us make a due return to that Providence by which we enjoy the privelege, by using it, like a wise, prudent and free people. Let us equally shun a hasty acceptance or a precipitate rejection of this all-important scheme. And if our final decision be the effect of true wisdom, let us never doubt but the end will be happy.

4.5.5 To close:

You must easily see, Sir, that what I have written is but a light sweep on the surface of things. Many things *in* the Constitution worthy of remark, I have wholly omitted; those I have mentioned, I have slightly criticised, and what is *not in* the Constitution that ought to be there, I have not attempted to say. I found you had prescribed me a task which few men, perhaps, can adequately perform, and that I had not by any means qualified myself to do it. But if this trifling attention to your wishes should prove a gratification, I shall be satisfied in that respect.

I am, Dear Sir,
Your Friend
& most ob't Serv't,
W. Symmes.

Capt. Peter Osgood, Jr.

Mr. President, in such an assembly as this and on a subject, that puzzles the oldest politicians, a young man, sir, will scarcely dare to *think* for himself; but if he venture to *speak*, the effort must certainly be greater. This Convention is the first representative body in which I have been honoured with a seat, and men will not wonder that a scene at once so new, and so august, should confuse, oppress, and almost disqualify me to proceed. 4.5.6

Sir, I wish to bespeak the candour of the Convention—that candour which I know, I need but ask to have it extended to me, while I make a few indigested observations on the paragraph now in debate. I have hitherto attended with diligence but no great anxiety, to the reasoning of the ablest partizans on both sides of the question. Indeed, I could have wished for a more effectual, and (if I may term it so) a more *feeling* representation in the lower house, and for a representation of the *people* in the senate—I have been and still am desirous of a rotation in office, to prevent the final perpetuation of power in the same men.—And I have not been able clearly to see why the *place* and *manner* of holding elections should be in the disposal of Congress. 4.5.7

But, sir, in my humble opinion, these things are comparative by the lesser things of the law.—They doubtless have their influence in the grand effect, and so are essential to the system—But, sir, I view the section to which we have at length arrived [Art. I, sec. 8] as the cement of the fabrick, and this clause as the key-stone, or (if I may apply the metaphor) the magick talisman on which the fate of it depends. 4.5.8

Allow me, sir, to recall to your remembrance that *yesterday*, when States were in doubt about granting to Congress a five per cent. impost, and the simple power of regulating trade—the time, when so delicate was the patriotick mind, that power was to be transferred with reluctant, with a sparing hand—and the most obvious utility could scarcely extort it from the people. It appears to me of some importance, to consider this matter, and to demand complete satisfaction upon the question, why an unlimited power in the affair of taxation, is so soon required? Is our situation so vastly different, that the powers so lately sufficient, are now but the dust of the balance? I observe, sir, that many men, who within a few years past, were strenuous opposers of an augmentation of the power of Congress, are now the warmest advocates of power, so large as not to admit of a comparison with those which they opposed. Cannot some of them state their reasons then, and their reasons now, that we may judge of their consistency—or shall we be left to suppose that the opinions of politicians, like those of the multitude, vibrate from one extreme to the other, and that we have no men among us to whom we can intrust the philosophick task of pointing out the golden mean? 4.5.9

At present, Congress have no power to lay taxes, &c. nor even to compel a compliance with their requisitions. May we not suppose, that the members of the great Convention, had severely felt the impotency of Congress, while 4.5.10

they were in it, and therefore were rather too keenly set for an effectual increase of power? That the difficulties they had encountered, in obtaining decent requisitions, had wrought in them a degree of impatience, which prompted them to demand the purse-strings of the nation, as if we were insolvent, and the proposed Congress were to compound with our creditors?—Whence, Sir, can this great, I had almost said, this bold demand have originated? Will it be said that it is but a consistent and necessary part of the general system? I shall not deny these gentlemen the praise of inventing a system completely consistent with itself, and pretty free from contradiction—but I would ask, I shall expect to be answered, how a system can be necessary for *us*, of which this is a consistent and necessary part?

4.5.11 But, Sir, to the paragraph in hand—Congress, &c.

Here, Sir, (however kindly Congress may be pleased to deal with us) is a very good and valid conveyance of all the property in the United States—to certain uses indeed, but those uses capable of any construction, the trustee may think proper to make. This body is not amenable to any tribunal, and therefore, this Congress can do no wrong—It will not be denied that they *may* tax us to any extent, but some gentlemen are fond of arguing that this body never *will* do any thing but what is for the common good. Let us consider that matter.

4.5.12 Faction, Sir, is the vehicle of all transactions in publick bodies, and when gentlemen know this so well, I am rather surprized to hear them so sanguine in this respect.[3] The prevalent faction *is the body*—these gentlemen, therefore, must mean that the prevalent faction will always be right, and that the true patriots will always out number the men of less and selfish principles. From this it would follow, that no publick measure was ever wrong, because it must have been passed by the majority, and so, I grant no power ever was, or will be abused.—In short, we know that all governments have degenerated, and consequently have abused the powers reposed in them, and why we should imagine better of the proposed Congress than of myriads of publick bodies who have gone before them, I cannot at present conceive.

4.5.13 Sir, we ought (I speak it with submission) to consider that what we now grant from certain motives, well grounded at present, will be exacted of posterity as a prerogative when we are not alive, to testify the tacit conditions of the grant—that the wisdom of this age will then be pleaded by those in power—and that the cession we are now about to make will be actually clothed with the venerable habit of ancestral sanction.[4]

Therefore, sir, I humbly presume we ought not to take advantage of our situation in point of time, so as to bind posterity to be obedient to laws, they may very possibly disapprove, nor expose them to a rebellion which at that period will very probably end only in their farther subjugation.

4.5.14 The paragraph in question is an absolute decree of the people. The Congress *shall* have power—it does not say that they shall *exercise* it—but our necessities say, they *must*, and the experience of ages says, that they *will*,[5] and finally, when the expenses of the nation, by their ambition are grown

enormous, that they will oppress and subject.—For sir, they may lay taxes, duties, imposts and excises! One would suppose that the Convention, sir, were not at all afraid to multiply words when any thing was to be got by it. By another clause, all imposts and duties, on exports and imports, wherever laid, go into the federal chest—so that Congress may not only lay imposts and excises, but all imposts and duties that are laid on imports and exports, by any State, shall be a part of the national revenue—and besides, Congress may lay an impost on the produce and manufactures of the country, which are consumed at home.—And all these shall be equal through the States.—Here sir, I raise two objections; 1st. that Congress should have this power. It is a universal, unbounded permission; and as such, I think, no free people ought ever to consent to it, especially in so important a matter as that of property. I will not descend, sir, to an abuse of this future Congress, until it exists, nor then, until it misbehaves, nor then, unless I dare. But I think that some certain revenue amply adequate to all necessary purposes, upon a peace establishment, but certain and definite would have been better, and the collection of it might have been guaranteed by every State to every other. We should then have known to what we were about to subscribe and should have chearfully granted it. But now, we may indeed grant, but who can *chearfully* grant he knows not what?

Again, sir, I object to the equality of these duties through the States. It matters not with me, in the present argument, which of them will suffer by this proportion. Some probably *will*, as the consumption of dutied articles will not, if we may judge from experience, be uniform in all. 4.5.15

But some say, with whom I have conversed, it was for this reason that taxes were provided, that by their assistance the defect of duties in some States ought to be supplied. Now then, let us suppose, that the duties are so laid, that if every State paid in proportion, to that which paid most, the duties alone would supply a frugal treasury. Some States will pay but half their proportion, and some will scarcely pay any thing. But those in general who pay the least duty, viz. the inland States, are least of all able to pay a land tax, and therefore I do not see but this tax would operate most against those who are least able to pay it. 4.5.16

I humbly submit it, sir, whether, if each State had its proportion of some certain gross sum assigned, according to its numbers, and a power was given to Congress, to collect the same, in case of default in the State, this would not have been a safer Constitution. For, sir, I also disapprove of the power to collect, which is here vested in Congress; it is a power, sir, to burden us with a standing army of ravenous collectors; harpies perhaps from another State, but who, however, were never known to have bowels for any purpose, but to fatten on the life-blood of the people. In one age or two this will be the case, and when the Congress shall become tyrannical, these vultures, their servants, will be the tyrants of the village, by whose presence, all freedom of speech and action, will be taken away. 4.5.17

Sir, I shall be told that these are imaginary evils—but I hold to this 4.5.18

maxim, that power was never given (of this kind especially) but it was exercised, nor ever exercised but it was finally abused. We must not be amused with handsome probabilities, but we must be assured that we *are in no danger,* and that this Congress *could* not distress us, if they were ever so much disposed.

4.5.19 To pay the debts, &c.

These words, sir, I confess are an ornament to the page. And very musical words—But they are too general to be understood as any kind of limitations of the power of Congress, and not very easy to be understood at all. When Congress have the purse, they are not confined to rigid oeconomy, and the word debts here is not confined to debts already contracted, or indeed, if it were, the term "general welfare" might be applied to any expenditure whatever. Or if it could not, who shall dare to gainsay the proceedings of this body at a future day, when according to the course of nature it shall be too firmly fixed in the saddle, to be overthrown by any thing but a general insurrection? An event not to be expected considering the extent of this Continent; and if it were to be expected, a sufficient reason in itself for rejecting this or any Constitution that would tend to produce it.

4.5.20 This clause, sir, contains the very sinews of the Constitution. And I hope the universality of it may be singular; but it may be easily seen, that it tends to produce in time, as universal powers in every other respect. As the poverty of individuals prevents luxury, so the poverty of publick bodies, whether sole or aggregate, prevents tyranny. A nation cannot, perhaps, do a more politick thing, than to supply the purse of its sovereign with that parsimony, which results from a sense of the labour it costs, and so to compel him to comply with the genius of his people, and conform to their situation, whether he will or not. How different will be our conduct, if we give the entire disposal of our property to a body, as yet almost unknown in theory, in practice quite heterogeneous in its composition, and whose maxims are yet intirely unknown.

4.5.21 Sir, I wish the gentlemen, who so ably advocate this instrument, would enlarge upon this formidable clause and I most sincerely wish that the effect of their reasoning may be my conviction. For, sir, I will not dishonour my constituents, by supposing that they expect me to resist that which is irresistible; the force of reason. No, sir, my constituents ardently wish for a firm, efficient continental government, but fear the operation of this which is now proposed. Let them be convinced that their fears are groundless, and I venture to declare in their name, that no town in the commonwealth, will sooner approve the form, or be better subjects under it.

1. See Symmes' elaboration of this point in the Massachusetts convention on 22 January 1788, 4.5.9–11.
2. Cf. Monroe 5.21.12 n. 3.
3. The discussion here should be compared with *The Federalist* no. 10.
4. Cf. *The Federalist* no. 49.

5. Publius agrees. Speaking also of taxation, he says: "I believe it may be regarded as a position, warranted by the history of mankind, that *in the usual progress of things, the necessities of a nation in every stage of its existence will be found at least equal to its resources.*" *The Federalist* no. 30, 190. In John Francis Mercer's version (5.5.10), "in Government what may be done will be done." See above DeWitt 4.3.23; Smith 6.12.36–37.

Letters of Agrippa

MASSACHUSETTS GAZETTE
November 1787–February 1788

The important *Agrippa* letters appear to have been written by James Winthrop.[1] The son of mathematics professor John Winthrop of Harvard, James became librarian of Harvard in 1770 following his graduation from that institution. He became register of probate in Middlesex in 1787 and Judge of Common Pleas in 1791. While Harvard librarian, he fought in the Revolution, was postmaster of Cambridge, and served as a volunteer against the Shays insurgents. Winthrop was twice passed over for his father's professorship in mathematics because, it is reported, his "intemperate manner and . . . eccentricities militated against him."[2] His chief literary effort was a study and interpretation of biblical prophecies.

The letters of Agrippa are vigorously and well argued, but were not much reprinted, probably because of their preoccupation with the interests of Massachusetts. That preoccupation deserves the reader's close attention, however, because it reflects the principled selfishness that is the ground of Agrippa's argument (VII, 4.6.26–29). The letters fall into two distinct sets, the first (I–XI, 4.6.1–47) addressed to the people of Massachusetts, the second (XII–XVI, 4.6.48–79) to the Massachusetts Convention. This fact explains much of the repetition and some of the variation in Agrippa's arguments. In both sets there are highly theoretical arguments as well as specific criticisms of the proposed Constitution and suggestions for action; but the differences in form and focus are due partly to the different circumstances and audiences to which the papers were addressed.

Each of the sets of letters has its own plan or outline, although Agrippa frequently allows the argument to stray, and indeed some of the most interesting and fruitful observations are made in the course of diversions or secondary arguments. The overall theme concerns the connection between freedom, commerce, and local institutions. The chief dangers of the proposed Constitution are, first, the destruction of the states, which are necessary because of the heterogeneity to be found in the United States, and, second, the stifling of commerce by excessive regulation.

The first set of papers is particularly interesting on the question of the small republic (IV, 4.6.14–17) and on commerce as the bond of Union (VIII,

4.6.30–33). Agrippa reveals here, in a particularly open way, a tension that is quite common in Anti-Federalist thought between the claims of civic virtue and of commerce as the bond of civil society. The second set of letters contains an extended and significant discussion of the Bill of Rights. A brief outline follows.

Part I—To the People

I. Introduction and general sketch: Freedom is necessary to industry; great objective should be to encourage the spirit of commerce (I, 4.6.1–6).

II. Advantages of present system: efficiency of states for internal regulation (II, III, 4.6.7–13).

III. Disadvantages of the consolidation implicit in the proposed Constitution (IV–VII, 4.6.14–29).

  A. Impossibility of governing an extensive empire on republican principles except as a confederated republic because of the heterogeneity of the parts. Yet the new system is a consolidation (IV, 4.6.14–17).

  B. Proof that the new system is a consolidation (V–VI, 4.6.18–25).

  C. Harm of this consolidation for Massachusetts (VII, 4.6.26–29).

IV. The true bond of Union is commerce (VIII–IX, 4.6.30–37).

  A. We are now a federal republic under that moderate political authority that is necessary to the peaceful operation of commercial intercourse (VIII, 4.6.30–33).

  B. Criticism of deficiencies of Articles of Confederation taken up:

    (1) regarding taxation (VIII, 4.6.30–33)

    (2) regarding regulation of intercourse with foreign nations (IX, 4.6.34–37).

V. Summary and suggested amendments to Articles of Confederation (X, 4.6.38–44).

(VI. P.S.—attack on Federalist Party [XI, 4.6.45–47]).

Part II—To the Massachusetts Convention

This second set of papers consists of a long paper devoted to the subject of the Federal Republic, and retracing much of the ground of the first set of papers (but sometimes with interesting elaborations), together with a new discussion of the Bill of Rights, and a set of proposed amendments to the Constitution.

I. Federal Republic is the form of government best suited to answer both internal and external needs. This is the system we now possess; it can be improved by modest amendments; it would be destroyed by the proposed Constitution (XII, 4.6.48–59).

II. Bill of Rights and Constitution (XIII–XV, 4.6.60–71).

III. Proposed Amendments to the Constitution (XVI, 4.6.72–79).

1. "It is said Winthrop writes under Agrippa. These pieces gain him no credit." C. Gore to R. King, 23 December 1787, *King, Life and Correspondence* I, 265; Ford, *Essays* 40, 51–52; Charles Warren, "Elbridge Gerry, James Warren, Mercy Warren, and the Ratification of the Federal Constitution in Massachusetts," Massachusetts Historical Society *Proceedings* 64 (1930–32):147, n. 6; Harding, *Contest over Ratification* 21, n.1.

Ford's reprinting of these letters (*Essays* 53–122) contains errors of numbering and dating and an omission, which are identified in the notes here. As Ford points out (p. 51), Agrippa's letters called forth a number of replies; but none of these seriously took up his arguments. See *Massachusetts Gazette* 30 November 1787 (Cassius, reprinted in Ford, *Essays* 22–23); 21 December 1787 ("Charles James Fox"); 28 December 1787, 4 January 1788 ("Kempis O'Flanagan"); 25 January 1788 (Janius).

2. Clifford K. Shipton, "James Winthrop," *Dictionary of American Biography* XX, 407. As evidence of Winthrop's eccentricity Shipton relates that in the *Memoirs* of the American Academy of Arts and Sciences he published "fallacious solutions" of certain problems in mathematics, "to the great mortification of the other members."

I

23 November 1787

To the People.

4.6.1 Many inconveniencies and difficulties in the new plan of government have been mentioned by different writers on that subject. Mr Gerry has given the publick his objections against it, with a manly freedom.[1] The seceding members from the Pennsylvania Assembly also published theirs.[2] Various anonymous writers have mentioned reasons of great weight. Among the many objections have been stated the unlimited right of taxation—a standing army—an inadequate representation of the people—a right to destroy the constitution of the separate states, and all the barriers that have been set up in defence of liberty—the right to try causes between private persons in many cases without a jury; without trying in the vicinity of either party; and without any limitation of the value which is to be tried. To none of these or any other objections has any answer been given, but such as have acknowledged the truth of the objection while they insulted the objector. This conduct has much the appearance of trying to force a general sentiment upon the people.

4.6.2 The idea of promoting the happiness of the people by opposing all their habits of business, and by subverting the laws to which they are habituated, appears to me to be at least a mistaken proceeding. If to this we add the limitations of trade, restraints on its freedom, and the alteration of its course, and *transfer of the market*, all under the pretence of regulation for *federal purposes*, we shall not find any additional reason to be pleased with the plan.

4.6.3 It is now conceded on all sides that the laws relating to civil causes were never better executed than at present. It is confessed by a warm federalist in answer to mr. Gerry's sensible letter, that the courts are so arranged at

present that no inconvenience is found, and that if the new plan takes place great difficulties may arise.[3] With this confession before him, can any reasonable man doubt whether he shall exchange a system, found by experience to be convenient, for one that is in many respects inconvenient, and dangerous? The expense of the new plan is terrifying, if there was no other objection. But they are multiplied. Let us consider that of the representation.

4.6.4 There is to be one representative for every thirty thousand people. Boston would nearly send one, but with regard to another there is hardly a county in the state which would have one. The representatives are to be chosen for two years. In this space, when it is considered that their residence is from two hundred to five [hundred?] miles from their constituents, it is difficult to suppose that they will retain any great affection for the welfare of the people. They will have an army to support them, and may bid defiance to the clamours of their subjects. Should the people cry aloud the representative may avail himself of the right to alter the *time of election* and postpone it for another year. In truth, the question before the people is, *whether they will have a limited government or an absolute one?*

4.6.5 It is a fact justified by the experience of all mankind from the earliest antiquity down to the present time, that freedom is necessary to industry. We accordingly find that in absolute governments, the people, be the climate what it may, are [in] general lazy, cowardly, turbulent, and vicious to an extreme. On the other hand, in free countries are found in general, activity, industry, arts, courage, generosity, and all the manly virtues.

Can there be any doubt which to choose? He that hesitates must be base indeed.

4.6.6 A favourite objection against a free government is drawn from the irregularities of the Greek and Roman republicks. But it is to be considered that war was the employment which they considered as most becoming freemen. Agriculture, arts, and most domestick employment were committed chiefly to slaves. But Carthage, the great commercial republick of antiquity, though resembling Rome in the form of its government, and her rival for power, retained her freedom longer than Rome, and was never disturbed by sedition during the long period of her duration.[4] This is a striking proof that the fault of the Greek and Roman republicks was not owing to the form of their government, and that the spirit of commerce is the great bond of union among citizens.[5] This furnishes employment for their activity, supplies their mutual wants, defends the rights of property, and producing reciprocal dependencies, renders the whole system harmonious and energetick. Our great object therefore ought to be to encourage this spirit. If we examine the present state of the world we shall find that most of the business is done in the freest states, and that industry decreases in proportion to the rigour of government.

Agrippa.

II

27 November 1787

To the People of Massachusetts.

4.6.7 In the Gazette of the 23d instant, I ascertained from the state of other countries and the experience of mankind, that free countries are most friendly to commerce and to the rights of property. This produces greater internal tranquillity. For every man, finding sufficient employment for his active powers in the way of trade, agriculture and manufactures, feels no disposition to quarrel with his neighbour, nor with the government which protects him, and of which he is a constituent part.[6] Of the truth of these positions we have abundant evidence in the history of our own country. Soon after the settlement of Massachusetts, and its formation into a commonwealth, in the earlier part of the last century, there was a sedition at Hingham and Weymouth. The governour passing by at that time with his guard, seized some of the mutineers and imprisoned them. This was complained of as a violation of their rights, and the governour lost his election the next year; but the year afterwards was restored and continued to be re-elected for several years. The government does not appear to have been disturbed again till the revocation of the charter in 1686, being a period of about half a century.[7]

4.6.8 Connecticut set out originally on the same principles, and has continued uniformly to exercise the powers of government to this time.

During the last year, we had decisive evidences of the vigour of this kind of government.[8] In Connecticut, the treason was restrained while it existed only in the form of conspiracy. In Vermont, the conspirators assembled in arms, but were suppressed by the exertions of the militia, under the direction of their sheriffs. In New-Hampshire, the attack was made on the legislature, but the insurrection was in a very few hours suppressed, and has never been renewed. In Massachusetts, the danger was, by delay, suffered to increase. One judicial court after another was stopped, and even the capital trembled. Still, however, when the supreme executive gave the signal, a force of many thousands of active, resolute men, took the field, during the severities of winter, and every difficulty vanished before them. Since that time we have been continually coalescing. The people have applied with diligence to their several occupations, and the whole country wears one face of improvement. Agriculture has been improved, manufactures multiplied, and trade prodigiously enlarged. These are the advantages of freedom in a growing country. While our resources have been thus rapidly increasing, the courts have set in every part of the commonwealth, without any guard to defend them; have tried causes of every kind, whether civil or criminal, and the sheriffs, have in no case been interrupted in the execution of their office. In those cases indeed, where the government was more

particularly interested, mercy has been extended, but in civil causes, and in the case of moral offences, the law has been punctually executed. Damage done to individuals, during the tumults, has been repaired, by judgment of the courts of law, and the award has been carried into effect. This is the present state of affairs, when we are asked to relinquish that freedom which produces such happy effects.

The attempt has been made to deprive us of such a beneficial system, and 4.6.9
to substitute a rigid one in its stead, by criminally alarming our fears, exalting certain characters on one side, and villifying them on the other.[9] I wish to say nothing of the merits or demerits of individuals; such arguments always do hurt. But assuredly my countrymen cannot fail to consider and determine who are the most worthy of confidence in a business of this magnitude.—Whether they will trust persons, who have, from their cradles, been incapable of comprehending any other principles of government, than those of absolute power, and who have, in this very affair, tried to deprive them of their constitutional liberty, by a pitiful trick. They cannot avoid prefering those who have uniformly exerted themselves to establish a limited government, and to secure to individuals all the liberty that is consistent with justice, between man and man, and whose efforts, by the smiles of Providence, have hitherto been crowned with the most splendid success. After the treatment we have received, we have a right to be jealous, and to guard our present constitution with the strictest care. It is the right of the people to judge, and they will do wisely to give an explicit instruction to their delegates in the proposed convention, not to agree to any proposition that will, in any degree, militate with that happy system of government under which Heaven has placed them.

Agrippa.

November 24, 1787.

III

30 November 1787

To the People.

It has been proved, from the clearest evidence, in two former papers, that a 4.6.10
free government, I mean one in which the power frequently returns to the body of the people, is in principle the most stable and efficient of any kind; that such a government affords the most ready and effectual remedy for all injuries done to persons and the rights of property. It is true we have had a tender act. But what government has not some law in favour of debtors? The difficulty consists in finding one that is not more unfriendly to the creditors than ours. I am far from justifying such things. On the contrary I

believe that it is universally true, that acts made to favour a part of the community are wrong in principle. All that is now intended is, to remark that we are not worse than other people in that respect which we most condemn. Probably the inquiry will be made, whence the complaints arise. This is easily answered. Let any man look round his own neighbourhood, and see if the people are not, with a very few exceptions, peaceable and attached to the government; if the country had ever within their knowledge more appearance of industry, improvement and tranquillity; if there was ever more of the produce of all kinds together for the market; if their stock does not rapidly increase; if there was ever a more ready vent for their surplus; and if the average of prices is not about as high as was usual in a plentiful year before the war. These circumstances all denote a general prosperity. Some classes of citizens indeed suffer greatly. Two descriptions I at present recollect. The publick creditors form the first of these classes and they ought to, and will be provided for. Let us for a moment consider their situation and prospects. The embarrassments consequent upon a war, and the usual reduction of prices immediately after a war, necessarily occasioned a want of punctuality in publick payments. Still however the publick debt has been very considerably reduced, not by the dirty and delusive scheme of depreciation, but the nominal sum. Applications are continually making for purchases in our eastern and western lands. Great exertions are making for clearing off the arrears of outstanding taxes, so that the certificates for interest on the state debt have considerably increased in value. This is a certain indication of returning credit. Congress this year disposed of a large tract of their lands towards paying the principal of their debt. Pennsylvania has discharged the whole of their part of the continental debt. New-York has nearly cleared its state debt, and has located a large part of their new lands towards paying the continental demands. Other states have made considerable payments. Every day from these considerations the publick ability and inclination to satisfy their creditors increases. The exertions of last winter were as much to support publick as private credit. The prospect therefore of the publick creditors is brightening under the present system. If the new system should take effect without amendments, which however is hardly probable, the increase of expense will be death to the hopes of all creditors both of the continental and of the state. With respect however to our publick delays of payment we have the precedent of the best established countries in Europe.

4.6.11 The other class of citizens to which I alluded was the ship-carpenters. All agree that their business is dull; but as nobody objects against a system of commercial regulations for the whole continent, that business may be relieved without subverting all the ancient foundations and laws which have the respect of the people. It is a very serious question whether giving to Congress the unlimited right to regulate trade would not injure them still further. It is evidently for the interest of the state to encourage our own

trade as much as possible. But in a very large empire, as the whole states consolidated must be, there will always be a desire of the government to increase the trade of the capital, and to weaken the extremes. We should in that case be one of the extremes, and should feel all the impoverishment incident to that situation. Besides, a jealousy of our enterprising spirit, would always be an inducement to cramp our exertions. We must then be impoverished or we must rebel. The alternative is dreadful.

4.6.12 At present this state is one of the most respectable and one of the most influential in the union. If we alone should object to receiving the system without amendments, there is no doubt but it would be amended. But the case is not quite so bad. New-York appears to have no disposition even to call a convention. If they should neglect, are we to lend our assistance to compel them by arms, and thus to kindle a civil war without any provocation on their part. Virginia has put off their convention till May, and appears to have no disposition to receive the new plan without amendments. Pennsylvania does not seem to be disposed to receive it as it is. The same objections are made in all the states, that the civil government which they have adopted and which secures their rights will be subverted. All the defenders of this system undertake to prove that the rights of the states and of the citizens are kept safe. The opposers of it agree that they will receive the least burdensome system which shall defend those rights.

4.6.13 Both parties therefore found their arguments on the idea that these rights ought to be held sacred. With this disposition is it not in every man's mind better to recommit it to a new convention, or to Congress, which is a regular convention for the purpose, and to instruct our delegates to confine the system to the general purposes of the union, than to *endeavour* to force it through in its present form, and with so many opposers as it must have in every state on the continent. The case is not of such pressing necessity as some have represented. Europe is engaged and we are tranquil. Never therefore was an happier time for deliberation. The supporters of the measure are by no means afraid of insurrections taking place, but they are afraid that the present government will prove superiour to their assaults.

Agrippa.

IV

3 December 1787

To the People.

4.6.14 Having considered some of the principal advantages of the happy form of government under which it is our peculiar good fortune to live, we find by

experience, that it is the best calculated of any form hitherto invented, to secure to us the rights of our persons and of our property, and that the general circumstances of the people shew an advanced state of improvement never before known. We have found the shock given by the war in a great measure obliterated, and the publick debt contracted at that time to be considerably reduced in the nominal sum. The Congress lands are fully adequate to the redemption of the principal of their debt, and are selling and populating very fast. The lands of this state, at the west, are, at the moderate price of eighteen pence an acre, worth near half a million pounds in our money. They ought, therefore, to be sold as quick as possible. An application was made lately for a large tract at that price, and continual applications are made for other lands in the eastern part of the state. Our resources are daily augmenting.

4.6.15 We find, then, that after the experience of near two centuries our separate governments are in full vigour. They discover, for all the purposes of internal regulation, every symptom of strength, and none of decay. The new system is, therefore, for such purposes, useless and burdensome.

4.6.16 Let us now consider how far it is practicable consistent with the happiness of the people and their freedom. It is the opinion of the ablest writers on the subject, that no extensive empire can be governed upon republican principles, and that such a government will degenerate to a despotism, unless it be made up of a confederacy of smaller states, each having the full powers of internal regulation.[10] This is precisely the principle which has hitherto preserved our freedom. No instance can be found of any free government of considerable extent which has been supported upon any other plan. Large and consolidated empires may indeed dazzle the eyes of a distant spectator with their splendour, but if examined more nearly are always found to be full of misery. The reason is obvious. In large states the same principles of legislation will not apply to all the parts. The inhabitants of warmer climates are more dissolute in their manners, and less industrious, than in colder countries. A degree of severity is, therefore, necessary with one which would cramp the spirit of the other.[11] We accordingly find that the very great empires have always been despotick. They have indeed tried to remedy the inconveniences to which the people were exposed by local regulations; but these contrivances have never answered the end. The laws not being made by the people, who felt the inconveniences, did not suit their circumstances. It is under such tyranny that the Spanish provinces languish, and such would be our misfortune and degradation, if we should submit to have the concerns of the whole empire managed by one legislature. To promote the happiness of the people it is necessary that there should be local laws; and it is necessary that those laws should be made by the representatives of those who are immediately subject to the want of them. By endeavouring to suit both extremes, both are injured.

4.6.17 It is impossible for one code of laws to suit Georgia and Massachusetts.

They must, therefore, legislate for themselves. Yet there is, I believe, not one point of legislation that is not surrendered in the proposed plan. Questions of every kind respecting property are determinable in a continental court, and so are all kinds of criminal causes. The continental legislature has, therefore, a right to make rules *in all cases* by which their judicial courts shall proceed and decide causes. No rights are reserved to the citizens. The laws of Congress are in all cases to be the supreme law of the land, and paramount to the constitutions of the individual states. The Congress may institute what modes of trial they please, and no plea drawn from the constitution of any state can avail. This new system is, therefore, a consolidation of all the states into one large mass, however diverse the parts may be of which it is to be composed. The idea of an uncompounded republick, on an average, one thousand miles in length, and eight hundred in breadth, and containing six millions of white inhabitants all reduced to the same standard of morals, or habits, and of laws, is in itself an absurdity, and contrary to the whole experience of mankind. The attempt made by Great-Britain to introduce such a system, struck us with horrour, and when it was proposed by some theorist that we should be represented in parliament,[12] we uniformly declared that one legislature could not represent so many different interests for the purposes of legislation and taxation. This was the leading principle of the revolution, and makes an essential article in our creed. All that part, therefore, of the new system, which relates to the internal government of the states, ought at once to be rejected.

Agrippa.

V

11 December 1787

To the People.

In the course of inquiry it has appeared, that for the purposes of internal regulation and domestick tranquillity, our small and separate governments are not only admirably suited in theory, but have been remarkably successful in practice. It is also found, that the direct tendency of the proposed system, is to consolidate the whole empire into one mass, and, like the tyrant's bed, to reduce all to one standard. Though this idea has been stated in different parts of the continent, and is the most important trait of this draft, the reasoning ought to be extensively understood. I therefore hope to be indulged in a particular statement of it. 4.6.18

Causes of all kinds, between citizens of different states, are to be tried before a continental court. This court is not bound to try it according to the 4.6.19

local laws where the controversies happen; for in that case it may as well be tried in a state court. The rule which is to govern the new courts, must, therefore, be made by the court itself, or by its employers, the Congress. If by the former, the legislative and judicial departments will be blended; and if by the Congress, though these departments will be kept separate, still the power of legislation departs from the state in all those cases. The Congress, therefore, have the right to make rules for trying *all kinds* of *questions* relating to property between citizens of different states. The sixth article of the new constitution provides, that the continental laws shall be the supreme law of the land, and that all judges in the separate states shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. All the state officers are also bound by oath to support this constitution. These provisions cannot be understood otherwise than as binding the state judges and other officers, to execute the continental laws in their own proper departments within the state. For all questions, other than those between citizens of the same state, are at once put within the jurisdiction of the continental courts. As no authority remains to the state judges, but to decide questions between citizens of the same state, and those judges are to be bound by the laws of Congress, it clearly follows, that all questions between citizens of the same state are to be decided by the general laws and not by the local ones.

4.6.20 Authority is also given to the continental courts, to try all causes between a state and its own citizens.[13] A question of property between these parties rarely occurs. But if such questions were more frequent than they are, the proper process is not to sue the state before an higher authority; but to apply to the supreme authority of the state, by way of petition. This is the universal practice of all states, and any other mode of redress destroys the sovereignty of the state over its own subjects. The only case of the kind in which the state would probably be sued, would be upon the state notes. The endless confusion that would arise from making the estates of individuals answerable, must be obvious to every one.

4.6.21 There is another sense in which the clause relating to causes between the state and individuals is to be understood, and it is more probable than the other, as it will be eternal in its duration, and increasing in its extent. This is the whole branch of the law relating to criminal prosecutions. In all such cases the state is plaintiff, and the person accused is defendant. The process, therefore, will be, for the attorney-general of the state to commence his suit before a continental court. Considering the state as a party, the cause must be tried in another, and all the expense of the transporting witnesses incurred. The individual is to take his trial among strangers, friendless and unsupported, without its being known whether he is habitually a good or a bad man; and consequently with one essential circumstance wanting by which to determine whether the action was performed maliciously or accidentally. All these inconveniences are avoided by the present

important restriction, that the cause shall be tried by a jury of the vicinity, and tried in the county where the offence was commited. But by the proposed *derangement*, I can call it by no softer name, a man must be ruined to prove his innocence. This is far from being a forced construction of the proposed form. The words appear to me not intelligible, upon the idea that it is to be a *system* of government, unless the construction now given, both for civil and criminal processes, be admitted. I do not say that it is intended that all these changes should take place within one year, but they probably will in the course of a half a dozen years, if this system is adopted. In the mean time we shall be subject to all the horrors of a divided sovereignty, not knowing whether to obey the Congress or the state. We shall find it impossible to please two masters. In such a state frequent broils will ensue. Advantage will be taken of a popular commotion, and even the venerable forms of the state be done away, while the new system will be enforced in its utmost rigour by an army. I am the more apprehensive of a standing army, on account of a clause in the new constitution which empowers Congress to keep one at all times; but this constitution is evidently such that it cannot stand any considerable time without an army. Upon this principle one is very wisely provided. Our present government knows of no such thing.

Agrippa.

VI

14 December 1787

To the People.

To prevent any mistakes, or misapprehensions of the argument, stated in my last paper, to prove that the proposed constitution is an actual consolidation of the separate states into one extensive commonwealth, the reader is desired to observe, that in the course of the argument, the new plan is considered as an intire system. It is not dependent on any other book for an explanation, and contains no references to any other book. All the defences of it, therefore, so far as they are drawn from the state constitutions, or from maxims of the common law, are foreign to the purpose. It is only by comparing the different parts of it together, that the meaning of the whole is to be understood. For instance— 4.6.22

We find in it, that there is to be a legislative assembly, with authority to constitute courts for the trial of all kinds of civil causes, between citizens of different states. The right to appoint such courts necessarily involves in it the right of defining their powers, and determining the rules by which their judgment shall be regulated; and the grant of the former of those rights is 4.6.23

nugatory without the latter. It is vain to tell us, that a maxim of common law requires contracts to be determined by the law existing where the contract was made: for it is also a maxim, that the legislature has a right to alter the common law. Such a power forms an essential part of legislation. Here, then a declaration of rights is of inestimable value. It contains those principles which the government never can invade without an open violation of the compact between them and the citizens.[14] Such a declaration ought to have come to the new constitution in favour of the legislative rights of the several states, by which their sovereignty over their own citizens within the state should be secured. Without such an express declaration the states are annihilated in reality upon receiving this constitution—the forms will be preserved only during the pleasure of Congress.

4.6.24 The idea of consolidation is further kept up in the right given to regulate trade.[15] Though this power under certain limitations would be a proper one for the department of Congress; it is in this system carried much too far, and much farther than is necessary. This is, without exception, the most commercial state upon the continent. Our extensive coasts, cold climate, small estates, and equality of rights, with a variety of subordinate and concurring circumstances, place us in this respect at the head of the union. We must, therefore, be indulged if a point which so nearly relates to our welfare be rigidly examined. The new constitution not only prohibits vessels, bound from one state to another, from paying any duties, but even from entering and clearing. The only use of such a regulation is, to keep each state in complete ignorance of its own resources. It certainly is no hardship to enter and clear at the custom house, and the expense is too small to be an object.

4.6.25 The unlimitted right to regulate trade, includes the right of granting exclusive charters. This, in all old countries, is considered as one principal branch of prerogative. We find hardly a country in Europe which has not felt the ill effects of such a power. Holland has carried the exercise of it farther than any other state; and the reason why that country has felt less evil from it is, that the territory is very small, and they have drawn large revenues from their colonies in the East and West Indies. In this respect, the whole country is to be considered as a trading company, having exclusive privileges. The colonies are large in proportion to the parent state; so that, upon the whole, the latter may gain by such a system. We are also to take into consideration the industry which the genius of a free government inspires. But in the British islands all these circumstances together have not prevented them from being injured by the monopolies created there. Individuals have been enriched, but the country at large has been hurt. Some valuable branches of trade being granted to companies, who transact their business in London, that city is, perhaps, the place of the greatest trade in the world. But Ireland, under such influence, suffers exceedingly, and is impoverished; and Scotland is a mere bye-word. Bristol, the second city in

England, ranks not much above this town in population. These things must be accounted for by the incorporation of trading companies; and if they are felt so severely in countries of small extent, they will operate with tenfold severity upon us, who inhabit an immense tract; and living towards one extreme of an extensive empire, shall feel the evil, without retaining that influence in government, which may enable us to procure redress. There ought, then, to have been inserted a restraining clause which might prevent the Congress from making any such grant, because they consequentially defeat the trade of the out-ports, and are also injurious to the general commerce, by enhancing prices and destroying that rivalship which is the great stimulus to industry.

Agrippa.

VII

18 December 1787

To the People.

There cannot be a doubt, that, while the trade of this continent remains free, the activity of our countrymen will secure their full share. All the estimates for the present year, let them be made by what party they may, suppose the balance of trade to be largely in our favour. The credit of our merchants is, therefore, fully established in foreign countries. This is a sufficient proof, that when business is unshackled, it will find out that channel which is most friendly to its course. We ought, therefore, to be exceedingly cautious about diverting or restraining it. Every day produces fresh proofs, that people, under the immediate pressure of difficulties, do not, at first glance, discover the proper relief. The last year, a desire to get rid of embarrassments induced many honest people to agree to a tender-act, and many others, of a different description, to obstruct the courts of justice. Both these methods only increased the evil they were intended to cure. Experience has since shewn, that, instead of trying to lessen an evil by altering the present course of things, every endeavour[16] should have been applied to facilitate the course of law, and thus to encourage a mutual confidence among the citizens, which increases the resources of them all, and renders easy the payment of debts. By this means one does not grow rich at the expense of another, but all are benefited. The case is the same with the states. Pennsylvania, with one port and a large territory, is less favourably situated for trade than the Massachusetts, which has an extensive coast in proportion to its limits of jurisdiction. Accordingly a much larger proportion of our people

4.6.26

are engaged in maritime affairs. We ought therefore to be particularly attentive to securing so great an interest. It is vain to tell us that we ought to overlook local interests. It is only by protecting local concerns, that the interest of the whole is preserved. No man when he enters into society, does it from a view to promote the good of others, but he does it for his own good. All men having the same view are bound equally to promote the welfare of the whole. To recur then to such a principle as that local interests must be disregarded, is requiring of one man to do more than another, and is subverting the foundation of a free government. The Philadelphians would be shocked with a proposition to place the seat of general government and the unlimited right to regulate trade in the Massachusetts. There can be no greater reason for our surrendering the preference to them. Such sacrifices, however we may delude ourselves with the form of words, always originate in folly, and not in generosity.[17]

4.6.27 Let me now request your attention a little while to the actual state of publick credit, that we may see whether it has not been as much misrepresented as the state of our trade.

At the beginning of the present year, the whole continental debt was about twelve millions of pounds in our money. About one quarter part of this sum was due to our foreign creditors. Of these France was the principal, and called for the arrears of interest. A new loan of one hundred and twenty thousand pounds was negotiated in Holland, at five per cent. to pay the arrears due to France. At first sight this has the appearance of bad economy, and has been used for the villainous purpose of disaffecting the people. But in the course of this same year, Congress have negotiated the sale of as much of their western lands on the Ohio and Missisippi, as amount nearly to the whole sum of the foreign debt; and instead of a dead loss by borrowing money at five per cent. to the amount of an hundred and twenty thousand pounds, in one sum, they make a saving of the interest at six per cent. on three millions of their domestick debt, which is an annual saving of an hundred and eighty thousand pounds. It is easy to see how such an immense fund as the western territory may be applied to the payment of the foreign debt. Purchasers of the land would as willingly procure any kind of the produce of the United States as they would buy loan office certificates to pay for the land. The produce thus procured would easily be negotiated for the benefit of our foreign creditors. I do not mean to insinuate that no other provision should be made for our creditors, but only to shew that our credit is not so bad in other countries as has been represented, and that our resources are fully equal to the pressure.

4.6.28 The perfection of government depends on the equality of its operation, as far as human affairs will admit, upon all parts of the empire, and upon all the citizens. Some inequalities indeed will necessarily take place. One man will be obliged to travel a few miles further than another man to procure justice.

But when he has travelled, the poor man ought to have the same measure of justice as the rich one. Small inequalities may be easily compensated. There ought, however, to be no inequality in the law itself, and the government ought to have the same authority in one place as in another. Evident as this truth is, the most plausible argument in favour of the new plan is drawn from the inequality of its operation in different states. In Connecticut, they have been told that the bulk of the revenue will be raised by impost and excise, and therefore they need not be afraid to trust Congress with the power of levying a dry tax at pleasure. New-York, and Massachusetts, are both more commercial states than Connecticut. The latter, therefore, hopes that the other two will pay the bulk of the continental expense. The argument is in itself delusive. If the trade is not over-taxed, the consumer pays it. If the trade is over-taxed, it languishes, and by the ruin of trade the farmer loses his market. The farmer has in truth no other advantage from imposts than that they save him the trouble of collecting money for the government. He neither gets or loses money by changing the mode of taxation. The government indeed finds it the easiest way to raise the revenue; and the reason is that the tax is by this means collected where the money circulates most freely. But if the argument was not delusive, it ought to conclude against the plan, because it would prove the unequal operation of it, and if any saving is to be made by the mode of taxing, the saving should be applied towards our own debt, and not to the payment of the part of a continental burden which Connecticut ought to discharge. It would be impossible to refute in writing all the delusions made use of to force this system through. Those respecting the publick debt, and the benefit of imposts, are the most important, and these I have taken pains to explain. In one instance indeed, the impost does raise money at the direct expense of the seaports. This is when goods are imported subject to a duty, and re-exported without a drawback. Whatever benefit is derived from this source, surely should not be transferred to another state, at least till our own debts are cleared.

Another instance of unequal operation is, that it establishes different degrees of authority in different states, and thus creates different interests. The lands in New-Hampshire having been formerly granted by this state, and afterwards by that state, to private persons, the whole authority of trying titles becomes vested in a continental court, and that state loses a branch of authority, which the others retain, over their own citizens. 4.6.29

I have now gone through two parts of my argument, and have proved the efficiency of the state governments for internal regulation, and the disadvantages of the new system, at least some of the principal. The argument has been much longer than I at first apprehended, or, possibly, I should have been deterred from it. The importance of the question has, however, prevented me from relinquishing it.

Agrippa.

VIII

25 December 1787

To the People.

4.6.30 It has been proved, by indisputable evidence, that power is not the grand principle of union among the parts of a very extensive empire; and that when this principle is pushed beyond the degree necessary for rendering justice between man and man, it debases the character of individuals, and renders them less secure in their persons and property. Civil liberty consists in the consciousness of that security, and is best guarded by political liberty, which is the share that every citizen has in the government. Accordingly all our accounts agree, that in those empires which are commonly called despotick, and which comprehend by far the greatest part of the world, the government is most fluctuating, and property least secure. In those countries insults are borne by the sovereign, which, if offered to one of our governours, would fill us with horrour, and we should think the government dissolving.

4.6.31 The common conclusion from this reasoning is an exceedingly unfair one, that we must then separate, and form distinct confederacies. This would be true if there was no principle to substitute in the room of power. Fortunately there is one. This is commerce.[18] All the states have local advantages, and in a considerable degree separate interests. They are, therefore, in a situation to supply each other's wants. Carolina, for instance, is inhabited by planters, while the Massachusetts is more engaged in commerce and manufactures. Congress has the power of deciding their differences. The most friendly intercourse may therefore be established between them. A diversity of produce, wants and interests, produces commerce, and commerce, where there is a common, equal and moderate authority to preside, produces friendship.

4.6.32 The same principles apply to the connection with the new settlers in the west. Many supplies they want, for which they must look to the older settlements, and the greatness of their crops enables them to make payments. Here, then, we have a bond of union which applies to all parts of the empire, and would continue to operate if the empire comprehended all America.

4.6.33 We are now, in the strictest sense of the terms, a federal republick. Each part has within its own limits the sovereignty over its citizens, while some of the general concerns are committed to Congress. The complaints of the deficiency of the Congressional powers are confined to two articles. They are not able to raise a revenue by taxation, and they have not a complete regulation of the intercourse between us and foreigners. For each of these complaints there is some foundation, but not enough to justify the clamour

which has been raised. Congress, it is true, owes a debt which ought to be paid. A considerable part of it has been paid. Our share of what remains would annually amount to about sixty or seventy thousand pounds. If, therefore, Congress were put in possession of such branches of the impost as would raise this sum in our state, we should fairly be considered as having done our part towards their debt; and our remaining resources, whether arising from impost, excise, or dry tax, might be applied to the reduction of our own debt. The principal of this last amounts to about thirteen hundred thousand pounds, and the interest to between seventy or eighty thousand. This is, surely, too much property to be sacrificed; and it is as reasonable that it should be paid as the continental debt. But if the new system should be adopted, the whole impost, with an unlimited claim to excise and dry tax, will be given to Congress. There will remain no adequate fund for the state debt, and the state will still be subject to be sued on their notes.—This is, then, an article which ought to be limited. We can, without difficulty, pay as much annually as shall clear the interest of our state debt, and our share of the interest on the continental one. But if we surrender the impost, we shall still, by this new constitution, be held to pay our full proportion of the remaining debt, as if nothing had been done. The impost will not be considered as being paid by this state, but by the continent. The federalists, indeed, tell us, that the state debts will all be incorporated with the continental debt, and all paid out of one fund. In this, as in all other instances, they endeavour to support their scheme of consolidation by delusion. Not one word is said in the book in favour of such a scheme, and there is no reason to think it true. Assurances of that sort are easily given, and as easily forgotton. There is an interest in forgetting what is false. No man can expect town debts to be united with that of the state; and there will be as little reason to expect, that the state and continental debts will be united together.

Agrippa.

IX

28 December 1787

To the People.

We come now to the second and last article of complaint against the present confederation, which is, that Congress has not the sole power to regulate the intercourse between us and foreigners. Such a power extends not only to war and peace, but to trade and naturalization. This last article ought never to be given them; for though most of the states may be willing for certain 4.6.34

reasons to receive foreigners as citizens, yet reasons of equal weight may induce other states, differently circumstanced, to keep their blood pure. Pennsylvania has chosen to receive all that would come there. Let any indifferent person judge whether that state in point of morals, education, energy is equal to any of the eastern states; the small state of Rhode-Island only excepted. Pennsylvania in the course of a century has acquired her present extent and population at the expense of religion and good morals. The eastern states have, by keeping separate from the foreign mixtures, acquired, their present greatness in the course of a century and an half, and have preserved their religion and morals.[19] They have also preserved that manly virtue which is equally fitted for rendering them respectable in war, and industrious in peace.

4.6.35 The remaining power for peace and trade might perhaps be safely enough lodged with Congress under some limitations. Three restrictions appear to me to be essentially necessary to preserve the equality of rights to the states, which it is the object of the state governments to secure to each citizen. 1st. It ought not to be in the power of Congress either by treaty or otherwise to alienate part of any state without the consent of the legislature. 2d. They ought not to be able by treaty or other law to give any legal preference to one part above another. 3d. They ought to be restrained from creating any monopolies. Perhaps others may propose different regulations and restrictions. One of these is to be found in the old confederation, and another in the newly proposed plan. The third seems to be equally necessary.

4.6.36 After all that has been said and written on this subject, and on the difficulty of amending our old constitution so as to render it adequate to national purposes, it does not appear that any thing more was necessary to be done, than framing two new articles. By one a limited revenue would be given to Congress with a right to collect it, and by the other a limited right to regulate our intercourse with foreign nations. By such an addition we should have preserved to each state its power to defend the rights of the citizens, and the whole empire would be capable of expanding, and receiving additions without altering its former constitution. Congress, at the same time, by the extent of their jurisdiction, and the number of their officers, would have acquired more respectability at home, and a sufficient influence abroad. If any state was in such a case to invade the rights of the Union, the other states would join in defence of those rights, and it would be in the power of Congress to direct the national force to that object. But it is certain that the powers of Congress over the citizens should be small in proportion as the empire is extended; that, in order to preserve the balance, each state may supply by energy what is wanting in numbers. Congress would be able by such a system as we have proposed to regulate trade with foreigners by such duties as should effectually give the preference to the produce and manufactures of our own country. We should then have a friendly intercourse

established between the states, upon the principles of mutual interest. A moderate duty upon foreign vessels would give an advantage to our own people, while it would avoid all the [dis]advantages arising from a prohibition, and the consequent deficiency of vessels to transport the produce of the southern states.

Our country is at present upon an average a thousand miles long from north to south, and eight hundred broad from the Missisippi to the Ocean. We have at least six millions of white inhabitants, and the annual increase is about two hundred and fifty thousand souls, exclusive of emigrants from Europe. The greater part of our increase is employed in settling the new lands, while the older settlements are entering largely into manufactures of various kinds. It is probable, that the extraordinary exertions of this state in the way of industry for the present year only, exceed in value five hundred thousand pounds. The new settlements, if all made in the same tract of country, would form a large state annually; and the time seems to be literally accomplished when a nation shall be born in a day. Such an immense country is not only capable of yielding all the produce of Europe, but actually does produce by far the greater part of the raw materials. The restrictions on our trade in Europe, necessarily oblige us to make use of those materials, and the high price of labour operates as an encouragement to mechanical improvements. In this way we daily make rapid advancements towards independence in resources as well as in empire. If we adopt the new system of government we shall by one rash vote lose the fruit of the toil and expense of thirteen years, at the time when the benefits of that toil and expense are rapidly increasing. Though the imposts of Congress on foreign trade may tend to encourage manufactures, the excise and dry tax will destroy all the beneficial effects of the impost, at the same time that they diminish our capital. Be careful then to give only a limited revenue, and the limited power of managing foreign concerns. Once surrender the rights of internal legislation and taxation, and instead of being respected abroad, foreigners will laugh at us, and posterity will lament our folly. 4.6.37

Agrippa.

X

1 January 1788

To the People.

Friends and Brethren,

It is a duty incumbent on every man, who has had opportunities for inquiry, to lay the result of his researches on any matter of publick im- 4.6.38

portance before the publick eye. No further apology will be necessary with the generality of my readers, for having so often appeared before them on the subject of the lately proposed form of government. It has been treated with that freedom which is necessary for the investigation of truth, and with no greater freedom. On such a subject, extensive in its nature, and important in its consequences, the examination has necessarily been long, and the topicks treated of have been various. We have been obliged to take a cursory, but not inaccurate view of the circumstances of mankind under the different forms of government to support the different parts of our argument. Permit me now to bring into one view the principal propositions on which the reasoning depends.

4.6.39 It is shewn from the example of the most commercial republick of antiquity, which was never disturbed by a sedition for above seven hundred years, and at last yielded after a violent struggle to a foreign enemy, as well as from the experience of our own country for a century and an half; that the republican, more than any other form of government is made of durable materials. It is shewn from a variety of proof, that one consolidated government is inapplicable to a great extent of country; is unfriendly to the rights both of persons and property, which rights always adhere together; and that being contrary to the interest of the extreme of an empire, such a government can be supported only by power, and that commerce is the true bond of union for a free state. It is shewn from a comparison of the different parts of the proposed plan, that it is such a consolidated government.

4.6.40 By article 3, section 2, Congress are empowered to appoint courts with authority to try civil causes of every kind, and even offences against particular states; by the last clause of article 1, section 8, which defines their legislative powers, they are authorized to make laws for carrying into execution all the "powers vested by this constitution in the government of the United States, or in *any department* or officer thereof;" and by article 6, the judges in every state are to be bound by the laws of Congress. It is therefore a complete consolidation of all the states into one, however diverse the parts of it may be. It is also shewn that it will operate unequally in the different states, taking from some of them a greater share of wealth; that in this last respect it will operate more to the injury of this commonwealth than of any state in the union; and that by reason of its inequality it is subversive of the principles of a free government, which requires every part to contribute an equal proportion. For all these reasons this system ought to be rejected, even if no better plan was proposed in the room of it. In case of a rejection we must remain as we are, with trade extending, resources opening, settlements enlarging, manufactures increasing, and publick debts diminishing by fair payment. These are mighty blessings, and not to be lost by the hasty adoption of a new system. But great as these benefits are, which we derive from our present system, it has been shewn, that they may be increased by giving Congress a limited power to regulate trade, and

assigning to them those branches of the impost on our foreign trade only, which shall be equal to our proportion of their present annual demands. While the interest is thus provided for, the sale of our lands in a very few years will pay the principal, and the other resources of the state will pay our own debt. The present mode of assessing the continental tax is regulated by the extent of landed property in each state. By this rule the Massachusetts has to pay one eighth. If we adopt the new system, we shall surrender the whole of our impost and excise, which probably amount to a third of those duties of the whole continent, and must come in for about a sixth part of the remaining debt. By this means we shall be deprived of the benefit arising from the largeness of our loans to the continent, shall lose our ability to satisfy the just demands on the state. Under the limitations of revenue and commercial regulation contained in these papers, the balance will be largely in our favour; the importance of the great states will be preserved, and the publick creditors both of the continent and state will be satisfied without burdening the people. For a more concise view of my proposal, I have thrown it into the form of a resolve supposed to be passed by the convention which is shortly to set in this town.

"Commonwealth of Massachusetts. 4.6.41

Resolved, That the form of government lately proposed by a federal convention, held in the city of Philadelphia, is so far injurious to the interests of this commonwealth, that we are constrained by fidelity to our constituents to reject it; and we do hereby reject the said proposed form and every part thereof. But in order that the union of these states may, as far as possible, be promoted, and the federal business as little obstructed as may be, we do agree on the part of this commonwealth, that the following addition be made to the present articles of confederation.

"XIV. The United States shall have power to regulate the intercou[r]se 4.6.42 between these states and foreign dominions, under the following restrictions; viz 1st. No treaty, ordinance, or law shall alienate the whole or part of any state, without the consent of the legislature of such state. 2d. The United States shall not by treaty or otherwise give a preference to the ports of one state over those of another; Nor, 3d create any monopolies or exclusive companies; Nor, 4th, extend the privileges of citizenship to any foreigner. And for the more convenient exercise of the powers hereby and by the former articles given, the United S[t]ates shall have authority to constitute judicatories, whether supreme or subordinate, with power to try all piracies and felonies done on the high seas, and also all civil causes in which a foreign state, or subject thereof actually resident in a foreign country and not being British absentees, shall be one of the parties. They shall also have authority to try all causes in which ambassadours shall be concerned. All these trials shall be by jury and in some sea-port town. All imposts levied by Congress on trade shall be confined to foreign produce or foreign manufactures imported, and to foreign ships trading in our harbours,

and all their absolute prohibitions shall be confined to the same articles. All imposts and confiscations shall be to the use of the state in which they shall accrue, excepting in such branches as shall be assigned by any state as a fund for defraying their proportion of the continental. And no powers shall be exercised by Congress but such as are expressly given by this and the former articles. And we hereby authorize our delegates in Congress to sign and ratify an article in the foregoing form and words, without any further act of this state for that purpose, provided the other states shall accede to this proposition on their part on or before the first day of January, which will be in the year of our Lord 1790. All matters of revenue being under the controul of the legislature, we reccommend to the general court of this commonwealth, to devise, as early as may be, such funds arising from such branches of foreign commerce, as shall be equal to our part of the current charges of the continent, and to put Congress in possession of the revenue arising therefrom, with a right to collect it, during such term as shall appear to be necessary for the payment of the principal of their debt, by the sale of the western lands."

4.6.43 By such an explicit declaration of the powers given to Congress, we shall provide for all federal purposes, and shall at the same time secure our rights. It is easier to amend the old confederation, defective as it has been represented, than it is to correct the new form. For with what ever view it was framed, truth constrains me to say, that it is insiduous in its form, and ruinous in its tendency. Under the pretence of different branches of the legislature, the members will in fact be chosen from the same general description of citizens. The advantages of a check will be lost, while we shall be continually exposed to the cabals and corruption of a British election. There cannot be a more eligible mode than the present, for appointing members of Congress, nor more effectual checks provided than our separate state governments, nor any system so little expensive, in case of our adopting the resolve just stated, or even continuing as we are. We shall in that case avoid all the inconvenience of concurrent jurisdictions, we shall avoid the expensive and useless establishments of the Philadelphia proposition, we shall preserve our constitution and liberty, and we shall provide for all such institutions as will be useful. Surely then you cannot hesitate, whether you will chuse freedom or servitude. The object is now well defined. By adopting the form proposed by the convention, you will have the derision of foreigners, internal misery, and the anathemas of posterity. By amending the present confederation, and granting limited powers to Congress, you secure the admiration of strangers, internal happiness, and the blessings and prosperity of all succeeding generations. Be wise then, and by preserving your freedom, prove, that Heaven bestowed it not in vain. Many will be the efforts to delude the convention. The mode of judging is itself suspicious, as being contrary to the antient and established usage of the commonwealth. But since this mode is adopted, we trust, that the numbers [members?] of

that venerable assembly will not so much regard the greatness of their power, as the sense and interest of their constituents. And they will do well to remember that even a mistake in adopting it, will be destructive, while no evils can arise from a total, and much less, probably, from such a partial rejection as we have proposed.

I have now gone through my reasonings on this momentous subject, and 4.6.44
have stated the facts and deductions from them, which you will verify for yourselves. Personal interest was not my object, or I should have pursued a different line of conduct. Though I conceived that a man who owes allegiance to the state is bound, on all important occasions, to propose such inquiries as tend to promote the publick good; yet I did not imagine it to be any part of my duty to present myself to the fury of those, who appear to have other ends in view. For this cause, and for this only, I have chosen a feigned signature. At present all the reports concerning the writer of these papers are merely conjectural. I should have been ashamed of my system if it had needed such feeble support as the character of individuals. It stands on the firm ground of the experience of mankind. I cannot conclude this long disquisition better than with a caution derived from the words of inspiration. *Discern the things of your peace now in the days thereof, before they be hidden from your eyes.*[20]

Agrippa.

XI

8 January 1788

To the People.

My last Address contained the outlines of a system fully adequate to all the 4.6.45
useful purposes of the union. Its object is to raise a sufficient revenue from the foreign trade, and the sale of our publick lands, to satisfy all the publick exigencies, and to encourage, at the same time, our internal industry and manufactures. It also secures each state in its own separate rights, while the continental concerns are thrown into the general department. The only deficiencies that I have been able to discover in the plan, and in the view of federalists they are very great ones, are, that it does not allow the interference of Congress in the domestick concerns of the state, and that it does not render our national councils so liable to foreign influence. The first of these articles tends to guard us from that infinite multiplication of officers which the report of the Convention of Philadelphia proposes. With regard to the second, it is evidently not of much importance to any foreign nation to purchase, at a very high price, a majority of votes in an assembly, whose

members are continually exposed to a recall. But give those members a right to sit six, or even two, years, with such extensive powers as the new system proposes, and their friendship will be well worth a purchase. This is the only sense in which the Philadelphia system will render us more respectable in the eyes of foreigners. In every other view they lose their respect for us, as it will render us more like their own degraded models. It is a maxim with them, that every man has his price. If, therefore we were to judge of what passes in the hearts of the federalists when they urge us, as they continually do, *to be like other nations,* and when they assign mercenary motives to the opposers of their plan, we should conclude very fairly, that themselves wish to be provided for at the publick expense. However that may be, if we look upon the men we shall find some of their leaders to have formed pretty strong attachments to foreign nations. Whether those attachments arose from their being educated under a royal government, from a former unfortunate mistake in politicks, or from the agencies for foreigners, or any other cause, is not in my province to determine. But certain it is, that some of the principal fomenters of this plan have never shewn themselves capable of that generous system of policy which is founded in the affections of freemen. Power and high life are their idols, and national funds are necessary to support them.

4.6.46 Some of the principal powers of Europe have already entered into treaties with us, and that some of the rest have not done it, is not owing, as is falsely pretended, to the want of power in Congress. Holland never found any difficulty of this kind from the multitude of sovereignties in that country, which must all be consulted on such an occasion. The resentment of Great Britain for our victories in the late war has induced that power to restrain our intercourse with their subjects. Probably an hope, the only solace of the wretched, that their affairs would take a more favourable turn on this continent, has had some influence on their proceedings. All their restrictions have answered the end of securing our independence by driving us into many valuable manufactures. Their own colonies in the mean time have languished for want of an intercourse with these states. The new settlement in Nova Scotia has miserably decayed, and the West India Islands have suffered for want of our supplies, and by the loss of our market. This has affected the revenue; and however contemptuously some men may affect to speak of our trade, the supply of six millions of people is an object worth the attention of any nation upon earth. Interest in such a nation as Britain will surmount their resentment. However their pride may be stung, they will pursue after wealth. Increase of revenue to a nation overwhelmed with a debt of near *two hundred and ninety millions* sterling is an object to which little piques must give way; and there is no doubt that their interest consists in securing as much of our trade as they can.

4.6.47 These are topicks from which are drawn some of the most plausible reasons that have been given by the federalists in favour of their plan, as

derived from the sentiments of foreigners. We have weighed them and found them wanting. That they had not themselves full confidence in their own reasons at Philadelphia is evident from the method they took to bias the state Convention. Mess'rs Wilson and M'Kean, two Scottish names, were repeatedly worsted in the argument. To make amends for their own incapacity, the gallery was filled with a rabble, who shouted their applause, and these heroes of aristocracy were not ashamed, though modesty is their national virtue, to vindicate such a violation of decency:[21] Means not less criminal, but not so flagrantly indecent, have been frequently mentioned among us to secure a majority. But those who vote for a price, can never sanctify wrong, and treason will still retain its deformity.

Agrippa.

XII[22]

11 January 1788

To the Massachusetts Convention.

Gentlemen,

Suffer an individual to lay before you his contemplations on the great subject that now engages your attention. To you it belongs, and may Heaven direct your judgment, to decide on the happiness of all future generations as well as the present. 4.6.48

It is universally agreed, that the object of every just government is to render the people happy, by securing their persons and possessions from wrong. To this end it is necessary that there should be local laws and institutions; for a people inhabiting various climates will unavoidably have local habits and different modes of life, and these must be consulted in making the laws. It is much easier to adapt the laws to the manners of the people, than to make manners conform to laws. The idle and dissolute inhabitants of the south, require a different regimen from the sober and active people of the north. Hence, among other reasons, is derived the necessity of local governments, who may enact, repeal, or alter regulations as the circumstances of each part of the empire may require. This would be the case, even if a very great state was to be settled at once. But it becomes still more needful, when the local manners are formed, and usages sanctified by the practice of a century and an half. In such a case, to attempt to reduce all to one standard, is absurd in itself, and cannot be done but upon the principle of power, which debases the people, and renders them unhappy, till all dignity of character is put away. Many circumstances render us an essentially different people from the inhabitants of the southern states. The

unequal distribution of property, the toleration of slavery, the ignorance and poverty of the lower classes, the softness of the climate, and dissoluteness of manners, mark their character. Among us, the care that is taken of education, small and nearly equal estates, equality of rights, and the severity of the climate, renders the people active, industrious and sober. Attention to religion and good morals is a distinguishing trait in our character. It is plain, therefore, that we require for our regulation laws, which will not suit the circumstances of our southern brethren, and the laws made for them would not apply to us.[23] Unhappiness would be the uniform product of such laws; for no state can be happy, when the laws contradict the general habits of the people, nor can any state retain its freedom, while there is a power to make and enforce such laws. We may go further, and say, that it is impossible for any single legislature so fully to comprehend the circumstances of the different parts of a very extensive dominion, as to make laws adapted to those circumstances. Hence arises in most nations of extensive territory, the necessity of armies, to cure the defect of the laws. It is actually under the pressure of such an absurd government, that the Spanish provinces have groaned for near three centuries; and such will be our misfortune and degradation, if we ever submit to have all the business of the empire done by one legislature. The contrary principle of local legislation by the representatives of the people, who alone are to be governed by the laws, has raised us to our present greatness; and an attempt on the part of Great-Britain, to invade this right, brought on the revolution, which gave us a separate rank among the nations. We even declared, that we would not be represented in the national legislature, because one assembly was not adequate to the purposes of internal legislation and taxation.[24]

Agrippa.

(*Remainder next Tuesday.*)

14 January 1788

(*concluded from our last*)[25]

To the Massachusetts Convention.

Gentlemen,

4.6.49 The question then arises, what is the kind of government best adapted to the object of securing our persons and possessions from violence? I answer, a FEDERAL REPUBLICK. By this kind of government each state reserves to itself the right of making and altering its laws for internal regulation, and the right of executing those laws without any external restraint, while the general concerns of the empire are committed to an assembly of delegates, each

accountable to his own constituents. This is the happy form under which we live, and which seems to mark us out as a people chosen of God. No instance can be produced of any other kind of government so stable and energetick as the republican. The objection drawn from the Greek and Roman states does not apply to the question.[26] Republicanism appears there in its most disadvantageous form. Arts and domestick employments were generally commited to slaves, while war was almost the only business worthy of a citizen. Hence arose their internal dissensions. Still they exhibited proofs of legislative wisdom and judicial integrity hardly to be found among their monarchick neighbours. On the other hand we find Carthage cultivating commerce, and extending her dominions for the long space of seven centuries, during which term the internal tranquillity was never disturbed by her citizens. Her national power was so respectable, that for a long time it was doubtful whether Carthage or Rome should rule. In the form of their government they bore a strong resemblance to each other. Rome might be reckoned a free state for about four hundred and fifty years. We have then the true line of distinction between those two nations, and a strong proof of the hardy materials which compose a republican government. If there was no other proofs we might with impartial judges risk the issue upon this alone. But our proof rests not here. The present state of Europe, and the vigour and tranquillity of our own governments, after experiencing this form for a century and an half, are decided proofs in favour of those governments which encourage commerce. A comparison of our own country, first with Europe and then with the other parts of the world, will prove, beyond a doubt, that the greatest share of freedom is enjoyed by the citizens, so much more does commerce flourish. The reason is, that every citizen has an influence in making the laws, and thus they are conformed to the general interests of the state; but in every other kind of government they are frequently made in favour of a part of the community at the expense of the rest.

The argument against republicks, as it is derived from the Greek and Roman states, is unfair. It goes on the idea that no other government is subject to be disturbed. As well might we conclude, that a limited monarchy is unstable, because, that under the feudal system, the nobles frequently made war upon their king, and disturbed the publick peace. We find, however, in practice, that limited monarchy is more friendly to commerce, because more friendly to the rights of the subject, than an absolute government; and that it is more liable to be disturbed than a republick, because less friendly to trade and the rights of individuals. There cannot, from the history of mankind, be produced an instance of rapid growth in extent, in numbers, in arts, and in trade, that will bear any comparison with our country. This is owing to what the friends of the new system, and the enemies of the revolution, for I take them to be nearly the same, would term *our extreme liberty*. Already, have our ships visited every part of the world, and brought us their commodities in greater perfection, and at a more moderate price, than we

4.6.50

ever before experienced. The ships of other nations crowd to our ports, seeking an intercourse with us. All the estimates of every party make the balance of trade for the present year to be largely in our favour. Already have some very useful, and some elegant manufactures got established among us, so that our country every day is becoming independent in her resources. Two thirds of the continental debt has been paid since the war, and we are in alliance with some of the most respectable powers of Europe. The western lands, won from Britain by the sword, are an ample fund for the principal of all our publick debts; and every new sale excites that manly pride which is essential to national virtue. All this happiness arises from the freedom of our institutions and the limitted nature of our government; a government that is respected from principles of affection, and obeyed with alacrity. The sovereigns of the old world are frequently, though surrounded with armies, treated with insult; and the despotick monarchies of the east, are the most fluctuating, oppressive and uncertain governments of any form hitherto invented. These considerations are sufficient to establish the excellence of our own form, and the goodness of our prospects.

4.6.51 Let us now consider the probable effects of a consolidation of the separate states into one mass; for the new system extends so far. Many ingenious explanations have been given of it; but there is this defect, that they are drawn from maxims of the common law, while the system itself cannot be bound by any such maxims. A legislative assembly has an inherent right to alter the common law, and to abolish any of its principles, which are not particularly guarded in the constitution. Any system therefore which appoints a legislature without any reservation of the rights of individuals, surrender[s] all power in every branch of legislation to the government. The universal practice of every government proves the justness of this remark; for in every doubtful case it is an established rule to decide in favour of authority. The new system is, therefore, in one respect at least, essentially inferiour to our state constitutions. There is no bill of rights, and consequently a continental law may controul any of those principles, which we consider at present as sacred; while not one of those points, in which it is said that the separate governments misapply their power, is guarded. Tender acts and the coinage of money stand on the same footing of a consolidation of power. It is a mere fallacy, invented by the deceptive powers of mr. Wilson, that what rights are not given are reserved. The contrary has already been shewn.[27] But to put this matter of legislation out of all doubt, let us compare together some parts of the book; for being an independent system, this is the only way to ascertain its meaning.

4.6.52 In article III, section 2, it is declared, that "the judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made or which shall be made under their authority." Among the cases arising under this new constitution are reckoned, "all controversies between citizens of different states," which include all kinds

of civil causes between those parties. The giving Congress a power to appoint courts for such a purpose is as much, there being no stipulation to the contrary, giving them power to legislate for such causes, as giving them a right to raise an army, is giving them a right to direct the operations of the army when raised. But it is not left to implication. The last clause of article I, section 8, expressly gives them power "to make all laws which shall be needful and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof." It is, therefore, as plain as words can make it, that they have a right by this proposed form to legislate for all kinds of causes respecting property between citizens of different states. That this power extends to all cases between citizens of the same state, is evident, from the sixth article, which declares all continental laws and treaties to be the *supreme law* of the land, and that all state judges are bound thereby, "*any thing in the constitution or laws of any state to the contrary notwithstanding.*" If this is not binding the judges of the separate states in their own office, by continental rules, it is perfect nonsense. There is then a complete consolidation of the legislative powers in all cases respecting property. This power extends to all cases between a state and citizens of another state. Hence a citizen, possessed of the notes of another state, may bring his action, and there is no limitation that the execution shall be levied on the publick property of the state but the property of individuals is liable. This is a foundation for endless confusion and discord. This, right to try causes between a state and citizens of another state, involves in it all criminal causes; and a man who has accidentally transgressed the laws of another state, must be transported, with all his witnesses, to a third state, to be tried. He must be ruined to prove his innocence. These are necessary parts of the new system, and it will never be complete till they are reduced to practice. They effectually prove a consolidation of the states, and we have before shewn the ruinous tendency of such a measure.[28]

By sect. 8, of article 1, Congress are to have the unlimitted right to regulate commerce, external and *internal,* and may therefore create monopolies which have been universally injurious to all the subjects of the countries that have adopted them, excepting the monopolists themselves. They have also the unlimited right to imposts and all kinds of taxes as well to levy as to collect them.[29] They have indeed very nearly the same powers claimed formerly by the British parliament. Can we have so soon forgot our glorious struggle with that power, as to think a moment of surrendering it now? It makes no difference in principle whether the national assembly was elected for seven years or for six. In both cases we should vote to great disadvantage, and therefore ought never to agree to such an article. Let us make provision for the payment of the interest of our part of the debt, and we shall be fairly acquitted. Let the fund be an impost on our foreign trade, and we shall encourage our manufactures. But if we surrender the un- 4.6.53

limitted right to regulate trade and levy taxes, imposts will oppress our foreign trade for the benefit of other states, while excises and taxes will discourage our internal industry. The right to regulate trade, without any limitations, will, as certainly as it is granted, transfer the trade of this state to Pennsylvania.[30] That will be the seat of business and of wealth, while the extremes of the empire will, like Ireland and Scotland, be drained to fatten an overgrown capital. Under our present equal advantages, the citizens of this state come in for their full share of commercial profits. Surrender the rights of taxation and commercial regulation, and the landed states at the southward will all be interested in draining our resources; for whatever can be got by impost on our trade and excises on our manufactures, will be considered as so much saved to a state inhabited by planters. All savings of this sort ought surely to be made in favour of our own state; and we ought never to surrender the unlimitted powers of revenue and trade to uncommercial people. If we do, the glory of the state from that moment departs, never to return.

4.6.54 The safety of our constitutional rights consists in having the business of government lodged in different departments, and in having each part well defined. By this means each branch is kept within the constitutional limits. Never was a fairer line of distinction than what may be easily drawn between the continental and state governments. The latter provide for all cases, whether civil or criminal, that can happen ashore, because all such causes must arise within the limits of some state. Transactions between citizens may all be fairly included in this idea, even although they should arise in passing by water from one state to another. But the intercourse between us and foreign nations, properly forms the department of Congress. They should have the power of regulating trade under such limitations as should render their laws equal. They should have the right of war and peace, saving the equality of rights, and the territory of each state. But the power of naturalization and internal regulation should not be given them. To give my scheme a more systematick appearance, I have thrown it into the form of a resolve, which is submitted to your wisdom for amendment, but not as being perfect.

4.6.55 "Resolved, that the form of government proposed by the federal convention, lately held in Philadelphia, be rejected on the part of this commonwealth; and that our delegates in Congress are hereby authorised to propose on the part of this commonwealth, and, if the other states for themselves agree thereto, to sign an article of confederation, as an addition to the present articles, in the form following, provided such agreement be made on or before the first day of January, which will be in the year of our Lord 1790; the said article shall have the same force and effect as if it had been inserted in the original confederation, and is to be construed consistently with the clause in the former articles, which restrains the United States from exercising such powers as are not expressly given.

"XIV. The United States shall have power to regulate, whether by treaty, 4.6.56
ordinance, or law, the intercourse between these states and foreign dominions and countries, under the following restrictions. No treaty, ordinance, or law shall give a preference to the ports of one state over those of another; nor 2d. impair the territory or internal authority of any state; nor 3d. create any monopolies or exclusive companies; nor 4th. naturalise any foreigners. All their imposts and prohibitions shall be confined to foreign produce and manufactures imported, and to foreign ships trading in our harbours. All imposts and confiscations shall be to the use of the state where they shall accrue, excepting only such branches of impost, as shall be assigned by the separate states to Congress for a fund to defray the interest of their debt, and their current charges. In order the more effectually to execute this and the former articles, Congress shall have authority to appoint courts, supreme & subordinate, with power to try all crimes, not relating to state securities, between any foreign state, or subject of such state, actually residing in a foreign country, and not being an absentee or person who has alienated himself from these states on the one part, and any of the United States or citizens thereof on the other part; also all causes in which foreign ambassadours or other foreign ministers resident here shall be immediately concerned, respecting the jurisdiction or immunities only. And the Congress shall have authority to execute the judgment of such courts by their own affairs. Piracies and felonies committed on the high seas shall also belong to the department of Congress for them to define, try, and punish, in the same manner as the other causes shall be defined, tried, and determined. All the before-mentioned causes shall be tried by jury and in some sea-port town. And it is recommended to the general court at their next meeting to provide and put Congress in possession of funds arising from foreign imports and ships sufficient to defray our share of the present annual expenses of the continent."

Such a resolve explicitly limitting the powers granted is the farthest we 4.6.57
can proceed with safety. The scheme of accepting the report of the Convention, and amending it afterwards, is merely delusive. There is no intention among those who make the proposition to amend it at all. Besides, if they have influence enough to get it accepted in its present form, there is no probability, that they will consent to an alteration when possessed of an unlimited revenue. It is an excellence in our present confederation, that it is extremely difficult to alter it. An unanimous vote of the states is required. But this newly proposed form is founded in injustice, as it proposes that a fictitious consent of only nine states shall be sufficient to establish it. Nobody can suppose that the consent of a state is any thing more than a fiction, in the view of the federalists, after the mobbish influence used over the Pennsylvania convention. The two great leaders of the plan, with a modesty of Scotsmen, placed a rabble in the gallery to applaud their speeches, and thus supplied their want of capacity in the argument. Repeatedly were Wil-

son and M'Kean worsted in the argument by the plain good sense of Findly and Smilie. But reasoning or knowledge had little to do with the federal party. Votes were all they wanted by whatever means obtained. Means not less criminal have been mentioned among us. But votes that are bought can never justify a treasonable conspiracy. Better, far better, would it be to reject the whole, and remain in possession of present advantages. The authority of Congress to decide disputes between states is sufficient to prevent their recurring to hostility: and their different situation, wants and produce is a sufficient foundation for the most friendly intercourse. All the arts of delusion and legal chicanery will be used to elude your vigilance, and obtain a majority. But keeping the constitution of the state, and the publick interest in view, will be your safety.

(We are obliged contrary to our intention, to postpone the remainder of Agrippa till our next.)

18 January 1788

(Concluded from our last.)

To the Massachusetts Convention.

Gentlemen,

4.6.58 To tell us that we ought to look beyond local interests, and judge for the good of the empire, is sapping the foundation of a free state.[31] The first principle of a just government is, that it shall operate equally. The report of the convention is extremely unequal. It takes a larger share of power from some, and from others, a larger share of wealth. The Massachusetts will be obliged to pay near three times their present proportion towards continental charges. The proportion is now ascertained by the quantity of landed property, then it will be by the number of persons. After taking the whole of our standing revenue, by impost and excise, we must still be held to pay a sixth part of the remaining debt. It is evidently a contrivance to help the other states at our expense. Let us then be upon our guard, and do no more than the present confederation obliges. While we make that our beacon we are safe. It was framed by men of extensive knowledge and enlarged ability, at a time when some of the framers of the new plan were hiding in the forests to secure their precious persons. It was framed by men, who were always in favour of a limitted government, and whose endeavours Heaven has crowned with success. It was framed by men, whose idols were not power and high life, but industry and constitutional liberty, and who are now in opposition to this new scheme of oppression. Let us then cherish the old confederation like the apple of our eye. Let us confirm it by such limitted

powers to Congress, and such an enlarged intercourse, founded on commerce and mutual want, with the other states, that our union shall outlast time itself. It is easier to prevent an evil than to cure it. We ought therefore to be cautious of innovations. The intrigues of interested politicians will be used to seduce even the elect. If the vote passes in favour of the plan, the constitutional liberty of our country is gone forever. If the plan should be rejected, we always have it in our power, by a fair vote of the people at large, to extend the authority of Congress. This ought to have been the mode pursued. But our antagonists were afraid to risk it. They knew that the plan would not bear examining. Hence we have seen them insulting all who were in opposition to it, and answering arguments only with abuse. They have threatened and they have insulted the body of the people. But I may venture to appeal to any man of unbiassed judgment, whether his feelings tell him, that there is any danger at all in rejecting the plan. I ask not the palsied or the jaundiced, nor men troubled with bilious or nervous affections, for they can see danger in every thing. But I apply to men who have no personal expectations from a change, and to men in full health. The answer of all such men will be, that never was a better time for deliberation. Let us then, while we have it in our power, secure the happiness and freedom of the present and future ages. To accept of the report of the convention, under the idea that we can alter it when we please, will be sporting with fire-brands[,] arrows and death. It is a system which must have an army to support it, and there can be no redress but by a civil war. If, as the federalists say, there is a necessity of our receiving it, for heaven's sake let our liberties go without our making a formal surrender. Let us at least have the satisfaction of protesting against it, that our own hearts may not reproach us for the meanness of deserting our dearest interests.

Our present system is attended with the inestimable advantage of preventing unnecessary wars. Foreign influence is assuredly smaller in our publick councils, in proportion as the members are subject to be recalled. At present, their right to sit continues no longer than their endeavours to secure the publick interest. It is therefore not an object for any foreign power to give a large price for the friendship of a delegate in Congress. If we adopt the new system, every member will depend upon thirty thousand people, mostly scattered over a large extent of country, for his election. Their distance from the seat of government will make it extremely difficult for the electors to get information of his conduct. If he is faithful to his constituents, his conduct will be misrepresented, in order to defeat his influence at home. Of this we have a recent instance, in the treatment of the dissenting members of the late federal convention. Their fidelity to their constituents was their whole fault. We may reasonably expect similar conduct to be adopted, when we shall have rendered the friendship of the members valuable to foreign powers, by giving them a secure seat in Congress. We shall too have all the intrigues, cabals and bribery practised, which are usual at elections in

4.6.59

Great-Britain. We shall see and lament the want of publick virtue; and we shall see ourselves bought at a publick market, in order to be sold again to the highest bidder. We must be involved in all the quarrels of European powers, and oppressed with expense, merely for the sake of being like the nations round about us. Let us then, with the spirit of freemen, reject the offered system, and treat as it deserves the proposition of men who have departed from their commission; and let us deliver to the rising generation the liberty purchased with our blood.

Agrippa.

XIII

22 January 1788

To the Massachusetts Convention.

Gentlemen,

4.6.60 Truly deplorable, in point of argument, must be that cause, in whose defence persons of acknowledged learning and ability can say nothing pertinent. When they undertake to prove that the person elected is the safest person in the world to controul the exercise of the elective powers of his constituents, we know what dependence is to be had upon their reasonings. Yet we have seen attempts to shew, that the fourth section of the proposed constitution, is an additional security to our rights. It may be such in the view of a Rhode-Island family (I think that state is quoted) who have been for some time in the minority: but it is extraordinary, that an enlightened character in the Massachusetts should undertake to prove, that, from a single instance of abuse in one state, another state ought to resign its liberty.[32] Can any man, in the free exercise of his reason, suppose, that he is perfectly represented in the legislature, when that legislature may at pleasure alter the time, manner, and place of election. By altering the time they may continue a representative during his whole life; by altering the manner, they may fill up the vacancies by their own votes without the consent of the people; and by altering the place, all the elections may be made at the seat of the federal government. Of all the powers of government perhaps this is the most improper to be surrendered. Such an article at once destroys the whole check which the constituents have upon their rulers. I should be less zealous upon this subject, if the power had not been often abused. The senate of Venice, the regencies of Holland, and the British parliament have all abused it. The last have not yet perpetuated themselves; but they have availed themselves repeatedly of popular commotions to continue in power. Even at this day we find attempts to vindicate the usurpation by which they con-

tinued themselves from three to seven years. All the attempts, and many have been made, to return to triennial elections, have proved abortive. These instances are abundantly sufficient to shew with what jealousy this right ought to be guarded. No sovereign on earth need be afraid to declare his crown elective, while the possessor has the right to regulate the time, manner, and place of election. It is vain to tell us, that the proposed government guarantees to each state a republican form. Republicks are divided into democraticks, and aristocraticks. The establishment of an order of nobles, in whom should reside all the power of the state, would be an aristocratick republick. Such has been for five centuries the government of Venice, in which all the energies of government, as well as of individuals, have been cramped by a distressing jealousy that the rulers have of each other. There is nothing of that generous, manly confidence that we see in the democratick republicks of our own country. It is a government of force, attended with perpetual fear of that force. In Great-Britain, since the lengthening of parliaments, all our accounts agree, that their elections are a continued scene of bribery, riot and tumult; often a scene of murder. These are the consequences of choosing seldom, and for extensive districts. When the term is short, nobody will give an high price for a seat. It is an insufficient answer to these objections to say, that there is no power of government but may sometimes be applied to bad purposes. Such a power is of no value unless it is applied to a bad purpose. It ought always to remain with the people. The framers of our state constitution were so jealous of this right, that they fixed the days for election, meeting and dissolving of the legislature, and of the other officers of government. In the proposed constitution not one of these points is guarded, though more numerous and extensive powers are given them than to any state legislature upon the continent. For Congress is at present possessed of the direction of the national force, and most other national powers, and in addition to them are to be vested with all the powers of the individual states, unrestrained by any declarations of right. If these things are for the security of our constitutional liberty, I trust we shall soon see an attempt to prove that the government by an army will be more friendly to liberty than a system founded in consent, and that five states will make a majority of thirteen. The powers of controuling elections, of creating exclusive companies in trade, of internal legislation and taxations ought, upon no account, to be surrendered. I know it is a common complaint, that Congress want more power. But where is the limitted government that does not want it? Ambition is in a governour what money is to a misar—he can never accumulate enough. But it is as true in politicks as in morals, he that is unfaithful in little, will be unfaithful also in much. He who will not exercise the powers he has, will never properly use more extensive powers. The framing entirely new systems, is a work that requires vast attention; and it is much easier to guard an old one. It is infinitely better to reject one that is unfriendly to liberty, and rest for a while satisfied with a

system that is in some measure defective, than to set up a government unfriendly to the rights of states, and to the rights of individuals—one that is undefined in its powers and operations. Such is the government proposed by the federal convention, and such, we trust, you will have the wisdom and firmness to reject.

Agrippa.

XIV

25 January 1788

To the Massachusetts Convention.

Gentlemen,

4.6.61 That the new system, proposed for your adoption, is not founded in argument, but in party spirit, is evident from the whole behaviour of that party, who favour it. The following is a short, but genuine specimen of their reasoning. The South-Carolina legislature have established an unequal representation, and will not alter it: therefore Congress should be invested with an unrestrained power to alter the time, manner and place of electing members into that body. Directly the contrary position should have been inferred. An elected assembly made an improper use of their right to controul elections, therefore such a right ought not to be lodged with them. It will be abused in ten instances, for one in which it will serve any valuable purpose. It is said also that the Rhode Island assembly *intend* to abuse their power in this respect, therefore we should put Congress in a situation to abuse theirs. Surely this is not a kind of reasoning that, in the opinion of any indifferent person, can vindicate the fourth section. Yet we have heard it publickly advanced as being conclusive.

4.6.62 The unlimitted power over trade, domestick as well as foreign, is another power that will more probably be applied to a bad than to a good purpose. That our trade was for the last year much in favour of the commonwealth is agreed by all parties. The freedom that every man, whether his capital is large or small, enjoys, of entering into any branch that pleases him, rouses a spirit of industry and exertion, that is friendly to commerce. It prevents that stagnation of business which generally precedes publick commotions. Nothing ought to be done to restrain this spirit. The unlimitted power over trade, however, is exceedingly apt to injure it.

4.6.63 In most countries of Europe, trade has been confined by exclusive charters. Exclusive companies are, in trade, pretty much like an aristocracy in government, and produce nearly as bad effects. An instance of it we have ourselves experienced. Before the revolution, we carried on no direct trade

to India. The goods imported from that country, came to us through the medium of an exclusive company. Our trade in that quarter is now respectable, and we receive several kinds of their goods at about half the former price.—But the evil of such companies does not terminate there. They always, by the greatness of their capital, have an undue influence on the government.

In a republick, we ought to guard, as much as possible, against the predominance of any particular interest. It is the object of government to protect them all. When commerce is left to take its own course, the advantages of every class will be nearly equal.—But when exclusive privileges are given to any class, it will operate to the weakening of some other class connected with them. 4.6.64

Agrippa.

(Remainder next Tuesday.)

29 January[33]

(Concluded from our last.)

To the Massachusetts Convention

Gentlemen,

This appears to be the universal effect of such establishments. A point of such magnitude ought, then, to be particularly guarded. In some respects it is beneficial that a system of commerce should be established by national authority. But if it is found, as it will upon examination, that most governments establish those companies, from occasional and temporal motives, and that they produce ill effects on government and on trade; the power ought in this respect to be restrained. As we are situated at one extreme of the empire, two or three such companies would annihilate the importance of our seaports, by transferring the trade to Philadelphia. With the decay of trade is connected the depreciation of lands and estates for want of a market for the produce. At present our exports are great and our manufactures are every day rising in importance. It seems to be agreed on all sides, that from the port of Boston only the balance was last year as much as an hundred & fifty thousand pounds in favour of the state; a comparison of that and former years is far from proving the distressed state of commerce. Complaints in that respect are about as well founded as in most others. They are made to serve a present purpose, and when that is accomplished, there is no redress for the disappointment of the publick expectation. It becomes us then to consider well of the powers before we surrender them. There is no recovering them when once given. It is vain to flatter ourselves with the idea, that 4.6.65

three quarters of the members of the new government will ever be for restraining their own power. If it was so easy as the federalists pretend to procure an alteration of the system after its adoption, I think, that it is a circumstance not much in its favour. In order to be perfect a constitution should be permanent. The new system sets out with a violation of the compact between the states. While it is in discussion, we ought to consider, that injustice never can be the basis of a good government. I have met with an account of one government uniformly supported by that principle, and I do not wish even my antagonists to become the subjects of that kingdom.

4.6.66 In answer to the favourite remark of the federalists, that what is not given is reserved, it is sufficient to reply, that the framers of the proposed constitution have themselves thought it necessary to make an explicit reservation of the power to grant titles of nobility.[34] Why did they reserve this point, if it would not otherwise have been given up? The conversation of the party is in direct opposition to any design ever to alter the system in favour of the liberties of the people. It is said that a constitution is itself a bill of rights. The fallacy of this position is easily shewn, but the length of this paper makes it necessary to postpone that part of the argument. At present we shall only observe, that a constitution does not necessarily point out any other dependencies than of the parts of the government upon each other, and not those between the government and people. Has Venice no constitution? Yet the people have no share in the government.

Agrippa.

XV

29 January 1788[35]

To the Massachusetts Convention.

Gentlemen,

4.6.67 As it is essentially necessary to the happiness of a free people, that the constitution of government should be established in principles of truth, I have endeavoured, in a series of papers, to discuss the proposed form, with that degree of freedom which becomes a faithful citizen of the commonwealth. It must be obvious to the most careless observer, that the friends of the new plan appear to have nothing more in view than to establish it by a popular current, without any regard to the truth of its principles. Propositions, novel, erroneous and dangerous, are boldly advanced to support a system, which does not appear to be founded in, but in every instance to contradict, the experience of mankind. We are told, that a constitution is in itself a bill of rights; that all power not expressly given is reserved; that no

powers are given to the new government which are not already vested in the state governments; and that it is for the security of liberty that the persons elected should have the absolute controul over the time, manner and place of election. These, and an hundred other things of the like kind, though they have gained the hasty assent of men, respectable for learning and ability, are false in themselves, and invented merely to serve a present purpose. This will, I trust, clearly appear from the following considerations.

It is common to consider man at first as in a state of nature, separate from all society. The only historical evidence, that the human species ever actually existed in this state, is derived from the book of Gen. There, it is said, that Adam remained a while alone. While the whole species was comprehended in his person was the only instance in which this supposed state of nature really existed. Ever since the completion of the first pair, mankind appear as natural to associate with their own species, as animals of any other kind herd together. Wherever we meet with their settlements, they are found in clans. We are therefore justified in saying, that a state of society is the natural state of man. Wherever we find a settlement of men, we find also some appearance of government. The state of government is therefore as natural to mankind as a state of society. Government and society appear to be co-eval. The most rude and artless form of government is probably the most ancient. This we find to be practised among the Indian tribes in America. With them the whole authority of government is vested in the whole tribe. Individuals depend upon their reputation of valour and wisdom to give them influence. Their government is genuinely democratical. This was probably the first kind of government among mankind, as we meet with no mention of any other kind, till royalty was introduced in the person of Nimrod. Immediately after that time, the Asiatick nations seem to have departed from the simple democracy, which is still retained by their American brethren, and universally adopted the kingly form. We do indeed meet with some vague rumors of an aristocracy in India so late as the time of Alexander the great. But such stories are altogether uncertain and improbable. For in the time of Abraham, who lived about sixteen hundred years before Alexander, all the little nations mentioned in the Mosaick history appear to be governed by kings. It does not appear from any accounts of the Asiatick kingdoms that they have practised at all upon the idea of a limitted monarchy. The whole power of society has been delegated to the kings; and though they may be said to have constitutions of government, because the succession to the crown is limitted by certain rules, yet the people are not benefitted by their constitutions, and enjoy no share of civil liberty. The first attempt to reduce republicanism to a system, appears to be made by Moses when he led the Israelites out of Egypt. This government stood a considerable time, about five centuries, till in a frenzy the people demanded a king, that they might resemble the nations about them. They were dissatisfied with their judges, and instead of changing the administration, they madly

4.6.68

changed their constitution. However they might flatter themselves with the idea, that an high spirited people could get the power back again when they pleased; they never did get it back, and they fared like the nations about them. Their kings tyrannized over them for some centuries, till they fell under a foreign yoke. This is the history of that nation. With a change of names, it describes the progress of political changes in other countries. The people are dazzled with the splendour of distant monarchies, and a desire to share their glory induces them to sacrifice their domestick happiness.

4.6.69 From this general view of the state of mankind it appears, that all the power of government originally reside in the body of the people; and that when they appoint certain persons to administer the government, they delegate all the powers of government not expressly reserved. Hence it appears, that a constitution does not in itself imply any more than a declaration of the relation which the different parts of the government bear to each other, but does not in any degree imply security to the rights of individuals. This has been the uniform practice. In all doubtful cases the decision is in favour of the government. It is therefore impertinent to ask by what right government exercises powers not expressly delegated. Mr. Wilson, the great oracle of federalism, acknowledges, in his speech to the Philadelphians, the truth of these remarks, as they respect the state governments, but attempts to set up a distinction between them and the continental government.[36] To any body who will be at the trouble to read the new system, it is evidently in the same situation as the state constitutions now possess. It is a compact among the *people* for the purposes of government, and not a compact between states. It begins in the name of the people and not of the states.

4.6.70 It has been shown in the course of this paper, that when people institute government, they of course delegate all rights not expressly reserved. In our state constitution the bill of rights consists of thirty articles. It is evident therefore that the new constitution proposes to delegate greater powers than are granted to our own government, sanguine as the person was who denied it. The complaints against the separate governments, even by the friends of the new plan, are not that they have not power enough, but that they are disposed to make a bad use of what power they have. Surely then they reason badly, when they purpose to set up a government possess'd of much more extensive powers than the present, and subject to much smaller checks.

4.6.71 Bills of rights, reserved by authority of the people, are, I believe, peculiar to America. A careful observance of the abuse practised in other countries has had its just effect by inducing our people to guard against them. We find the happiest consequences to flow from it. The separate governments know their powers, their objects, and operations. We are therefore not perpetually tormented with new experiments. For a single instance of abuse among us there are thousands in other countries. On the other hand, the people know their rights, and feel happy in the possession of their freedom, both civil and

political. Active industry is the consequence of their security; and within one year the circumstances of the state and of individuals have improved to a degree never before known in this commonwealth. Though our bill of rights does not, perhaps, contain all the cases in which power might be safely reserved, yet it affords a protection to the persons and possessions of individuals not known in any foreign country. In some respects the power of government is a little too confined. In many other countries we find the people resisting their governours for exercising their power in an unaccustomed mode. But for want of a bill of rights the resistance is always by the principles of their government, a rebellion which nothing but success can justify. In our constitution we have aimed at delegating the necessary powers of government and confining their operation to beneficial purposes. At present we appear to have come very near the truth. Let us therefore have wisdom and virtue enough to preserve it inviolate. It is a stale contrivance to get the people into a passion, in order to make them sacrifice their liberty. Repentance always comes, but it comes too late. Let us not flatter ourselves that we shall always have good men to govern us. If we endeavour to be like other nations we shall have more bad men than good ones to exercise extensive powers. That circumstance alone will corrupt them. While they fancy themselves the vicegerants of God, they will resemble him only in power, but will always depart from his wisdom and goodness.

Agrippa.

XVI

5 February 1788

To the Massachusetts Convention.

Gentlemen,

In my last address I ascertained, from historical records, the following principles: that, in the original state of government, the whole power resides in the whole body of the nation; that when a people appoint certain persons to govern them, they delegate their whole power; that a constitution is not itself a bill of rights; and that, whatever is the form of government, a bill of rights is essential to the security of the persons and property of the people. It is an idea favourable to the interest of mankind at large, that government is founded in compact. Several instances may be produced of it; but none is more remarkable than our own. In general I have chosen to apply to such facts as are in the reach of my readers. For this purpose I have chiefly confined myself to examples drawn from the history of our own country, 4.6.72

and to the old testament. It is in the power of every reader to verify examples thus substantiated. Even in the remarkable argument on the fourth section, relative to the power over election, I was far from stating the worst of it, as it respects the adverse party. A gentleman, respectable in many points, but more especially for his systematick and perspicuous reasoning in his profession, has repeatedly stated to the Convention among his reasons in favour of that section, that *the Rhode-Island assembly have for a considerable time past had a bill lying on their table for altering the manner of elections for representatives in that state*.[37] He has stated it with all the zeal of a person who believed his argument to be a good one. But surely a *bill lying on a table* can never be considered as any more than an intention to pass it, and nobody pretends that it ever actually did pass. It is in strictness only the intention of a part of the assembly, for nobody can aver that it ever will pass.* I write not with an intention to deceive, but that the whole argument may be stated fairly. Much eloquence and ingenuity have been employed in shewing that side of the argument in favour of the proposed constitution; but it ought to be considered that if we accept it upon mere verbal explanations, we shall find ourselves deceived. I appeal to the knowledge of every one, if it does not frequently happen, that a law is interpreted in practice very differently from the intention of the legislature. Hence arises the necessity of acts to amend and explain former acts. This is not an inconvenience in the common and ordinary business of legislation; but is a great one in a constitution. A constitution is a legislative act of the whole people. It is an excellence that it should be permanent, otherwise we are exposed to perpetual insecurity from the fluctuation of government. We should be in the same situation as under absolute government, sometimes exposed to the pressure of greater, and sometimes unprotected by the weaker power in the sovereign.

4.6.73 It is now generally understood, that it is for the security of the people, that the powers of the government should be lodged in different branches. By this means publick business will go on when they all agree, and stop when they disagree. The advantage of checks in government is thus manifested, where the concurrence of different branches is necessary to the same act, but the advantage of a division of business is advantageous in other respects.[39] As in every extensive empire, local laws are necessary to suit the different interests, no single legislature is adequate to the business. All human capacities are limited to a narrow space; and as no individual is capable of practising a great variety of trades, no single legislature is capable of managing all the variety of national and state concerns. Even if a legisla-

*A writer in the Gazette of 29th January, under the signature of Captain McDaniel having with civility and apparent candour, called for an explanation of what was said in one of my former papers, I have chosen to mention him with respect, as the only one of my reviewers who deserves an answer.[38]

ture was capable of it, the business of the judicial department must, from the same cause, be slovenly done. Hence arises the necessity of a division of the business into national and local. Each department ought to have all the powers necessary for executing its own business, under such limitations as tend to secure us from any inequality in the operations of government. I know it is often asked against whom in a government by representation is a bill of rights to secure us? I answer, that such a government is indeed a government by ourselves; but as a just government protects all alike, it is necessary that the sober and industrious part of the community should be defended from the rapacity and violence of the vicious and idle. A bill of rights therefore, ought to set forth the purposes for which the compact is made, and serves to secure the minority against the usurpation and tyranny of the majority. It is a just observation of his excellency, doctor Adams in his learned defence of the American constitutions, that unbridled passions produce the same effect whether in a king, nobility, or a mob.[40] The experience of all mankind has proved the prevalence of a disposition to use power wantonly. It is therefore as necessary to defend an individual against the majority in a republick as against the king in a monarchy. Our state constitution has wisely guarded this point. The present confederation has also done it.

I confess that I have yet seen no sufficient reason for not amending the confederation, though I have weighed the argument with candour. I think it would be much easier to amend it than the new constitution. But this is a point on which men of very respectable character differ. There is another point in which nearly all agree, and that is, that the new constitution would be better in many respects if it had been differently framed. Here the question is not so much what the amendments ought to be, as in what manner they shall be made; whether they shall be made as conditions of our accepting the constitution, or whether we shall first accept it, and then try to amend it. I can hardly conceive that it should seriously be made a question. If the first question, whether we will receive it as it stands, be negatived, as it undoubtedly ought to be, while the conviction remains that amendments are necessary; the next question will be, what amendments shall be made? Here permit an individual, who glories in being a citizen of Massachusetts, and who is anxious that the[her?] character may remain undiminished, to propose such articles as appear to him necessary for preserving the rights of the state. He means not to retract any thing with regard to the expediency of amending the old confederation, and rejecting the new one totally; but only to make a proposition which he thinks comprehends the general idea of all parties. If the new constitution means no more than the friends of it acknowledge, they certainly can have no objection to affixing a declaration in favour of the rights of states and of citizens, especially as a majority of the states have not yet voted upon it— 4.6.74

4.6.75 "Resolved, that the constitution lately proposed for the United States be received only upon the following conditions:

"1. Congress shall have no power to alter the time, place or manner of elections, nor any authority over elections, otherwise than by fining such state as shall neglect to send its representatives or senators, a sum not exceeding the expense of supporting its representatives or senators one year.

"2. Congress shall not have the power of regulating the intercourse between the states, nor to levy any direct tax on polls or estates," or any excise.

"3. Congress shall not have power to try causes between a state and citizens of another state, nor between citizens of different states; nor to make any laws relative to the transfer of property between those parties, nor any other matter which shall originate in the body of any state.

"4. It shall be left to every state to make and execute its own laws, except laws impairing contracts, which shall not be made at all.

"5. Congress shall not incorporate any trading companies, nor alienate the territory of any state. And no treaty, ordinance or law of the United States shall be valid for these purposes.

"6. Each state shall have the command of its own militia.

"7. No continental army shall come within the limits of any state, other than garrison to guard the publick stores, without the consent of such states in time of peace.

"8. The president shall be chosen annually and shall serve but one year, and shall be chosen successively from the different states, changing every year.

"9. The judicial department shall be confined to cases in which ambassadours are concerned, to cases depending upon treaties, to offences committed upon the high seas, to the capture of prizes, and to cases in which a foreigner residing in some foreign country shall be a party, and an American state or citizen shall be the other party; provided no suit shall be brought upon a state note.

"10. Every state may emit bills of credit without making them a tender, and may coin money, of silver, gold or copper, according to the continental standard.

"11. No powers shall be exercised by Congress or the president but such as are expressly given by this constitution and not excepted against by this declaration. And any office [officer?] of the United States offending against an individual state shall be held accountable to such state as any other citizen would be.

"12. No officer of Congress shall be free from arrest for debt by authority of the state in which the debt shall be due.

"13. Nothing in this constitution shall deprive a citizen of any state of the benefit of the bill of rights established by the constitution of the state in

which he shall reside, and such bills of rights shall be considered as valid in any court of the United States where they shall be pleaded.

"14. In all those causes which are triable before the continental courts, the trial by jury shall be held sacred."

These at present appear to me the most important points to be guarded. I 4.6.76
have mentioned a reservation of excise to the separate states, because it is necessary, that they should have some way to discharge their own debts, and because it is placing them in an humiliating & disgraceful situation to depute them to transact the business of internal government without the means to carry in on. It is necessary also, as a check on the national government, for it has hardly been known that any government having the powers of war, peace, and revenue, has failed to engage in needless and wanton expense.[41] A reservation of this kind is therefore necessary to preserve the importance of the state governments: without this the extremes of the empire will in a very short time sink into the same degradation and contempt with respect to the middle state as Ireland, Scotland, & Wales, are in with regard to England. All the men of genius and wealth will resort to the seat of government, that will be center of revenue, and of business, which the extremes will be drained to supply.

This is not mere vision, it is justified by the whole course of things. We 4.6.77
shall therefore, if we neglect the present opportunity to secure ourselves, only encrease the number of proofs, already too many, that mankind are incapable of enjoying their liberty. I have been the more particular in stating the amendments to be made, because many gentlemen think it would be preferrable to receive the new system with corrections. I have by this means brought the corrections into one view, and shewn several of the principal points in which it is unguarded. As it is agreed, at least professedly, on all sides, that those rights should be guarded, it is among the inferiour questions in what manner it is done, provided it is absolutely and effectually done. For my own part, I am fully of opinion, that it would be best to reject this plan, and pass an explicit resolve, defining the powers of Congress to regulate the intercourse between us and foreign nations, under such restrictions as shall render their regulations equal in all parts of the empire. The impost, if well collected, would be fully equal to the interest of the foreign debt, and the current charges of the national government. It is evidently for our interest that the charges should be as small as possible. It is also for our interest that the western lands should, as fast as possible, be applied to the purpose of paying the home debt. Internal taxation and that fund have already paid two thirds of the whole debt, notwithstanding the embarrassments usual at the end of a war.

We are now rising fast above our difficulties, every thing at home has the 4.6.78
appearance of improvement, government is well established, manufactures increasing rapidly, and trade expanding. Till since the peace we never sent a ship to India, and the present year, it is said, sends above a dozen vessels

from this state only, to the countries round the Indian ocean. Vast quantities of our produce are exported to those countries. It has been so much the practice of European nations to farm out this branch of trade, that we ought to be exceedingly jealous of our right. The manufactures of the state probably exceed in value one million pounds, for the last year. Most of the useful and some ornamental fabricks are established. There is great danger of these improvements being injured unless we practice extreme caution at setting out. It will always be for the interest of the southern states to raise a revenue from the more commercial ones. It is said that the consumer pays it; But does not a commercial state consume more foreign goods than a landed one? The people are more crouded, and of consequence the land is less able to support them. We know it is to be a favourite system to raise the money where it is. But the money is to be expended at another place, and is therefore so much withdrawn annually from our stock. This is a single instance of the difference of interest; it would be very easy to produce others. Innumerable are[42] the differences of manners, and these produce differences in the laws. Uniformity in legislation is of no more importance than in religion; Yet the framers of this new constitution did not even think it necessary that the president should believe that there is a God, although they require an oath of him. It would be easy to shew the propriety of a general declaration upon that subject. But this paper is already extended too far.

4.6.79 Another reason which I had in stating the amendments to be made, was to shew how nearly those who are for admitting the system with the necessary alterations, agree with those who are for rejecting this system and amending the confederation. In point of convenience, the confederation amended would be infinitely preferable to the proposed constitution. In amending the former, we know the powers granted, and are subject to no perplexity; but in reforming the latter, the business is excessively intricate, and great part of the checks on Congress are lost. It is to be remembered too, that if you are so far charmed with eloquence, and misled by fair representations and charitable constructions, as to adopt an undefined system, there will be no saying afterwards that you were mistaken, and wish to correct it. *It will then be the constitution of our country, and entitled to defence.* If Congress should chuse to avail themselves of a popular commotion to continue in being, as the fourth section justifies, and as the British parliament has repeatedly done, the only answer will be, that it is the constitution of our country, and the people chose it. It is therefore necessary to be exceedingly critical. Whatsoever way shall be chosen to secure our rights, the same resolve ought to contain the whole system of amendment. If it is rejected, the resolve should contain the amendations of the old system; and if accepted, it should contain the corrections of the new one.

Agrippa.

1. See above, 2.1.

2. See above, 3.2.

3. See A Landholder (Oliver Ellsworth), *Connecticut Courant* 3 December 1787, Ford, *Essays* 159.

4. See XIII, 4.6.49–50. On the bearing of the examples of Greece and Rome, see *The Federalist* no. 8, 47; no. 9, 50–51; on Rome and Carthage, no. 6, 32.

5. *The Federalist* no. 9, 51. On commerce as the bond of union, see Agrippa VIII, 4.6.31 n. 18.

6. For an elaboration of this view, see Charles Pinckney's speech in the Philadelphia convention on 25 June 1787; and for a major forerunner of the *The Federalist* answer, see Madison's reply to Pinckney on the next day. Farrand I, 397–404, 421–23. It may be observed that Agrippa's examples, which follow, support the proposition that a republican government will be energetic enough to suppress sedition, not that it will be exempt from it.

7. See Thomas Hutchinson, *History of the Colony and Province of Massachusetts Bay* (Cambridge, Mass., 1936) I, 123 ff.

8. The reference is to the disturbances culminating in Shays' rebellion. On the issue of American conditions in the 1780s, see Federal Farmer I, 2.8.1 n. 4; Centinel IV, 2.7.91 n. 43; Plebeian 6.11.5 n. 6.

9. For a reply to this and the following remarks, see Cassius (James Sullivan), in the *Massachusetts Gazette* 30 November 1787, Ford, *Essays* 22–23.

10. For other Anti-Federalist arguments to this effect, see Cato III, 2.6.12–16 n. 8. For Federalist defenses of the extended republic, see, in addition to *The Federalist* (nos. 9, 10, 14, 51), Ford *Pamphlets* 203–6 (Fabius), 129–30 (Citizen of Philadelphia), 248 (Aristides); Ford, *Essays* 215–16 (A Countryman); McMaster and Stone 193 (Plain Truth); ibid. 336, 386, 395 (Wilson); Elliot II, 352–53 (Hamilton); Elliot III, 85, 125, 199 (Randolph); ibid. 107–8 (Corbin), 232 (Marshall); Elliot IV, 22 (Davis); ibid. 262, 326–327 (Pinckney); *Poughkeepsie Country Journal* 12 December 1787 (Cato).

11. On heterogeneity, and particularly differences between North and South, see IX, 4.6.34–35; XII, 4.6.48; Cato III, 2.6.18 n. 13.

12. See Resolution of Stamp Act Congress, 19 October 1765; Massachusetts Circular Letter, 11 February 1768; Declaration and Resolves of First Continental Congress, 14 October 1774. Nos. 38, 45, and 56 in Henry Steele Commager, *Documents of American History* (New York 1968).

13. This alleged authority, upon which a considerable part of Agrippa's proof of the consolidating tendency of the Constitution depends, is not of course given explicitly in the Constitution. Apparently Agrippa is referring to the comprehensive federal jurisdiction that he says "clearly follows" from Article VI; but his contention is extremely dubious. See XIII, 4.6.52, for a slightly different version of this argument. Cf. Centinel II, 2.7.42;

14. On bills of rights as the standard by which rulers can be held to the terms of the contract and the people justified in their resistance, see XIII, 4.6.51, 71. For similar Anti-Federal arguments, see Old Whig IV, 3.3.21–30; Philadelphiensis IV, 3.9.21–22; DeWitt, 4.3.8; [Maryland] Farmer I, 5.1.15–16; Impartial Examiner 5.14.5, 10.

15. On the power to regulate commerce, see XIII, 4.6.53.

16. The original reads, "shewn, that instead of . . . course of things, that every endeavour . . ."

17. Cf. Monroe 5.21.12. See Agrippa XII, 4.6.58 n. 31.

18. On commerce as the producer of friendship and peace, see *The Federalist* no. 6; and cf. no. 11, 72: "An unity of commercial, as well as political interests, can only result from an unity of government." See Candidus 4.9.13–15.

19. John Adams, in Philadelphia for the meetings of the first Continental Congress in 1774, observed: "Phyladelphia with all its Trade, and Wealth, and Regularity is not Boston. The Morals of our People are much better, their Manners are more polite, and agreeable—they are purer English. Our Language is better, our Persons are handsomer, our Spirit is greater, our Laws are wiser, our Religion is superiour, our Education is better. We exceed them in every Thing, but in a Markett, and in charita-

ble public foundations." *Diary and Autobiography of John Adams*, ed. L. H. Butterfield (Cambridge 1961), 9 October 1774, II, 150. See Agrippa XII, 4.6.48.

20. Var. on Luke 19:42.

21. See McMaster and Stone 364–65.

22. This first part of letter XII, which is the beginning of the second set of Agrippa essays, although printed by Ford (*Essays* 91–92), is omitted from the E. H. Scott edition (*The Federalist and other Constitutional Papers* [Chicago 1894] II).

23. See IV, 4.6.17; IX, 4.6.34–36.

24. See IV, 4.6.17 n. 12.

25. Ford numbers this piece "XIII" and the following one "XIV"; but it is clear from the introductory and concluding notations and from the substance that these are parts of one long essay, although printed in succeeding issues of the *Massachusetts Gazette*. It appears that Agrippa intended to write one long essay (here numbered XII) containing the argument of his former series, and then added several essays containing new materials (here numbered XIII–XVI).

26. On ancient republics, see I, 4.6.6; XII, 4.6.49.

27. See VI, 4.6.23, and XV, 4.6.69 n. 36, for Wilson's argument.

28. See V, 4.6.18–21.

29. On the power to regulate trade and to tax, see VI, VII, 4.6.24–28.

30. Cf. Hanno, in a short essay not reprinted here, who makes the same argument, *Massachusetts Gazette* 13 November 1787. For W. W. Crosskey's discussion of the Massachusetts Anti-Federalists' views of the commerce power, see his *Politics and the Constitution* I, 188–90.

31. See VII, 4.6.26. On the primacy of the interest of the port, see [Maryland] Farmer VII, 5.1.108; Mercer 5.5.5; cf. Monroe 5.20.12.

32. Although Ford (*Essays* 105) identifies this argument as having been made by Caleb Strong on 16 January 1788, the report of Strong's speech of this day contains no explicit reference to Rhode Island. There is a reference to such an argument in an exchange between Bishop, King, and Gorham; and J. C. Jones argues explicitly that the clause is necessary because "a state may *refuse* to send to Congress its representatives as Rhode Island has done." Elliot II, 23–24, 28–29. For other references to Rhode Island's delinquency, see Elliot II, 48–49, 53.

33. This piece is the conclusion of the essay numbered here XIV. It was apparently overlooked by Ford and is omitted by him.

34. See Federal Farmer IV, 2.8.50 n. 39; Brutus II, 2.9.30 n. 22.

35. The date of this essay is incorrectly given by Ford as 20 January 1788. It appeared on 29 January, in the same issue as the conclusion of XIV.

36. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 143. See Federal Farmer IV, 2.8.50 n. 38, n. 39; [New Hampshire] Farmer 4.17.1 n.1.

37. Although Ford (*Essays* 116) finds no record of this in the *Debates of the Massachusetts Convention*, both Judge Dan and Rufus King refer to proposals before the Rhode Island legislature to select representatives by corporations rather than numbers. Elliot II, 49–50.

38. The writer had objected to Agrippa's comment that "it was said" that the Rhode Island Assembly intended to abuse its power over election and that therefore "we should put Congress in a situation to abuse theirs." See above XIV, 4.6.61.

39. On separation of powers, see Brutus XVI, 2.9.197 n. 112.

40. This argument is made in the preface of vol. 1 of John Adams, *Defence* (*Works* IV, 284–85). On bills of rights to check majority tyranny see [Maryland] Farmer I, 5.1.15 n. 11.

41. See Symmes 4.5.14 n. 5.

42. The original reads, "as."

Essay by A Federalist

BOSTON GAZETTE
26 November 1787

In rich prose A Federalist inveighs against the Massachusetts advocates of aristocracy and "rigid government"; these—and especially the lawyers among them—are the forces behind the proposed Constitution. He would rather be a free citizen of the small state of Massachusetts than an oppressed subject of a great American empire. A passing allusion to an important Anti-Federalist theme, the need for government to be (in A Federalist's words) "suitable to the GENIUS and HABITS of the citizens of these states," was the object of a penetrating Federalist criticism a few days later.

Mess'rs. Edes',

I am pleased to see a spirit of inquiry burst the band of constraint upon the 4.7.1
subject of the NEW PLAN for consolidating the governments of the United States, as recommended by the late Convention. If it is suitable to the GENIUS and HABITS of the citizens of these states, it will bear the strictest scrutiny.[1] The PEOPLE are the grand inquest who have a RIGHT to judge of its merits. The hideous daemon of Aristocracy has hitherto had so much influence as to bar the channels of investigation, preclude the people from inquiry and extinguish every spark of liberal information of its qualities. At length the luminary of intelligence begins to beam its effulgent rays upon this important production; the deceptive mists cast before the eyes of the people by the delusive machinations of its INTERESTED advocates begins to dissipate, as darkness flies before the burning taper; and I dare venture to predict, that in spite of those mercenary declaimers, the plan will have a candid and complete examination—those furious zealots who are for cramming it down the throats of the people, without allowing them either time or opportunity to scan or weigh it in the balance of their understandings, bear the same marks in their features as those who have been long wishing to erect an aristocracy in THIS COMMONWEALTH—their menacing cry is for a RIGID government, it matters little to them of what kind, provided it answers THAT description—As the plan now offered comes something near their wishes, and is the most consonant to their views of any they can hope for,

they come boldly forward and DEMAND its adoption—they brand with infamy every man who is not as determined and zealous in its favour as themselves—they cry aloud the whole must be swallowed or none at all, thinking thereby to preclude any amendment; they are afraid of having it abated of its present RIGID aspect—they have strived to overawe or seduce printers to stifle and obstruct a free discussion, and have endeavoured to hasten it to a decision before the people can duly reflect upon its properties,—in order to deceive them, they incessantly declare that none can discover any defect in the system but bankrupts who wish no government, and officers of the present government who fear to lose a part of their power.—These zealous partizans may injure their own cause, and endanger the public tranquility by impeding a proper inquiry; the people may suspect the WHOLE to be a dangerous plan, from such COVERED and DESIGNING schemes to enforce it upon them: compulsive or treacherous measures to establish any government whatever, will always excite jealousy among a free people: better remain single and alone, than blindly adopt whatever a few individuals shall demand, be they ever so wise; I had rather be a free citizen of the small republic of Massachusetts, than an oppressed subject of the great American empire: let all act understandingly or not at all—If we can confederate upon terms that will secure to us our liberties, it is an object highly desirable, because of its additional security to the whole—if the proposed plan proves such an one, I hope it will be adopted, but if it will endanger our liberties as it stands, let it be amended; in order to which it must and ought to be open to inspection and free inquiry—the inundation of abuse that has been thrown out upon the heads of those who have had any doubts of its universal good qualities, have been so redundant, that it may not be improper to scan the characters of its most strenuous advocates: it will first be allowed that many undesigning citizens may wish its adoption from the best motives, but these are modest and silent, when compared to the greater number, who endeavour to suppress all attempts for investigation; these violent partizans are for having the people gulp down the gilded pill blind-folded, whole, and without any qualification whatever, these consist generally, of the NOBLE order of C[incinnatu]s, holders of public securities, men of great wealth and expectations of public office, B[an]k[er]s and L[aw]y[er]s: these with their train of dependents from the Aristocratick combination—the L[aw]y[e]r in particular, keep up an incessant declamation for its adoption, like greedy gudgeons they long to satiate their voracious stomacks with the golden bait—The numerous tribunals to be erected by the new plan of consolidated empire, will find employment for ten times their present numbers; these are the LOAVES AND FISHES for which they hunger; they will probably find it suited to THEIR HABITS, if not to the HABITS OF the PEOPLE—There may be reasons for having but few of them in the State Convention, lest THEIR 'OWN' INTEREST should be too strongly considered.—The time draws near for the choice of Delegates, I hope my

fellow-citizens will look well to the characters of their preference, and remember the Old Patriots of 75; they have never led them astray, nor need they fear to try them on this momentous occasion.

A Federalist.

1. To this another writer, who also took the pseudonym "A Federalist" replied: "I would ask this writer, if civil *habits* are antecedent, and prior to civil institutions? Would a wise legislator who was about to form a system of government, for a nation, in a state of nature, adapt his plan to the prevailing habits of such a people? No; his object would be, to introduce a code of laws that would *induce* those habits of civilization and order, which must result *from* good government. The truth of the case is, that as a people, we are destitute of FEDERAL FEATURES, and HABITS—the several *State Constitutions* are *local, partial,* and *selfish;* they are not calculated in their construction, to form *national views;* this great object is beyond their limits—and *dear bought* experience proves that the *unbounded* sovereignty of the individual governments, is incompatible with a *national* system.

"For want of those HABITS OF NATIONALITY, we have been brought into our present contemptible and deplorable situation. The proposed *Federal Constitution* is happily calculated to form us to a *national spirit,* and to diffuse those generous *federal* sentiments, without which, we never can be a happy and flourishing people." *Boston Gazette* 3 December 1787. See the similar criticism by "Convention" of another Massachusetts Anti-Federalist, above, 4.1.1 n. 1. For other discussions of this theme see Federal Farmer III, 2.8.24 n. 19.

Essay by One of the Common People

BOSTON GAZETTE
3 December 1787

This essay is a reply to a good short Federalist piece by One of the Middle-Interest, dealing mainly with the Bill of Rights, published in the *Massachusetts Centinel* 28 November 1787. One of the Common People contends that the state bills of rights will be no protection against congressional encroachments made possible by the broad and loose constitutional grants of power. In a short time American fundamental law will have become as undefined as the unwritten common law—made worse, indeed, by the different legislative jurisdictions—and Americans will have none but the weak security of the virtue of their legislators. The liberty of the press can easily be abridged by prosecuting for libel against the United States, and the trial by jury in civil cases could and should have been given constitutional protection.

Messieurs Edes,

4.8.1 A Writer in the Centinel who calls himself "*One of the middle-interest,*" has gone into a long inquiry to find out "*where we learned the idea of a Bill of Rights.*"[1] It is of little moment where it was learned, since we are possessed of so important and so invaluable a discovery, to guard the *people* against the increasing powers of artificial aristocracy, whose seeds are every where disseminated in free states. This writer thinks it would be superfluous to preface or combine with the federal constitution, a *bill of rights,* because the state constitution is already guarded by one.[2]—If the new plan is adopted, every one knows the state constitution will be very materially and essentially altered; and so far will the security of our rights be precarious and dependent on meer acts of congress, which, without this barrier, may, and by the present tenor of the new constitution, will render our priviledges as undefined as this writer says are those of the subjects of England; which are only to be "*collected from meer opinions of the learned and contradictory authors*". If we alienate a great part of the powers, at present

contained in our state constitution, and vest them in congress, why is it not as necessary that those alienated powers should be secured and limited by a declaration of rights, as that the remaining powers which are left in the hands of the state government should be thus guarded, especially if the greater half are alienated? This writer says, a bill of rights is not necessary, because the first section declares "*that all legislative powers herein* GIVEN (viz. given in the new constitution) *shall be vested in congress*;" and then says, "*the legislative powers* NOT GIVEN *are not surely in congress.*"—But will he say that the powers *therein given* are *clearly* and *explicitly* defined? that the *boundary line* of the legislative jurisdiction *given* to congress is so plain as not to be mistaken or abused? that it will never *clash* with the jurisdiction claimed by the legislature of this state? Is the following clause of such a nature as to have any fixed or definite limits? "*This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the* SUPREME LAW OF THE LAND; *and the judges in every state shall be bound thereby, any thing in the* CONSTITUTION *or laws of any state to the contrary notwithstanding.*"—Unless some additional guard is added to define the above clause, here will be a fine field for ambitious or designing men to extend the federal jurisdiction.—In the course of a few years our state legislature will be annihilated, together with our bill of rights, which this writer says is a sufficient security: our *rights* will then depend on the *virtue* of the federal legislature; our *privileges* will then be sought after in a mass of mutilated laws, in *volumes of contradictory reports of the learned.* When this federal government is established, we shall have *two* bodies to legislate for us, and unless the powers which *each* body will have a right to exercise, be clearly defined, we must expect nothing but rival discord and contention, until the federal authority gains the ascendancy, as above predicted; or what may be worse, a revolt from their domination.[3] This writer asks—"*Where is the liberty of the press taken away?*"[4] If congress have a right to controul it, they may be said to have a right to take it away.—Will not the United States Attorney have the power to prosecute any printer for a pretended libel against the United States? Will not a printer be triable for a pretended libel against any foreign minister or consul, or for a libel against any of the individual states, by a federal tribunal? Are not such prosecutions warranted by the following clause in the new constitution? "*all controversies wherein the United States shall be a party, all cases affecting foreign ministers and consuls, and all controversies between a citizen and a state,*" shall be cognizable before a federal tribunal.—Cannot congress by virtue of this clause, restrain all publick information of mal-administration? And will not congress have *absolute* uncontrouled power over printers, and every other person within the United States territory, where there will undoubtedly be a great city?

4.8.2 Never was the trial by jury in civil cases thought so lightly of in America as at this day: we have bled for it, and are now almost ready to trifle it away—because in cases of default (which implies a consent of parties) there is no trial by jury, we must give up that inestimable privilege in all civil cases whatever.[5]—This is fine reasoning sure; because we will not have a jury when we do not want them, we shall not when we do—This gentleman cannot be serious when he asserts, that "*if it were to be expressed* WHAT *civil causes should be tried by jury, it might take a volume of laws, instead of an article of rights*;" If it did I would have the volume, rather than hazard the priviledge.—But I will ask whether it requires this volume of laws to express that privilege in our state constitution? and whether there would be any difficulty in having it declared, that the citizens of each state shall enjoy it conformably to the usage in the state where the tribunal shall be established? he says, "*doubtless congress will make some general regulations in this matter,*" but it will be well to recollect that they may *unmake* them, or *not* make them too, if they please, and *when* they please; but if it is a part of the constitution, the *people alone* will have the power to change or annul it.[6]—It is too great a privilege to be left at loose. I sincerely believe if the federal constitution which shall be *given*, be *clearly defined*, and a *boundary line* be marked out, declaratory of the extent of their jurisdiction, of the rights which the state hold unalienable, and the privilege which the citizens thereof can never part with, the republick of America will last for ages, and be free.

One of the Common People

1. One of the Middle-Interest, writing in the *Massachusetts Centinel* for 28 November 1787, argued that the idea of a Bill of Rights arose in and was appropriate to a country where there was no written constitution. "Because their constitution being only to be collected out of the dust of ages, and from the meer opinions of the learned, it was just they should procure their kings to sign and seal, if I may so express it, a plain and express confirmation of those parts of their constitution which former monarchs had denied or violated." For references to Federalist claims that no bill of rights is necessary, see Mason 1.2.21 n. 1.

2. The argument of One of the Middle-Interest is more complex and defensible than appears from this characterization, and it was in fact one of the better Federalist statements on this (for the proponents of the Constitution) very difficult matter. See Brutus II, 2.9.32 n. 23. The author's conclusion is that "we *retain* all those rights which are prefixed to our state constitution, and which are not expressly given up to the national government; in addition to which we have those other rights which are *not* in the state constitution, but which are expressed in the *federal*."

3. See Monroe 5.21.17 n. 8.

4. He goes on: "For if the several state constitutions already protect the liberty of the press, and no legislative power is given to Congress to restrict that liberty; but if on the other hand the republican forms of government are guaranteed to the several states, then surely the liberty of the press is most amply provided for. The first section in the federal constitution already quoted, plainly shews, that Congress have no legislative powers but what are given them by that constitution—they therefore can never restrict the liberty of the press, unless they have some power given them by the constitution so to do, which no where appears." This is the argument made by James

Wilson in his Statehouse Speech (McMaster and Stone 143); cf. the citations in Federal Farmer II, 2.8.50 n. 39.

5. One of the Middle Interest makes the standard Federalist argument that the practice of the states is extremely various, agreeing only in *not* requiring a jury trial for *all* civil causes. Cf. Federal Farmer II, 2.8.19 n. 16. For other Anti-Federal discussions, see Plebeian 6.11.15 n. 13.

6. "The answer is, that all legislatures must be trusted with something—to suppose they will so form the judicial departments merely to oppress, without a possibility of serving avarice, ambition or any known human motive, is to suppose that men will be so disinterested as to act against their own existence, and from no given cause that can be described." *Massachusetts Centinel* 28 November 1787. See Smith 6.12.34 n. 32.

Essays by Candidus

(BOSTON) INDEPENDENT CHRONICLE
December 1787–January 1788

The essays of Candidus are ascribed to Samuel Adams or his follower, Benjamin Austin, Jr.[1]

Beginning with a somewhat labored defense of full deliberation and denial of any necessity to accept the Constitution in its entirety, Candidus goes on to list the usual objections (4.9.11). The chief contribution of the essay lies in the author's discussion of the state of American commerce. What is wanted is a union "of commerce and amity" rather than "of legislation and taxation" (4.9.13–16). The whole power of legislation and taxation given to the legislature and the extensive jurisdiction given to the judiciary in the new Constitution are dangerous and unnecessary. The writer ends on a perennial Anti-Federalist and "old republican" theme, warning against the tendency to blame on a lack of energy in government what is really due to dissipation and living beyond the means available; the remedy is to be found, not in governmental reform, but in industry and frugality.

In the second essay Candidus attempts to meet the criticism that the Anti-Federalists propose no alternative to the Constitution by sketching the outlines of a new plan, taken from previous resolutions of Congress, the Articles of Confederation, and the proposed Constitution. The plan provides for congressional power to pass a navigation act, regulate all commerce, and raise revenue by impost. The states would enter into a treaty of amity with one another to pay the existing debt, to maintain peace, to conduct foreign affairs, to establish a supreme court for specified federal purposes (see summary, 4.9.23). Candidus ends with a further discussion of commerce, the importance of a better federal system, and the danger of going too far and surrendering everything to a new government. It would be safer and more effective to confine Congress to the objects of defense and promoting commerce. In the very brief third letter, Candidus defends himself against being "branded as an anti federalist."

1. See Harding, *Contest over Ratification* 22–23. Harding is mistaken in saying that there were "several articles" by Candidus published in the *Chronicle* in December; there were two articles in December and one in January. See Charles Warren, Massachusetts Historical Society, *Proceedings* 64: 147 n. 6, 151, 153.

I
6 December 1787

Mess'rs. Adams & Nourse,

The Constitution recommended by the Convention, is a subject of the greatest importance, to every individual of these States; and ought to be seriously considered. The respectability of the characters who composed that Assembly, without doubt, will have its due weight; yet it cannot be supposed, that the citizens of America, will so far rely on the abilities of those gentlemen, as to concur in their measures, while any doubts remain on their minds, respecting their salutary operations. 4.9.1

Some leading arguments offered in favour of the Constitution, are, that our situation, is such, as renders it absolutely necessary, we should establish some Federal Plan of Government;—that the present Constitution, is the *only one* that can ever be adopted; and that if we *reject this*, the consequences will be fatal to this country. These dreadful apprehensions seem to preclude every candid enquiry on the subject: For if we *must comply*, without even a lisp of hesitation, it is needless to offer it to the people, for their consideration. If the authors are *deified*, and their works pronounced *infallible*, it is delivered to the people, rather for their *implicit acquiescence*, than for their *free deliberations*. 4.9.2

It is also said, that the States have no other alternative, than to *accept* it in every particular, or totally to *reject* it. These observations, however, I conceive, are mere assertions, without evidence. The people being called on to convene, and deliberate, proves that the Convention themselves, supposed the plan was subject to amendments. Neither can we imagine, those respectable characters, would insinuate an idea so affronting, and degrading, to the Freemen of these States, as that they *must submit* in the gross, to the Constitution offered, notwithstanding they might have the most weighty reasons to reject some *particular parts*. 4.9.3

It is further said, *that anarchy and civil war, will ensue, provided we reject the proposed Constitution:* This is a bugbear, raised to influence a very respectable part of the community. Can it be supposed that the people, are so savage, and void of every principle of common prudence, that they would abandon all their deliberations in Council, and rush immediately to arms? The people of these States, are too wise and considerate, to be guilty of such horrid imprudencies: They are too enlightened to decide their political controversies by the SWORD. Those persons therefore, who raise such vile suggestions, are endeavouring to effect certain purposes, by working on the tender passions of the honest and well-disposed.[1] 4.9.4

Some persons are for adopting the Constitution, without any farther consideration, as they say it is *impossible* for us to be in a worse situation than at present.[2] Such men are fit subjects to answer any purposes whatever, and 4.9.5

are acting a part which they cannot justify to themselves or posterity. Are not such sentiments degrading to the character of Freemen? It must be a melancholly crisis when the people are tired of guarding their liberties; and are resigned to whatever government is *dealt to them*. If our commerce is failing, and our industrious citizens are distressed, so far from being dilatory, the more caution is required, to adopt such a plan as will remedy their complaints. Let such persons read the history of other nations, and then judge whether it is *impossible* that our situation should be worse.

4.9.6 Is it presumed, that the wisdom of this people has so far forsaken them, that they are willing to accede without any examination, to a mode of government, which may affect millions of their posterity? Or is it conceived that the period has arrived when they are ready to resign every pretension to judge for themselves, and dare not scrutinize any establishments on which depend their political happiness and welfare?

4.9.7 On the other hand, if the State Conventions do not approve of every paragraph, *must the whole plan* become null and void? Shall the people, after being at the trouble of choosing members to meet in Convention; and taxing themselves with the expence of their assembling, be *obliged* to relinquish the whole business, and throw up every prospect of succeeding in their attempts, to establish a permanent government? These suggestions I conceive are artfully introduced to mislead the people, and are calculated to operate on their *fears*, so far as to influence them to accede *in every particular* to the proposed plan, although they might wish to make some very essential alterations.

4.9.8 Is it not the greatest absurdity to suppose, that the plan offered, *cannot* be amended previous to its adoption,—when it expressly provides for proposing amendments after it has begun to operate? Would it not be the height of folly, to adopt a plan *entire*, in expectation of altering some very essential parts at a future period? Surely the most prudent method is, to rectify all important matters, while we are assembled to deliberate on the subject, rather than to hazard the chance of feeling evils, when possibly it may be too late to remedy them? These are considerations, worthy our serious attention.

4.9.9 Some zealots are in extacy, when they speak of the present Constitution, and think it as sacred as the Commandments delivered from *Sinai*. But if we recur to what gave rise to the Convention, we shall not find that any thing super-natural was expected. The plain truth of the case is, these States finding the necessity of adopting a Federal plan to regulate their commerce, promote their agriculture and manufactures, chose from each State a number of respectable characters to meet for the above purposes.—They accordingly met, and after four months deliberation, they matured the plan now offered for our consideration. No man I presume did suppose at the time of their choice, that the devised plan, whatever it might be, was to be

rejected or *approved* in every particular. The principal design at first was, to bring forward some preliminary articles, by which the people might know the general disposition of the States; and from thence they would be able to judge, how far it was probable a Federal system could be adopted. The Constitution now offered is the outlines of a plan, which probably might be agreed on with certain amendments by the whole confederacy. This knowledge of the inclination of the several States, is as much as we could rationally have expected at the first meeting of the Convention.

4.9.10 Those persons who are in such *great haste* to adopt the present plan, should consider that even the smallest treaties and most common business of legislation require many overtures before they are accomplished. Certainly then so great an undertaking as the Federal Constitution of thirteen Independent Sovereign States, so various in their interests, cannot be compleated without the greatest caution and deliberation. We should not be so greatly impatient if we considered this important truth, *that on the wise establishment of a Federal plan, the liberties we have so dearly purchased, wholly depend.*

4.9.11 The grand question therefore now is, what objections have we to the system offered? The State Conventions when they assemble, without doubt will keep the *original plan*, as entire as possible. It is not supposed, that they will object to any matters, but such as they conceive are destructive to the liberties of the people. Provided objections are made, "*that a bill of rights is wanted: That the liberty of the press is not fully secured: That the powers of Congress to raise armies, lay impost, excise and direct taxation, are too great and dangerous: That the representation is inadequate: That the executive is vested with too extensive authority, and may tend to despotism: That the Legislatures of the several States would in time be annihilated: That the Congressional body would become independent of their constituents, by being paid out of the public treasury: That the choice of President by a detached body of electors was dangerous and tending to bribery; or if it is conceived that the States ought to confederate for the purposes of commerce and amity, rather than for those of legislation and taxation.*" If after a mature and candid examination the State Conventions should consider the foregoing objections of the highest importance, without doubt they would propose, that such particulars should be *erased*, and *amendments* inserted.

4.9.12 The State Conventions in case any alterations are required, have it in their power to choose delegates to meet again in Continental Convention. The objections (if any) of the several States would then be fully known, and after examining the sentiments of the whole, some plan it is probable would be devised, that would meet the approbation of the confederacy. As the people are now convinced (even more than when the late Convention was chosen) of the necessity of adopting some permanent foederal Constitution.

4.9.13 Many people are sanguine for the Constitution, because they apprehend our *commerce* will be benefited. I would advise those persons to distinguish between the evils that arise from extraneous causes and our private imprudencies, and those that arise from our government. It does not appear that the embarrassments of our trade will be removed by the adoption of this Constitution. The powers of Europe do not lay any extraordinary duties on our *oil, fish* or *tobacco,* because of our government; neither do they discourage our ship building on this account. I would ask what motive would induce Britain to repeal the duties on our *oil,* or France on our *fish,* if we should adopt the proposed Constitution? Those nations laid these duties to promote their own fishery, &c. and let us adopt what mode of government we please, they will pursue their own politicks respecting our imports and exports, unless we can check them by some *commercial* regulations.

4.9.14 But it may be said, that such commercial regulations will take place after we have adopted the Constitution, and that the northern States would then become carriers for the Southern. The great question then is, whether it is necessary in order to obtain these purposes, for every State to give up their whole power of *legislation* and *taxation,* and become an unwieldly republick, when it is probable the important object of our commerce could be effected by a *uniform navigation act,* and *giving Congress full power to regulate the whole commerce of the States?* This power, Congress have often said was sufficient to answer all their purposes. The circular letter from the Boston merchants and others, was urgent on this subject. Also the navigation act of this State, was adopted upon similar principles, and was declared[3] by our Minister in England, to be the most effectual plan to promote our navigation, *provided it had been adopted by the whole confederacy.*[4]

4.9.15 But it may be said, this regulation of commerce, without *energy* to enforce a compliance is quite ideal: *coertion* with some persons seems the principal object, but I believe we have more to expect from the *affections of the people,* than from an armed body of men. Provided an uniform commercial system was adopted, and each State felt its agreeable operations, we should have but little occasion to exercise force.[5] But however, as power is thought necessary to raise an *army,* if required, to carry into effect any foederal measure, I am willing to place it, where it is likely to be used with the utmost caution. This power I am willing to place among the confederated States, to be exercised when *two thirds* of them in their *Legislative capacities* shall say the common good requires it. But to trust this power in the hands of a few men delegated for two, four and six years, is complimenting the ambition of human nature too highly, to risque the tranquility of these States on their absolute determination. Certain characters *now on the stage,* we have reason to venerate, but though this country is now blessed with a Washington, Frnaklin, Hancock and Adams, yet pos-

terity may have reason to rue the day when their political welfare depends on the decision of men who may fill the places of these worthies.

4.9.16 In considering the proposed Constitution, it is very necessary to distinguish what may give an undue influence to a particular profession and what ought to be adopted for *national purposes*. This party-influence is very evident in the powers vested in the Supreme Judicial. These powers extending "between citizens of different States," also "between citizens of a State, and citizens of foreign States," will I apprehend occasion innumerable judicial controversies; and the people will become exposed to the most expensive law suits; as almost every cause (even those originally between citizens of the same State) may be so contrived as to be carried to this foederal court. A poor man may be harrassed by tedious and expensive appeals to this Supreme Court, or "such *inferiour Courts as Congress may from time to time ordain and establish.*"

4.9.17 The question then on this subject is, whether the judicial power ought to extend to any other than *national matters*. such as "treaties," &c. And whether the Judicial Courts of the several States are not competent, to decide as usual on the controversies of the individuals of the several States?

It is said, that the parties by this establishment, may appeal to a disinterested foederal Court, which will secure to them a fair trial, and an impartial judgment. But this mode of reasoning is calculated to mislead, by a false insinuation, rather than to prevent any evils which at present exist. The equity of our State Judicial Courts, has never been a subject of complaint. Why then should we give up these State trials, and suffer ourselves to be harrassed by a long and expensive appeal to a Continental Supreme Judicial Court? Would not such appeals serve to give every advantage to the rich over the poor? The tradesman, mechanic, and farmer, would by this establishment, be exposed to every imposition from the wealthy; as the former could not spare the time, and defray the expence of prosecuting their legal claims, distant from home. This mode also gives every advantage to British and other foreign creditors to embarrass the American merchant by appeals to this Court.

4.9.18 Upon the whole, we are too apt to charge those misfortunes to the want of *energy* in our government, which we have brought upon ourselves by dissipation and extravagance; and we are led to flatter ourselves, that the proposed Constitution will restore to us peace and happiness, notwithstanding we should neglect to acquire these blessings by industry and frugality.[6]—I will venture to affirm, that the extravagance of our British importations,—the discouragement of our own manufactures, and the luxurious living of all ranks and degrees, have been the principal cause of all the evils we now experience; and a general reform in these particulars, would have a greater tendency to promote the welfare of these States, than any measures that could be adopted.—No government under heaven could

have preserved a people from ruin, or kept their commerce from declining, when they were exhausting their valuable resources in paying for superfluities, and running themselves in debt to *foreigners*, and to *each other* for articles of folly and dissipation:—While this is the case, we may contend about forms of government, but no establishment will enrich a people, who wantonly spend beyond their income.

4.9.19 The foregoing observations are intended solely to guard us against the artful suggestions of partizans on either side, and to remove every undue biass, while we are deliberating on this important subject.—I cannot but console myself, that some measures will be adopted by the several States, to promote the great purposes of agriculture, trade and manufactures; and provided the plan now offered should not be wholly accepted, it is presumed the wisdom of the States will not suffer the materials to be thrown away; but will carefully select the choicest, and on the basis of PUBLIC CONFIDENCE establish some foederal system, that will not be dissolved till the consummation of all things.

Candidus.

II

20 December 1787

"Remember, O my Friends, the Laws, the Rights,
The generous plan of Power, deliver'd down
From age, to age, by your renowned forefathers,
So dearly bought, the price of so much Blood!
O! Let them never perish in your hands,
But piously transmit them to your Children."

Addison[7]

4.9.20 In my last, I endeavoured to guard my countrymen, against the artful suggestions of many who say that the proposed Constitution is the *only one* that can be adopted: that we *must* receive it without any *amendments;* and that *anarchy and civil war,* will be the consequences of rejecting it.—The two former pleas, I contended was derogatory to freemen, and the latter affronting to our understanding.

I need not urge my countrymen, to a serious consideration of the important business before them; presuming that the wisdom and prudence which have ever been the characteristic of Americans, will lead the members of the convention to consider maturely, before they decide on so momentous a question.

4.9.21 Many arguments have been offered to the public, both for, and against the

new Constitution; on one side we have the rapturous strains of a *Wilson*, on the other the nervous reasoning of *Brutus:*[8]—But the advocates for the Constitution, have always assumed an advantage by saying, that their opposers have never offered any plan as a substitute; the following outlines are therefore submitted, not as *originating* from an individual, but as *copied* from former resolutions of Congress, and united with *some parts* of the Constitution proposed by the respectable Convention. This being the case, I presume it will not be invalidated by the cant term of antifederalism, viz.

1st. That the Legislature of *each State*, empower Congress to frame a *navigation act*, to operate uniformly throughout the States; reserving to Congress all necessary powers to *regulate our commerce with foreign nations, and among the several States, and with the Indian tribes*. The revenue arising from the *impost* to be subject to their appropriations, "to enable them to *fulfil their public engagements with foreign creditors*."[9] 4.9.22

2d. That the Legislature of each State, instruct their delegates in Congress to frame a treaty of AMITY, for the purposes of discharging each State's proportion of the public debt, and support of the foederal government. To assist each other in cases of *insurrections* and *invasion:* and in case any State within the confederacy should be *delinquent* in discharging their proportion of the public debt, either *foreign or domestic*, to enforce (if necessary) their immediate payment. Each State *obligating themselves in the treaty of amity*, to furnish (whenever required by Congress) a proportionate number of the Militia, who are ever to be well organized and disciplined, for the purposes of repelling any invasion; suppressing any insurrection; or reducing any delinquent State within the confederacy, to a compliance with the foederal treaty of commerce and amity.—Such assistance to be furnished by the *Supreme Executive* of each State, on the application of Congress.—The troops in cases of *invasion* to be under the command of the Supreme Executive of the State immediately in danger; but in cases of *insurrection*, and *when employ'd against any delinquent State in the confederacy*, the troops to be under the command of Congress.

3d. That such States as did not join the confederacy of *commerce and amity*, should be considered as *aliens;* and any goods brought from such State into any of the confederated States, together with their vessels, should be subject to heavy extra duties.

4th. The treaty of amity, agreed to by the several States, should expressly declare, that no State (without the consent of Congress) should enter into any treaty, alliances or confederacy, grant letters of marque and reprisal; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder; expost facto law, impairing the obligations of contracts; engage in war, or declare peace.[10]

5th. A Supreme Judicial Court to be constituted for the following *foederal purposes*, viz. To extend to all treaties made previous to, or which shall be made under the authority of the confederacy. All cases affecting Ambas-

sadors, and other public Ministers and Consuls; controversies between two or more States; and between citizens of the same State, claiming lands under grants of different States.—To define and punish piracies, and felonies committed on the high seas, and offences against the law of nations.

6th. That it be recommended to Congress, that the said *navigation act,* and *treaty of amity,* be sent to the Legislatures (or people) of the several States, for their assenting to, and ratifying the same.—The ratification of nine States, to be sufficient for the establishment of such a navigation act, and treaty of amity, between the States, so ratifying the same.[11]

7th. A regular statement and account of the receipt and expenditures, of all public monies, should be published from time to time.[12]

4.9.23 The above plan it is humbly conceived secures the *internal government* of the several States, promotes the *commerce* of the whole union; preserves a due degree of *energy;* lays restraints on *aliens;* secures the several States against *invasions* and *insurrections,* by a MILITIA, rather than a STANDING ARMY; checks all *expost facto* laws; cements the States by certain *foederal restrictions;* confines the judiciary powers to *national matters;* provides for the public information of *receipts* and *expenditures:* in a word, places us in a compleat *foederal state.*

4.9.24 Every man must be sensible, that a foederal system, is of the utmost importance to our national prosperity.—The deranged situation of our public affairs, now calls on us to adopt such measures as will relieve the distresses of the PEOPLE, and establish upon a permanent basis the COMMERCE of these States.

4.9.25 The encouragement of a beneficial commerce must be acknowledged, to be of the greatest public utility; as the value of our produce and our lands, must either rise or fall in proportion to the prosperous, or adverse state of trade. This essential concern, has ever claimed the particular attention of Congress; their earnest solicitations to vest them with sufficient powers for this purpose, fully evince of what importance they considered this object. Provided their requisitions had been complied with, our trade would probably have been upon a respectable footing,—and foreigners would largely have contributed to the payment of our national debt.

4.9.26 The question now is, what public measures must be adopted to restore our decayed commerce, and give energy to government? These I presume, are the great objects to be considered: And, provided this business is earnestly undertaken, every embarrassment we now experience would subside; our public credit would revive; our government would receive every support; a circulation of currency would ensue; our taxes would be quickly collected; the husbandman, merchant and tradesman, would experience the salutary effects; and *public confidence,* which has long been wanting among us, would be again restored.

4.9.27 Notwithstanding the many advocates for the adoption of the new Constitution, I cannot but doubt, whether this establishment will remedy our

complaints. It is true the government of these States has been for many years in a decline; *for want of a federal system*, all our measures to promote the public interest have proved abortive. But in order to remedy these evils, shall we now pass to the other extreme; and, from denying Congress every power whatever, wantonly surrender into their hands our *Excises*, and submit to their *direct taxation?* with powers to raise armies, &c. &c.

4.9.28 The readiness of the people to adopt the new Constitution, arises in a great degree from the apprehension that *no other mode* can be adopted: But this is a mistaken idea, as Congress a few years since, pointed out a mode similar to a part of the plan now offered,—which they recommended to the several States for their adoption.

4.9.29 The resolves of Congress, 18th April, 1783, "recommends to the several States, to invest them with powers to levy for the use of the United States, certain duties upon goods, imported from any foreign port, island or plantation;" which measure is declared by them, "To be a system more free, from well founded exceptions, and is better calculated to receive the approbation of the several States, *than any other, that the wisdom of Congress could devise; and if adopted, would enable them to fulfil their public engagements with their foreign creditors.*"[13]

4.9.30 The address of the General Court of this Commonwealth, to the people, 30th October, 1786, fully evinces, that measure much short of the proposed Constitution, would restore these States to the highest degree of harmony and respectability.

They say "Of the *national debt*, that part which is due to foreigners, must be paid in gold and silver;—if the *Continental Impost*, should take place, which there is much reason to expect, *it would immediately discharge us from the principal of this debt;* with respect to the *Continental domestic debt*, Congress have resolved that the lands ceded to them, by the individual States, shall be disposed of, *for the payment of that debt; the particular debt of this Commonwealth*, is almost wholly due to its citizens; considerable sums are expected from the sale of lands in the easterly part of this State."[14]

4.9.31 From the above quotations, it does appear, that the *Continental Impost*, is fully adequate to enable Congress to fulfil their engagements with their *foreign Creditors*. The *lands ceded to Congress*, are to be disposed of, for the payment of the *Continental domestic debt*:* And the *particular debt of this State*, will probably, (exclusive of the Western territory) be discharged in a great measure, from the sale of the *Eastern lands*. If then, these three great national objects, can be accomplished, without a total surrender of the Sovereignty of these States, why should each State with such *alacrity*, reduce themselves to mere corporations,—and submit their *Excises*, with

*The Continental domestic debt, is £27,000,000; Congress have already sold lands to the amount of £6,000,000, and about £11,000,000 are already collected in the different State Treasuries; so that there remains to be redeemed, not more than £10,000,000.

every other tax, to the unlimited controul of Congress? This conduct in the American annals, may appear as inglorious, as King *John's* resignation of the Crown, to the *Pope's Legate*. The magnitude of the surrender is expressed most forcibly by Mr. *Wilson*, when he says, "Thirteen Sovereign States, some of which, in territorial jurisdiction, *population*, and *resource*, equal the most respectable nations of Europe; but likewise myriads of citizens, who in future ages, shall inhabit the vast uncultivated regions of the Continent." Certainly then, the importance of the business before us, ought to "fill our minds with awe and apprehension."[15]

4.9.32 The creditors of the particular States, would become great sufferrers, if the *Excises* are wholly subject to the use of Congress. The interest of the State debt must remain for many years unpaid; as the necessary arrangements of Congress; the pay of their officers; the great expences naturally attending so extensive a system of government; the parade and pagentry necessary to keep up the etiquette of *Dignities;* together with the enormous expenditures, within the confines of the Federal town, will call for the greatest part of the money that can be for many years collected.

4.9.33 Provided the Constitution should be adopted in *all its parts*, the Congressional Body, would have so many important matters to consider, that the most essential object of *Commerce* might not claim that particular attention, which our present situation requires. The merchant and tradesman, might be waiting with earnest expectations for some commercial regulations, while Congress were busily engaged in framing other systems of legislation.

4.9.34 When we consider the great revenue requisite to support the proposed Constitution, we ought to reflect whether the *abilities* of the people are proportionate. How can the tradesman, farmer and merchant in the present feeble state of their several occupations, and employments, be able to support the immediate expences of the new Constitution? The demands on them, would be *hastily* made; and they must be answered, even before any beneficial operations could arise from the establishment; and after those great advances of taxes, it is quite uncertain, whether we should not be disappointed in our expectations, of the revival of our commerce.

4.9.35 But should we adopt the plan proposed by Congress, in their resolves of the 18th April, 1783, (already mentioned) no extraordinary expences would arise, and Congress having but *one object* to attend, every commercial regulation would be uniformly adopted; the duties of impost and excise, would operate equally throughout the States; our ship-building and carrying trade, would claim their immediate attention. And in consequence thereof, our agriculture, trade and manufactures would revive and flourish. No acts of legislation, independent of this great business, would disaffect one State against the other; but the whole, uniting in one Federal System of commerce, would serve to remove all local attachments, and establish our navi-

gation upon a most extensive basis. The powers of Europe, would be alarmed at our Union, and would fear lest[16] we should retaliate on them by laying restrictions on their trade.

These being the probable consequences of a commercial system, the questions are, Whether it is necesssary, to adopt the Constitution proposed; or whether each State, complying with the request of Congress, together with the other parts of the plan proposed, would not answer every purpose we would wish to effect? If the latter is competent to these purposes, why should we be so urgent to adopt a plan of government, among other defects, destitute of that basis of freedom, A BILL OF RIGHTS; and which exposes every man, within these States, to be drag'd hundreds of miles, to a Federal Judicial Court?* 4.9.36

The Constitution proposed, may aggrandize a few individuals: *The offices of honor and profit, may please the AMBITION of some, and relieve the EMBARRASSMENTS of others.* It may serve to multiply Judicial controversies, and embarrass the citizens of the several States, by appeals to a Federal Court. It may give an undue influence to Congress, by the appointment of a numerous Body of officers. It may discourage *Industry*, by promoting an infinite train of dependants and seekers.—But the great object of commerce,—our national respectability,—together with industry and frugality, would probably be the happy consequences of a Commercial Confederation. 4.9.37

These States, by the blessing of Heaven, are now in a very tranquil state.—This government in particular, has produced an instance of ENERGY, in suppressing late Rebellion, &c. which no absolute Monarchy can boast: And, notwithstanding the insinuations of a *"small party,"* who are ever branding the PEOPLE, with the most approbious Epithets; representing them as aiming to level all distinctions; emit paper money; encourage the Rebellion. Yet the present General Court, the voice of that Body, whom they have endeavoured to stigmatize, have steadily pursued measures foreign from the suggestions of such revilers. And the public credit has been constantly appreciating since the present Administration. 4.9.38

Let us then be cautious how we disturb this general harmony. Every exertion is now making, by the people, to discharge their taxes. Industry and frugality prevail. Our commerce is every day encreasing by the enterprize of our Merchants.—And above all, the PEOPLE of *the several States are convinced of the necessity of adopting some Federal Commercial Plan.* 4.9.39

*Supposing a merchant at the southward, should order his correspondent in Boston, to build him a vessel: The merchant after forwarding his accounts, in case of any dispute, might be carried to the Supreme Judicial Court: the ship-carpenter would be obliged to attend the trial, and probably call'd on, to carry a number of his workmen as witnesses; the expences attending their journey; the delay of the cause; neglect of business—together with numberless intervening charges, would absorb the earnings of a whole year's labour.

May that kind Providence, which has ever conducted America through every changing scene, guide and direct the ensuing Convention, to adopt such measures, as will promote the lasting happiness of these States.

Candidus.

III

3 January 1788

Mess'rs Printers,

4.9.40 It has long been the boast of the Americans, that they are privileged above all other nations, by having it in their power, to adopt a Constitution on the free deliberations of the people.—The attempts therefore, which have been made to destroy this freedom, must be peculiarly disgusting to every man, who sincerely wishes the happiness and welfare of his country.

As a citizen of this Commonwealth, I ventured to offer my sentiments on a subject, which is now before the people, for their consideration. The infamous publications, which have appeared in consequence of my remarks, serve only to expose the insolence of party writers, who are anxious to curb every candid enquiry, lest[17] they should be disappointed in their fancied expectations.[18]

4.9.41 No person within these States, more sincerely wishes the adoption of a federal system; being sensible of the necessity of an efficient Government, to establish our national respectability, and promote our agriculture, manufactures and commerce; but through the violence of party zeal, every man who dares exercise his own judgment, is branded as an antifederalist, tho' his sentiments should wholly correspond with the repeated requisitions of Congress.

4.9.42 This ungenerous method of condemning characters, is contrary to that candour, which actuates the citizens of these states. Freedom of debate in all national questions, has ever been held sacred among a free people; the great subject now submitted to the public, most certainly claims this indulgence, as on its impartial discussion, every thing that is valuable depends.

The adoption of the proposed Constitution, being a concern of such magnitude, we are in duty bound to hear with patience, the observations of our fellow citizens, provided their remarks are delivered with calmness and propriety; this candid disposition towards each other, cannot at this time injure us, but would be the means to unite every man, in embracing a system of Government, which might forever secure the liberties of this Country.

Candidus.

1. Cf. *The Federalist* nos. 6 and 7. See Centinel IV, 2.7.91 n. 47; XI, 2.7.139 n. 74.

2. "We may indeed with propriety be said to have reached almost the last stage of national humiliation. There is scarely anything that can wound the pride, or degrade the character of an independent nation, which we do not experience. . . . [I]t may in general be demanded, what indication is there of national disorder, poverty and insignificance that could befal a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes." *The Federalist* no. 15, 91–92. For references to discussions of American circumstances, see Centinel IV, 2.7.91 n. 43; Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

3. The original reads "and which was declared . . ."

4. See Jensen, *New Nation* 399–407.

5. This argument is of course similar to that made by Agrippa; see VIII, 4.6.31–32.

6. See DeWitt 4.3.21; Friend to the Rights of the People 4.23.3(4); Henry 5.16.10; Plebeian 6.11.6 n. 7.

7. Joseph Addison, *Cato, A Tragedy* act 3, sc. 5.

8. See Brutus 2.9.

9. See resolutions of 3 February 1781, 18 April 1783, and 30 April 1784. *Journals of the Continental Congress* XIX, 112–13; XXIV, 257 ff., XXVI, 321–22.

10. Articles of Confederation, Art. VI.

11. Ibid., Art. IX.

12. Ibid.

13. See *Journals of the Continental Congress* XXIV, 257–60, 277–83.

14. *Address From the General Court to the People of the Commonwealth of Massachusetts* (Boston 1786).

15. Candidus is quoting from the Dallas version of James Wilson's speech of 24 November to the Pennsylvania ratifying convention; see McMaster and Stone 218.

16. The original reads, "least."

17. The original reads, "least."

18. See especially the satirical Candidus in the *Massachusetts Centinel* of 26 December 1787.

Essay by Cornelius

HAMPSHIRE CHRONICLE
11 and 18 December 1787

The essay by Cornelius was one of the few Massachusetts Anti-Federalist essays of substance originating outside Boston. Samuel Bannister Harding reprints the essay in his study of ratification in Massachusetts; and his evaluation—with perhaps the substitution of an "and" for his "but"—is perfectly just: "it is an able, fair-minded production, showing a considerable degree of political knowledge and independence of thought; but it is tinctured with a democratic jealousy and a distrust of commercial interests which was the characteristic of most of the rural districts of this State."[1] Cornelius begins by pointing out that the Constitution is an entirely new system, inconsistent with the provisions for amending the Articles of Confederation. He provides an excellent statement of the dangers of such a precedent to the stability of law and public and private engagements (4.10.4–5), a persistent Anti-Federalist theme. Proceeding systematically through the main departments of government, he argues that the legislature is given unnecessarily broad powers and is substantially independent of the control and even the knowledge of the people. In the relatively narrow context of the power of the legislators to determine their own pay, he engages in broad reflections on the character of the national representatives, particularly their tendency to yield to the luxurious example of the affluent citizens and foreign representatives, with whom they will come chiefly into contact, and in turn to set such an example themselves and thus to promote luxury and extravagance (4.10.8–9). Discussing the provision for the election of the representatives, Cornelius describes the conflict of interests between the landed and mercantile interests, the greater natural compactness and maneuverability of the latter, and the likelihood of the power of the new government falling into its hands (4.10.11). In the executive, Cornelius finds an elected monarchy which will be the source of dissension among the states (4.10.12); and in the judiciary, numerous and expensive courts to burden the citizens (4.10.13).

Cornelius grants, indeed strongly emphasizes, the need for giving Congress further powers—but insists that in a surfeit of liberty Americans should not swing to the other extreme. He suggests that it will be enough to give Congress the power to lay and collect taxes, duties, imposts, and

excises (not the impost alone, as many Anti-Federalists suggested) and to regulate commerce. If a presidency like that in the Constitution is indeed necessary, it should be made hereditary and for life to avoid the rivalship and corruption of an elective monarchy. If a federal judiciary is necessary, it should be one with fewer courts and a smaller jurisdiction (4.10.17–18).

Cornelius concludes in a somewhat miscellaneous fashion, pointing to the inequity to Massachusetts of the method of apportioning direct taxes, the tendency of the Constitution to a rule of men rather than of law, and (again) the danger of presidential elections (4.10.19–21).

1. Harding, *Contest over Ratification* 33.

11 December 1787

Great, and perhaps, just encomiums, are, in the publick prints, and in private circles, daily bestowed on the constitution reported by the late Federal Convention. Not the least objection, that I recollect, has publickly appeared against it. Among those in particular, who are reputed wise and discerning, almost every one seems eager to embrace it. This being the case, it will undoubtedly be considered by many, as discovering a want of modesty in any one, who may presume to express a doubt of the expediency and happy consequences of adopting the constitution. 4.10.1

As truth will bear the light; and by how much the more close examination it undergoes, by so much the more ravishing beauty it will shine; there can be no danger in hinting at some of the objections that arise against this form of government, in the mind of one, who feels for his own safety—who has never learned to see with eyes, other than his own, and who, at the same time, wishes the happiness of his fellow men, so far at least, as that of his own is included. 4.10.2

Power has not commonly been suffered to lie down dormant, and to rust in the hands of its possessors, for want of use. It may well be presumed that men, whether individuals, or publick bodies, will generally exercise as much power as they are legally vested with, and as much to their own private advantage as they have a constitutional right to do.[1]—With this general idea in view, let us attend to the Constitution, and soberly consider some of the consequences that will probably follow, if it should be adopted by the United States. 4.10.3

It may be observed in the first place, that this constitution is not an amendment of the confederation, in the manner therein stipulated; but it is an intire subversion of that solemn compact.—By the 13th article of that compact, the faith of the United States is solemnly plighted to each and every State, that "the articles of this confederation shall be inviolably ob- 4.10.4

served by every State, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States and be afterwards confirmed *by the legislature of every state.*"

4.10.5 By the 7th article of the constitution, it is ordained, that "the ratification of *the conventions of nine States* shall be sufficient for the establishment of this Constitution between the States so ratifying the same."

Will not the adoption of this constitution in the manner here prescribed, be justly considered as a perfidious violation of that fundamental and solemn compact, by which the United States hold an existence, and claim to be a people? If a nation may so easily discharge itself from obligations to abide by its most solemn[2] and fundamental compacts, may it not, with still greater ease, do the same in matters of less importance? And if nations may set the example, may not particular States, citizens, and subjects, follow? What then will become of publick and private faith? Where is the ground of allegiance that is due to government? Are not the bonds of civil society dissolved?[3] Or is allegiance founded only in power? Has *moral obligation* no place in civil government? In mutual compacts, can one party be bound while the other is free? Or, can one party disannul such compact, without the consent of the other? If so, constitutions and national compacts are, I conceive, of no avail; and oaths of allegiance must be preposterous things.

4.10.6 By this constitution, *the legislative powers are vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.* The latter are to be chosen for two years, and the former for six. It has been a generally received maxim, that frequent and free elections are the greatest security against corruption in government, and the oppression of the people. Have the United States, hitherto, suffered any inconvenience from annual elections? Have their delegates been too often shifted, or too frequently recalled? This, I believe, will not be pretended.

4.10.7 When once the Senators and Representatives are elected, they are under no constitutional check or controul from their constituents, either by instructions, being liable to be recalled, or otherwise. It is not in the power of the citizens or the legislature of any particular State, nor of all the citizens and legislatures of all the States, either to give any legal instructions to a single member of Congress, or to call him to account for any part of his conduct relative to the trust reposed in him. He may be impeached by the House of Representatives, provided he conducts [himself] in a manner that is offensive to them; but he cannot be convicted in any case, without the concurrence of two thirds of the Senators present.

4.10.8 The Congress are to have *power to levy and collect taxes, duties, imposts and excises,* at their discretion; and out of this revenue, to make themselves such compensation for their services as they may think proper.

Is it altogether certain, that a body of men elected for so long a term,—rendered thus independent, and most of them placed at the distance of some

hundreds of miles from their constituents, will pay a more faithful regard to their interest, and set an example of economy, more becoming the circumstances of this country, than they would do, if they were annually elected, subject to some kind of instructions, and liable to be recalled, in case of male administration? Have the several states, in the estimation of the compilers of this Constitution, been hitherto, so parsimonious and unjust in paying their delegates, that they have rendered themselves unfit to contract with their Senators and Representatives, respecting a compensation for their service? If so, what may we suppose will be considered as a just compensation, when this honourable Body shall set their own pay, and be accountable to none but themselves?

(*The remainder in our next.*)

18 December 1787

(*Concluded from our last.*)

It will probably be urged, "Our State Legislature set their own pay; and why should not Congress do the same." 4.10.9

If the cases are similar, the reasoning may be good; but there is a wide difference between them. The members of our State legislature are annually elected—they are subject to instructions—they are chosen within small circles—they are sent but a small distance from their respective homes: Their conduct is constantly known to their constituents. They frequently see, and are seen, by the men whose servants they are. While attending the duties of their office, their connexions in general, are with men who have been bred to economy, and whose circumstances require them to live in a frugal style. They are absent from their respective homes but a few days, or weeks, at most. They return, and mix with their neighbours of the lowest rank, see their poverty, and feel their wants.—On the contrary: The members of Congress are to be chosen for a term of years. They are to be subject to no instructions. They are to be chosen within large circles: They will be unknown to a very considerable part of their constituents, and their constituents will be not less unknown to them. They will be far removed, and long detained, from the view of their constituents. Their general conduct will be unknown. Their chief connections will be with men of the first rank in the United States, who have been bred in affluence at least, if not in the excess of luxury. They will have constantly before them the enchanting example of Ambassadors, other publick Ministers, and Consuls from foreign courts, who, both from principles of policy, and private ambition, will live in the most splendid and costly style. Men are naturally enough inclined to vie with each other. Let any body of men whatever be placed,

from year to year, in circumstances like these; let them have the unlimitted controul of the property of the United States; and let them feel themselves vested, at the same time, with a constitutional right, out of this property to make themselves such compensation as they may think fit: And then, let any one judge, whether they will long retain the same ideas, and feel themselves under equal restraints as to fixing their own pay, with the members of our state legislature. This part of the Constitution, I conceive to be calculated, not only to enhance the expense of the federal government to a degree that will be truely burdensome; but also, to increase that luxury and extravagance, in general, which threatens the ruin of the United States; and that, to which the Eastern States in particular, are wholly unequal.

4.10.10 By this Federal Constitution, each House is to be the judge, not only of the elections, and returns, but also of the *qualifications* of its members; and that, without any other rule than such as they themselves may prescribe. This power in Congress, I take to be equal to that of a negative on elections in general. And the freedom of elections being taken away, where is the security or liberty that is reserved to the citizens under this federal government? But as if this were a light thing, and the liberties of the people not sufficiently cramped by their election being thus exposed to a negative, at the pleasure of each House; the Congress are also vested with the power of prescribing, not only the times and manner of holding elections for Senators; but, the times, manner and *places* of holding elections for Representatives. There is undoubtedly, some interesting and important design in the Congress being, by the Constitution, thus particularly vested with this discretionary power of controuling elections. Will it be urged that, as to such particular times and *places* for holding elections as may be most convenient for the several States, the Congress will be more competent judges than the citizens themselves, or their respective legislatures? This, surely, will not be pretended. The end then of placing this power in the hands of the Congress, cannot have been, the greater convenience of the citizens who are interested and concerned in those elections. But whatever may have been the *design*, it is easy to see that a very interesting and important use may be made of this power; and I can conceive of but one reason why it should be vested in the Congress; particularly as it relates to the *places* of holding elections for Representatives. This power being vested in the Congress, may enable them, from time to time, to throw the elections into such particular parts of the several States where the dispositions of the people shall appear to be the most subservient to the wishes and views of that honourable body; or, where the interests of the major part of the members may be found to lie. Should it so happen (as it probably may) that the major part of the Members of Congress should be elected in, and near the seaport towns; there would, in that case, naturally arise strong inducements for fixing the places for holding elections in such towns, or within their vicinity. This would effectually exclude the distant parts of the several States, and

the bulk of the landed interest, from an equal share in that government, in which they are deeply interested.

There is nothing in the Constitution that determines what shall be considered as an election of a Representative. The Representatives are to be chosen by the people; and where there are a number to be chosen, it is, perhaps, not very likely that any one gentleman will have a majority of all the votes. Those who may appear to have the greatest number of votes must, therefore be considered as being elected.—I wish there never might be any competition between the landed and mercantile interests, nor between any different classes of men whatever. Such competitors will, however, exist, so long as occasion and opportunity for it is given, and while human nature remains the same that it ever has been. The citizens in the seaport towns are numerous; they live compact; their interests are one; there is a constant connection and intercourse between them; they can, on any occasion, centre their votes where they please. This is not the case with those who are in the landed interest; they are scattered far and wide; they have but little intercourse and connection with each other. To concert uniform plans for carrying elections of this kind is intirely out of their way. Hence, their votes if given at all, will be no less scattered than are the local situations of the voters themselves. Wherever the seaport towns agree to centre their votes, there will, of course, be the greatest number. A gentleman in the country therefore, who may aspire after a seat in Congress, or who may wish for a post of profit under the federal government, must form his connections, and unite his interest with those towns. Thus, I conceive, a foundation is laid for throwing the whole power of the federal government into the hands of those who are in the mercantile interest; and for the landed, which is the great interest of this country to lie unrepresented, forlorn, and without hope. It grieves me to suggest an idea of this kind: But I believe it to be important, and not the mere phantom of imagination, or the result of an uneasy and restless disposition.[4] I am convinced of the candour and liberal disposition of gentlemen who are now in the seaport towns, and the mercantile interest; and I am fully persuaded, they desire no such undue advantages over their brethren in the country, who are in the landed interest. But, let a man be *king over Syria;* and he may do things for which he had, before, no disposition. The Constitution is designed for time to come. 4.10.11

The executive power is to be *vested in a President of the United States, who is to hold his office during the term of four years, and who is to be commander in chief of the army and navy, and of the militia of the several States, when called into the actual service of the United States. He is to receive for his services, at stated times, a compensation which shall not be increased nor diminished during the term for which he is elected.* This compensation must, and ought, to be suited to the dignified station in which that officer is placed, which cannot be considered as far below that of an European Monarch. Elective Monarchies, wherever they have obtained, 4.10.12

have generally been attended with the most dreadful consequences. And I am not without fear that venality and corruption may shortly be found among some of the least calamities that will attend those elections. At no very distant period, we may expect the most violent competitions between individual aspiring men, between particular States, and between the Eastern and Southern States.[5] When this shall take place, it will be natural to seek, and easy to find, sufficient pretences for recourse to arms.

4.10.13 *The judicial power of the United States is to be vested in one Supreme Court, and in such other Inferior Courts as Congress may from time to time ordain and establish. The Judges of both are to hold their offices during good behaviour, and at stated times, to receive for their services a compensation, which shall not be diminished during their continuance in office.*— From the great variety of cases to which this judicial power is to extend, it is apparent these courts must be numerous. And as the judges are, at stated times, to receive from the publick, a compensation for their services, this must add a very considerable sum to the expence of government. Every trifling controversy of twenty shillings, or less, *between citizens of different States*, must be brought, it seems, before one of these Federal Courts. The great number of publick men that must be supported on the plan of this Constitution, in addition to the governments of the particular States, must lay a burden on the citizens which there is reason to fear, will prove insupportable.

4.10.14 The publick mind, I fear, is at this critical juncture, prepared to do the same that almost every people, who have enjoyed an excessive degree of liberty have done before;—to plunge headlong into the dreadful abyss of Despotick Government.—At the time of forming the Confederation, the publick rage was on the side of liberty. The reigning disposition then was, to secure the highest degrees of liberty to the people, and to guard against every possible instance of oppression in their rulers. The consequence is, want of sufficient energy in government. We have had a surfeit of liberty; and, to many, the very name has now become nauseous.

4.10.15 That the Congress ought to have further powers than those with which they are vested by the Confederation, no reasonable man will deny. That this is absolutely necessary, in order that the United States should continue much longer to exist, with any tolerable degree of reputation, I am fully convinced. But that the Congress, or any other body of men, should be vested with all those independent and unlimitted powers prescribed in the Constitution, appears to me, by no means necessary. Considering the principles by which publick bodies are generally influenced, I am very apprehensive, that if this Constitution is adopted, the remedy proposed will, in no very distant period of time, prove, at least equally distressing with the disease itself. The strength and energy of government does not, I conceive, so much consist in particular men, being vested with unlimitted powers, as it does in a due regulation of the necessary powers with which they are vested,

and in effectual provision for the exercise of those powers. It is possible, I believe, for government to be weak in the hands of a Despot, and strong, where considerable degrees of liberty are enjoyed.

We have practiced but a few years on the Confederation; long enough however, to discover its principle defects. The great embarrassments under which we have laboured, are found, I imagine, to have risen from the want of a revenue, and a general regulation of trade. If Congress (continuing in all other respects, to possess the same powers which they do at present) were vested with the further power of laying and collecting taxes, duties, imposts, and excises, and with the exclusive right of regulating Commerce, I believe our federal government would be as firm and happy as might reasonably be expected to fall to the lot of humanity, in this state of imperfection. 4.10.16

If it is indeed necessary that we should have a President, vested with the powers prescribed in the Constitution, I am fully persuaded that rather than that he should be elected in the manner therein described, and for the term limitted, it would be attended with consequences less pernicious, at once, to make the office hereditary, and during life. This would, at least, prevent that rivalship, venality, corruption, and tumult, which may be expected, sooner or later, to attend those elections. 4.10.17

If it is further necessary, that a Judicial Court should be constituted, whose powers shall extend to certain cases of national importance; this, I apprehend, may be done with equal advantage, and less inconvenience, without multiplying those courts in the manner which the Constitution prescribes. 4.10.18

In the case of direct taxation, the rule of apportionment among the several States, I take to be very unequal, and in its operation, will prove exceedingly injurious to the Eastern States. These States, compared with the Southern, have always abounded in people more than in wealth; and from the nature of their climate and soil, will forever continue to do the same. Yet, by this rule of apportionment, a great allowance is made in favour of the Southern States: Three persons, including those bound to service for a term of years, being reckoned equal to five slaves. In the Eastern States there are but few slaves. In Massachusetts, there are none. There are in that State, a large number of negroes; and in apportioning the taxes, three of these negroes are to be reckoned equal to five in the Southern States. 4.10.19

When I consider the independent situation in which the members of Congress are placed,—the sovereign right of controuling elections, which that honourable body are to possess,—the discretionary, and unlimited power, vested in each House, to judge of the qualifications of its members; and that by such rules only as they themselves may prescribe, and alter as they please,—the unbridled temptations that will be constantly before them to aggrandize themselves, their connexions, and friends, at the expense of their constituents, and the unbounded opportunity they will have to do this: I am constrained to believe, that the principles on which the Constitution is 4.10.20

predicated, are such as tend to a government of *Men*, and not of *Laws*. And notwithstanding the high encomiums that are bestowed on this form of government, I shall be most disagreeably [agreeably?] disappointed, if it does not prove, in its operation, to be one of the most unequal, arbitrary, oppressive, venal, and corrupt governments that is extant.

4.10.21 I am sensible that the office of President of the United States is, in some respects, different from that of King of Great-Britain; and also, that the powers of the Senate are, in some measure, different from those of the House of Lords: Yet, either the one, or the other, existing in America, might be pernicious to the people. And it may be yet uncertain, whether, in every instance wherein they differ, the difference is in favour of the Federal Government.—In offices that are elective, where the elections are liable to embarrassments, or exposed to venal and corrupt influence, it may admit of some doubt, whether the man of the greatest integrity, or the man of the greatest intrigue, stands the fairest chance for preferment!

4.10.22 Thus I have ventured, with freedom, and I hope, with candour, to express my own ideas on this interesting and important subject. I have no disposition to kindle a flame, nor to excite any groundless fears, in the minds of my fellow citizens. I most ardently wish for an efficient, firm, and permanent *system of government;* and at the same time, that the people at large may enjoy as much liberty and ease, as may be consistent with such a government.

Cornelius.

1. See Symmes, 4.5.14 n. 5.
2. The original reads, "solemly."
3. See Republican Federalist III, 4.13.15 n. 11.
4. Charles Beard quotes Cornelius on the competition between the landed and mercantile interests as "probably the most reasoned statement of the antagonism of realty and personalty in its relation to the adoption of the Constitution in Massachusetts"; but Brown correctly points out that Cornelius does not support Beard's specific thesis. Beard, *An Economic Interpretation of the Constitution* 305–6; Robert E. Brown, *Charles Beard and the Constitution* (Princeton 1956) 187. The description of the proponents of the Constitution by A [New Hampshire] Farmer, which Beard apparently did not see, is closer to his thesis (4.17.8).
5. Randolph wished to avoid the divisiveness of fights over the executive by providing a plural executive. See Farrand I, 66 (1 June), 88 (2 June).

Essay by Poplicola

BOSTON GAZETTE AND THE COUNTRY JOURNAL
24 December 1787

Replying to a comment made by Thomas McKean in the Pennsylvania ratifying convention that a well-administered despotism is the best form of government, Poplicola elaborates on the Anti-Federalist themes of the danger of relying for good government on the virtue of the rulers and the evils of monarchic and aristocratic governments. The essay appeared on the same day, 24 December 1787, in both the *Boston Gazette and the Country Journal* and the Boston *American Herald;* it is taken here from the former.[1]

1. This essay is dated incorrectly by Charles Warren in his article "Elbridge Gerry, James Warren, Mercy Warren and the Ratification of the Federal Constitution in Massachusetts," Massachusetts Historical Society, *Proceedings* LXIV (1932): 147 n. 6.

Messieurs Edes,

Mr. McKean, says a Philadelphia paper, closed a long speech on the legislative article of the new Constitution with this striking observation: "Though a good system of government is certainly a blessing, yet it is on the *administration* of the best system, that the freedom, wealth and happiness of the people depend."[1] There is nothing, I confess, so striking to my mind in this observation—A good system of government may be, and too often is, administered by weak and corrupt men; and while this is the case, the people will suffer injury. The fault then will be not in the system, but in the administration; though many persons, when they see public affairs badly managed, are apt to ascribe it to the wrong cause; and hence they wish to change the very nature of a good Constitution; and very frequently change for the worse. The *Federalists,* as they call themselves (improperly in my humble opinion) seem to be aware that the plan offered by the late Convention will not endure a strict scrutiny; they wish, however, that the people would adopt it in its present form, and depend on a wise administration. But do they think the people of America, after so magnanimous and arduous a conflict for the rights of mankind, will be so *improvident* as to adopt a form which they may not think safe for themselves, and their posterity, because Mr. McKean thinks, as we find in another part of his speech, that even the 4.11.1

worst government *may* be so administered as to ensure the dignity and happiness of a nation?[2] I presume they will not—Let us aim at a *Federal* Constitution, calculated to establish the *Federal* Union of these sovereign States, and secure the liberties of the people; and having fixed upon *such* a Constitution, we shall even then have enough to do, if we turn our utmost attention to the means of having it administered well. This would be acting up to the character of citizens of a free sovereign and independent State.

4.11.2 But there is one observation made by that honorable gentleman, in the same speech, which, to me, appears *striking* indeed, "DESPOTISM, (says he) if wisely administered, *is the best form of government ever invented by the ingenuity of man!*["] I cannot but wonder that such a sentiment should fall from the lips of Mr. McKean, who is undoubtedly a man of sense and knowledge—In the course of his studies in the law, and from his other reading, I should have thought he would have been led to a different conclusion.—Is *Despotism* then the offspring of human ingenuity? No. In societies of men, it springs from an intolerably haughty, and imperious temper—an insatiable lust of domination; and from servility and ignorance in multitudes of the human race, who have been flattered and coaxed to give up their unalienable rights of nature, by degrees, till the tyrant has become strong enough to invade the whole, and immerge the deluded multitude in slavery and wretchedness. For my part, I do not believe there is a man on earth, to whom it would be safe for the people to intrust the powers of a despot, whose will must be their law—I would not trust him however mild and gracious his natural temper might be. *Nero,* was said to be blest with a kind and affectionate heart; but the powers of a despot intoxicated his mind—He soon became wild and unruly, as the most untameable beasts of the forest—Every tender feeling was eradicated from his soul, and he was the butcher of the *subjects* (not *citizens*) of Rome in a very few years.—Fatal experience has taught the world, that despotism has proved ruinous to the dignity and happiness of men—*Despots* have very rarely, if ever, had wisdom, integrity and other essential qualities, to "administer" their governments "wisely;" and they have as seldom had inclination to spend a thought about it. The Supreme Being, indeed, governs the Universe by the council of his own understanding; and if all his creatures are not happy under his government, it is owing to their imperfection, or their fault. He alone is perfectly wise, powerful, and good—He leaves it to the wisdom of men to institute governments for themselves, and it must be owned that the wisest human institutions are *imperfect*—But it is exceedingly clear, from the government which He prescribed for his favourite people, that *despotism* was not *His* choice—They foolishly changed their free government for a monarchy, though they were faithfully warned of the intolerable burdens it would bring them under, which they afterwards felt to their cost without remedy—The pride and madness, not the *ingenuity* of man, *invented* DESPOTISM.

I wish Mr. McKean would again recur to the histories of Despotic Governments, and see how many of the tyrants have treated their people with savage and brutal barbarity, to one who govern'd with a tolerable degree of mildness and wisdom: Even under the best of them, their forlorn subjects hold their property, their liberties, and lives, on no better a tenure than their sovereign pleasure—I have seen and experienced so much of the depravity and weakness of the human mind, that I hope these States will never be prevailed upon to relinquish a greater share of their powers, to the Federal Union, than is sufficient to give the government a degree of energy, adequate to the emergencies of the Union; and that while they chearfully do this, they will wisely guard those rights and powers which shall remain, and watch with *republican* jealousy against the least encroachment on them. 4.11.3

Mr. McKean, after speaking of the *Supreme* excellency of DESPOTISM, IF wisely administered, mentions absolute and limited monarchies, aristocracies, and mixed governments, and says the people under each of them "are as *contented* and prosperous as we are, owing, undoubtedly to the wisdom and virtue of their rulers." Absolute monarchies and hereditary aristocracies are much the same, so far as the people whom they govern, are affected. By gazing at the splendor of a monarch, or a nobility, and being well accustomed to military tyranny, they bow to the yoke and bear it as patiently as their brother-oxen—They drag their heavy loads without repining, and will be *contented*, though they are cruelly whipped for their pains. Whence is this abject submission? From their ignorance.—Slavery renders them incapable, even of thinking—The means of information are kept from them, and they have not the idea that men were designed to be free, and that some communities, alas! how few! actually are free. England is a limited monarchy, and a mixed government—The people of that nation must be allowed, to be very *contented;* for they have seen their nation governed by a junto—They have seen that junto purchasing parliaments to give a sanction to all their profligate measures—They have seen the junto raising and keeping a standing army in a time of profound peace: That army murdering peaceable and quiet subjects, and the murderers pardoned—And they have seen that junto employing an army and navy for the most dishonorable purpose of slave-making in America, and finally squandering away thirteen of their richest jewels! and after all they have scarcely breath'd a murmer.—God Almighty grant, that these United States may never be ruled by a *junto*, or if they should be so unfortunate, may they not long rest *contented* under it! 4.11.4

Poplicola.

1. Poplicola refers to a report in the *Pennsylvania Packet*, 3 December 1787, of a speech by Thomas McKean in the Pennsylvania ratifying convention on 28 November 1787. The report reads as follows: "On Wednesday [28 November] Mr. M'Kean closed a long speech on the legislative article of the new constitution with

this striking observation: 'Though a good system of government is certainly a blessing, yet it is on the *administration* of the best system that the freedom, wealth and happiness of the people depend. DESPOTISM, if wisely administered, *is the best form of government invented by the ingenuity of man,* and we find that the people under absolute and limited monarchies, under aristocracies and mixed governments are as contented and as prosperous as we are, owing, undoubtedly, to the wisdom and virtue of their rulers. In short, the best government may be so conducted as to produce misery and disgrace, and the worst so administered as to insure dignity and happiness to a nation.' "

Another version was reported in the *Pennsylvania Herald,* 26 December 1787: "And after all Mr. President, though a good system is certainly a blessing, yet the wealth, the prosperity, and the freedom of the people, must ultimately depend upon the administration of the best government. The wisdom, probity and patriotism of the rulers, will ever be the criterion of public prosperity; and hence it is, that despotism, if well administered, is the best form of government invented by human ingenuity. We have seen nations prosperous and happy under monarchies, aristocracies, and governments compounded of these, and to what can we ascribe their felicity, but the wise and prudent conduct of those who exercise the powers of government? For experience will demonstrate that the most perfect system may be so perverted as to produce poverty and misery, and the most despotic so executed as to disseminate affluence and happiness among the people." Both of these may be found in McMaster and Stone 280, 282. For other Federalist arguments about the critical importance of good administration see Elliot II, 254 (Hamilton); *The Federalist* no. 17, 107; no. 27, 172–74; no. 46, 316–17. For other Anti-Federalist discussions of this theme, see Federal Farmer I, 2.8.1 n. 3.

2. On the reliance by the Federalists on good men in office, see Federal Farmer VIII, 2.8.110 n. 72.

Essays by Helvidius Priscus

(BOSTON) INDEPENDENT CHRONICLE
and MASSACHUSETTS GAZETTE
December 1787–February 1788

In a letter to Rufus King on 30 December 1787, Christopher Gore wrote that "S. Adams is out full *against it*. There is ev'ry reason to conclude him the author of Helvidius Priscus in Adams and Nourse of last Thursday."[1] Charles Warren, on the other hand, contends that the author was General James Warren.[2] It must be admitted that the reader's interest in Helvidius Priscus, stimulated by his having been one of these notable Old Patriots, finds little sustenance in the essays themselves. The author opens with an attack on James Wilson and on the propriety of the conduct of the federal convention. Warning against the loss of liberty threatened by the so-called federal republic, he urges the Old Patriots to come forward and resist this departure from the principles of "the late glorious revolution." The remaining essays are taken up mainly with discussions of personalities, the machinations of the aristocratic faction, and the "gilded trap" they have set. There are two pairs of essays, the first published in the Boston *Independent Chronicle*, the second in the *Massachusetts Gazette*.[3]

1. King, *Life and Correspondence* I, 266–67.
2. Warren, Massachusetts Historical Society, *Proceedings* 64 (1932): 155–56. Warren's argument is in this instance not especially persuasive. It rests on the fact that a correspondent to the *Massachusetts Gazette* later said that the same man wrote the Helvidius Priscus and the Republican Federalist series (see 4.13); since James Warren quite clearly wrote the latter, he must have also written the former. The difficulty is that no reason is given for giving greater weight to the testimony of this Massachusetts correspondent than to that of Gore. On James Warren, see 4.13 intro.
3. Warren quotes some of the invective that these essays stimulated in reply. Massachusetts Historical Society, *Proceedings* 64 (1932): 156.

INDEPENDENT CHRONICLE
27 December 1787

To the Public.

Mr. WILSON observes, in his late celebrated speech, "that after a lapse of 4.12.1

six thousand years, America has now presented the first instance of a people asembled to weigh deliberately, and calmly, and to decide leisurely, and peaceably, on a form of government, by which they shall bind themselves and their posterity."[1] Has he not here suggested the strongest reason that can be urged, for postponing the adoption of the new system? If the assertion is true, is it prudent for this extensive Continent implicitely to accept, and rapidly and irrevocably adopt, the propositions of thirty or forty men, some of whom were infants, when the principles of the late revolution animated the patriots of this country to a noble resistance, and led them to bear the bold arm to shake the sceptre of foreign dominion: And as Mr. WILSON himself observes, "Government is a science as yet in infancy; and with all its various modifications, has been the result of force, fraud or accident."[2] May not these gentlemen be considered as yet in their pupilage, with regard to the origin, the end, and the most perfect mode of civil government? It is also well known, that some of the late Convention were the professed advocates of the British system; that others stood suspended in equilibrio, uncertain on which side to declare, until the scale of fortune balanced in favour of America; that the political manoeuvres of some of them have always sunk in the vortex of private interest, and that the immense wealth of others has set them above all principle. These several classes selected, a correspondent would inquire; how many of the disinterested worthies who ventured every thing for the support of the rights of their country, and the liberties of mankind, will be left to adorn that assembly, who have ambitiously and daringly presumed (without any commission for that purpose) to annihilate the sovereignties of the thirteen United States; to establish a DRACONIAN CODE; and to bind posterity by their *secret councils?* It may perhaps be replied that one third part of the body were of this generous description. Let us candidly grant it and examine their conduct; several of them left the assembly in disgust before the decision of the question. Others expressly reprobated the proceedings of a *conclave,* where it has been ridiculously asserted all the wisdom of America was concentered; and a RANDOLPH, MASON, and GERRY, had the firmness to avow their dissent; to support their opinions in the Legislatives of their several States; and submit them to the observation of the world.[3] It is true indeed that the *ancient Doctor,* who has been always republican in principle and conduct, doubted, trembled, hesitated, wept, and signed: While the illustrious President, not called upon to decide or necessitated to give his opinion, kept the chair, but undoubtedly painfully agitated for the fate of a country he had heroically lent his arm to defend.[4] All the powers of eloquence are exerted to catch the ear; and the utmost pathos of expression employed to warm the imagination, in Mr. WILSON's insidious speech; but as it will doubtless be the subject of critical discussion by those who have leisure to examine both its principles, and its tendency, I will but cursorily observe that he discovers no less *dexterity* and *address,* in his oratorical explanation of the system, then he acknowledges was necessary to *reconcile the jarring*

interests that opposed it[5]—and finally to prevail with several whose objections were insurmountable, to lend their signature to an instrument for which he is obliged to ransack the annals of ancient and modern story to find a name. But he acknowledges that neither *Rome*, nor *Britain*, nor *Switzerland*, or *Holland*, bear much resemblance to the newly fabricated *federal republic*.—And that he cannot find a precedent any where for the *Heterogeneous Monster*, unless it may be admitted in the *Lycian league* of the *Amphictionic Council*.[6] It is here natural for every one acquainted with ancient history to turn their thoughts to the miserable fate of the *Lycians*. They were a sober, and virtuous people, who maintained their independence, and their freedom, for several centuries; and supported their own simple institutions, under twenty-three distinct sovereignties; until the reign of *Leomitian*, when they fell under the Roman yoke, with other cities of Greece, while the *tyrant* alledged the same excuse for his encroachment, that we hear hacknied in the streets of our capitals, for subjugating the Americans to the arms of power *because they were no longer capable of enjoying their liberties*. Nor is *Mr. Wilson* more fortunate in calling our attention to the ruin of the Amphictionic union. Every one will recollect that the *Locrians*, (a people bearing a strong resemblance to a party in America) had crept in among them, and that an ambitious *Phillip* had his emisaries in that body, who by political intrigue, and well-timed *plausible speeches*, enabled him by the aid of a *standing army*, to set himself at the head of the Grecian States; to annihilate their constitutions, and to degrade them to the most abject submission to the will of a despotic tyrant. The application and the semblance is left for the consideration of every lover of his country.

America has fought for her liberties; she has purchased them by the most 4.12.2
costly sacrifices; she embarked in the enterprize with a spirit that gained her the applauses of mankind; and procured her emancipation from tyranny by the blood of her heroes, and her friends. And shall her honour, her character, her freedom, be sported away by the duplicity, and the intrigues of those, who never participated in her sufferings? Or by the machinations of such as have no pole star for their guide, but the mad ambition of a mind ready to sacrifice the finest feelings of humanity for its gratification? FORBID IT HEAVEN! and may the people awake from a kind of apathy which seems to pervade them, before they are aroused by the thunder of arms, or the insolence of dragooning parties, to arrest from the peasant, and the mechanic, the last farthing of their hard earnings, to support the splendid fabrick of *Mr. Wilson's* FEDERAL REPUBLIC. What an insiduous term! But this people are too wise to be long deceived by the extortion, or misapplication of words. Let the youth of America, who are yet ignorant of the characters, and the causes that occasioned the dismemberment of the United States from the crown of Britain, read for themselves the many excellent publications, on the origin of government, and the rights of human nature, that appeared between the year 1763 and 1775.—And instead of indulging a raptuous admiration for the modern superficial speechifyers in

favour of an American monarchy; let them examine the principles of the late glorious revolution, and see how far they comport with the opinions in vogue.[7] And before they embrace the chains of survitude, let them scrutinize their own hearts, and inquire, if their pride and their independency of spirit, will suffer them to lick the hand of a despotic master. And may the delegates for the ensuing convention consider well the importance of their decision. They will be applauded by the admiring world for making a stand at this critical conjuncture; or they will be execrated by all posterity for co-operating with the ambitious and intriguing spirits, who wish for the sake of their own advancement, to manacle a free and independent people, who have made the most astonishing and successful exertions to support their own rights, and to establish their rank among the nations. And when they shall have time to look around and be convinced, even *Mr. Wilson* acknowledges, "*they will then spurn at every attempt to shackle them with despotic power.*"[8]

4.12.3 Let them call for the name of the audacious man, who dared to say to his associates, in the late convention, "*that unless they hurried the constitution through before the people had time for consideration, there was no probability that it would ever be adopted.*"[9] And let him be stigmatized with the odium that is due to the base betrayer of the rights of his country, and not absurdly trusted, though he may artfully have obtained an election, to decide a second time on a question in which he is so manifestly interested.

4.12.4 It is obvious that there is not the smallest propriety that any of the members of that body, who have held out a system for the people to judge of, should themselves set in any of the State conventions, and have a voice to enforce their own alarming proceedings.

Let the old Patriots come forward, and instead of secretly wraping up their opinions within their own breasts, let them lift up the voice like a trumpet, and shew this people their folly, and the trembling *Columbia*, her impending danger. Let none of them fear the arbitrary frown of either Otbo, Galba, or Vitellius, nor the fate of

Helvidius Priscus.

INDEPENDENT CHRONICLE
10 January 1788

To the Public.

4.12.5 The three pillars lately erected at the southward, are like the hanging towers of Pisa, to be proped up and cemented by the blood of posterity, if ever they stand at all; for the present generation have too strong a sense of the rights of nature, of the sufferings experienced for their re-establishment, to set

down passively under a tottering pile, erected on pillars of porcelain—and if half a dozen others should yet be added to the guilded dome, it will still be astonishingly defective; as the artificers have hurried it through for their own present accommodation, without one solid heart of oak to support an edifice, whose wings extend to embrace the territory from the Mississippi, to the chain of lakes, and from the inland seas to the eastern shore.—An ancient historian has left it on record, that the first monarch after the Achoean league, who gained an entire influence over their councils, was possessed of all the virtues that endear a king.—"A lively genius, an uncommon understanding, an happy memory, an agreeable utterance, an unaffected grace in all his actions—He possessed a beautiful aspect, heightened by a majestic air, which bespoke the greatness of his mind, but his brightest virtues were the sweetness of his temper, his affability and great desire to please and content all who were under his government."—But alas! he was a man—he was a king—and let America be admonished, that in the plenitude of uncontrouled power, the same historian adds, that he so forfeited this great character, and from a glorious king became an inhuman tyrant.[10] Mankind have always been lulled by sounds into a fatal security, without giving themselves the trouble of investigation. Yet it is not probable the metaphisical disquisitions of a *southern doctor,* will persuade the world that the majority of the late CONVENTION were so much the peculiar favourites of heaven as to receive an immediate inspiration for the model of a government,[11] that should subjugate a country which appears to those who are really religious, and who believe in a providential direction, to have been remarkably under divine protection in the various steps that led to its independence. But why was the small minority (who could not in conscience accede) denied their share in this heavenly illumination?—and why was the aged *Dr. Franklin,* so darkened in his councils, as to make a motion, that the President should have no sallary? and to oppose almost every article in the system till the last, when he lent his signature in tears? or were those tears the result of a late revelation, that the system was fairly deduced from heaven; though it might involve America, first in anarchy, and then in despotism.[12] But the men who have denied the authenticity of the decalogue, and perhaps the divine origin of the gospel, may sport with the credulity of mankind—and droll on the miraculous interpositions of heaven, under an appearance of an enthusiasm for truth, if it will operate to the completion of a favourite system, while yet the honour of the gentleman is secure from falshood, when he asserts that he believes "the finger of God was as much employed in fabricating the foederal republic as in dictating the ten commandments; and that the divine origin of the new system is as much the object of his faith, as the division of the red sea, or the fulmination of the law from Mount Sina."[13] But as the gentlemen of the medical faculty have not all of them been the most remarkable advocates for divine inspiration; or the most distinguished in vindicating the sacred oracles of religion, we are glad if the learned *Dr. Rush* is an exception.

4.12.6 If he has really a sober sense of divine dispensation, it is to be regreted that a man of understanding should suffer his language to wear the guize of enthusiastic rant; But if he is one of the fashionable sceptical race, it is not strange when a darling point was to be urged, that he should indulge such epithets of impious affectation to fall from his lip, as shocks the feelings of those who revere the code of the supreme lawgiver. While the Roman usurper was ravaging Gaul, whenever it was convenient for their purposes, his commissioners consulted the Pagan oracles, and when the people were prepared by their love of pleasure, and prostration of principle, to bow to the yoke of servitude, he was pronounced from the lip of the Cybles, the destined master of the world; yet we do not find that *Caesar*, though *Pontifex Maximus* or *Curio*, who was purchased by his gold, had either of them much religion, and when it became necessary for the purposes of the tyrant, a *Claudius* was found to get a law enacted that no regard should be paid to the denunciations of the augurs. But the augurs who profess a more perfect religion, without pretending to immediate inspiration, will venture to predict, that the characters of the respected minority in the grand convention, and the names of FINDLEY, SMILIE, and others in *Pennsylvania*, and a much longer list in the Massachusetts, instead of sinking into contempt, will stand distinguished in the annals of fame, for opposing with the magnanimity of genuine patriotism, a combination of ambitious spirits, exorbitant wealth or squandered fortune, of men of licentious principles, and heated imaginations, and of a few of more conscientious opinion, who from the early rudiments of education and manners, have always had a predilection in favour of arbitrary government. But in the exultation of party, let them not again in the convivial hour, toast the memory *of the heroes who sacrificed their lives in defence of the liberties of America*—least the pale spectres should appear as the evil genius of Brutus, and summon them to the shades, though not to die like the Phillippian Hero, in the last glorious struggle for freedom, but in the ignoble effort to consign posterity to the manacles of slavery.

Helvidius Priscus.

MASSACHUSETTS GAZETTE
22 January 1788

To the Publick.

4.12.7 The convention of Massachusetts has now met, and on their decision, in a great measure, depends the fate of America. This state has, from the beginning of the contest with Britain, been distinguished for her wisdom in counsel, her zeal in opposition, and her energy in baffling the arts of power, and

counteracting the intrigues of foreign and domestick foes, who wished not long ago to deprive her of her rights and to annihilate her as a state. On every trying occasion this state has stood foremost in the union, and done itself honour by its perseverance and independency of spirit—She has once more an opportunity of asserting her own dignity, by rejecting or essentially amending a system, calculated to involve in a *servitude*, too complicated to be described, till its dreadful effects are experienced, when they may BE FORBIDDEN TO COMPLAIN. But if they have chosen a set of delegates, of sufficient integrity and ability, they may yet be instrumental in saving all America from a THRALDOM, which may be foreseen without the aid of *inspiration*. But if there should be a *temporising*, an *ignorant*, or a *designing majority*, ready to accede, from *fear*, from *folly*, or *interest*, and bow the neck to the MISHAPEN IDOL, held out for the adoration of the United States, it requires no uncommon sagacity to discover, that their doings will involve this country in blood, render themselves the contempt of the best of their fellow-citizens, and the execration of posterity.

We are told, that only 25 out of 130 members, convened in the three states 4.12.8
of Pennsylvania, New-Jersey, and Delaware, had the wisdom, the firmness, and the patriotism, to reject the adoption of the proffered system of arbitrary government—an humiliating proof this of the local prejudices, the narrow views, and the selfish motives, by which mankind are too generally actuated—If all the wealth of America was to center in Boston, in consequence of its adoption; if Cambridge was to be made the federal city, and the fountain of all honour was circumscribed within the limits of ten miles—If the avaricious citizen, the ambitious courtier, and the ardent youth, from all parts of the continent, who are in quest of honour and emolument, were to repair and do homage for the idol in this favoured city, and to disseminate their wealth in its neighbourhood, no doubt the mechanicks, the macaronies, and the miserly part of Boston, and perhaps a majority in Convention, might think it good policy to adopt a system that would enrich and ennoble their own state—though even then gentlemen in the distant counties would have little reason to precipitate the plan. But view the reverse—Philadelphia is the central city; and a thousand circumstances will combine to sink the population, the wealth, and the consequence of Boston;[14] so that, both in a general and in a local view, we cannot but hope, that in a convention of *three* or *four hundred men*, of Massachusetts, a large majority will be found too wise to relinquish their own sovereignty and independence, and too just to violate the present excellent constitution of this state, and break the bands of the sacred compact, which the new arrangement would annihilate, and bring them down to the *degraded dependents on a splended monarchy, that will wring from them and their children their last farthing for its support*. We have seen much scurrility and abuse indiscriminately cast on all who are not mad enough, with their eyes open, to put a *yoke* on their necks, which neither themselves nor posterity will be able to break. But we see neither reason, argument, or necessity for

this country to renounce their best privileges, because *officiously* advised thereto by a set of men acting entirely out of the line of their commission. But the *Landholder,*[15] without *veracity*—the *New-England Damper,*[16] without *any thing*—and a long *etcetera* of signatures, without principle or perspicuity, will never damp the ardour of liberty, nor check the energy of the able supporters of those genuine principles that mark, with dignity, those who have again stepped forth to defend, in its last struggle, that freedom and independence of spirit, which has made this country the admiration of the philosopher, the hero, and the statesman.

4.12.9 It is not material whether the federal farmer belongs to Virginia or Kamtschatka—whether he owns five hundred negroes, or is a man of no property at all—if his arguments are cogent—his reasonings conclusive—if the consequences of adopting the new system are fairly drawn, and the most certain despotism deduced from the principles of its fabrication, the intricacy and extent of its designs, and the fatal consequences of its operation. Nor is it of consequence to the publick, or to the general cause, whether mr. *Lee* is an enemy, or a devotee to the fame and to the merit, of general *Washington*, or whether mr. *Gerry* refused his signature to the new constitution, in consistance with his former character, from enlarged and distinguished views to the general welfare, or from the pitiful consideration of a few publick securities in his pocket: nor will it alter the *deformed visage* of this deceptive system to inquire, whether mr. *Gorham* and mr. *King* embraced it with ardour from the sublimest feelings of *patriotism* and *publick utility*, or *with an eye to the rich harvests that may be reaped on the Delaware*. We are not contending for the characters of men, nor entering into the private disputes and local prejudices of individuals or of states—We wish to view every thing on the broad scale of independence to America—the *sovereignty of the United States*, and *the freedom of the people*, who have a just claim thereto, by the birth-right of nature, and the grant of heaven—sealed with the rich blood of martyrs in her cause.—Every member of the community ought diligently to read and to study the constitution of his country, and teach the rising generation to be free. By knowing their rights, they will soon perceive when they are violated, and be the better prepared to resist and defend them.

Helvidius Priscus.

MASSACHUSETTS GAZETTE
5 February 1788

To the Inhabitants of Massachusetts.

4.12.10 It has been one of the leading arts of the aristocratick faction, to depreciate the abilities of that part of the convention of the Massachusetts who are

opposed to the arbitrary system, which the other supports with the avidity of interest, and the acrimony of contempt for those of less fortune, education, or other factitious advantages than themselves. An impartial observer, who has little personal acquaintance with, nor any undue prejudice against, the one side, or predilection in favour of the other, has read with great attention the speeches of both, on a subject the most important that has yet been discussed in America. He has been willing to discover truth, and ready to pay the tribute of applause wherever it is due, either to the peasant, just called from the field, or to the accomplished citizen, who has spent his life in court; and has faithfully compared the arguments of both, and must acknowledge, that, where he had been led to expect genius, improved by education, oratorical abilities, and profound reasoning, brightened by study and experience, he has been mortified, for the sake of human nature, to find evasion and sophistry; the prostration of the genuine principles of liberty, and the weak subterfuges of party, endeavouring to cast a veil over the design, the meaning and the consequences of a system that does not require the deepest sagacity to penetrate. On the other hand, there seems to be the modesty of benevolence and the boldness of truth, in the short, unadmired speeches which, in the garb of simplicity, utter the native dictates of good sense, uncorrupted by the splendour of wealth, and animated by the feelings of the man who revolts at the idea of relinquishing the privileges of the free-born citizen; and in the more lengthy investigation, a mr. *K[ing]sl[e]y* appears to have as thorough a knowledge of the subject in debate, and to express his ideas of the police of the old and new system, as well as of the rights we possess, and the privileges we are about to relinquish, as some of the gentlemen of the bar, who claim more attention in the assembly, from their different modes of education. Nor will few deny that Dr. *W[i]l[lar]d* has discovered as much knowledge of ancient history, that he speaks as clearly on the subject of intrigue, which has been the ruin of republicks, and that he elucidates the consequence of different governments and combinations, at least with as much precision as mr. *G[orha]m*, without introducing the localities, that occasion a temporary animosity between Connecticut and New-York. The comprehensive view of the subject of taxation, the inconsistency of opinion in those who were lately perhaps over delicate with regard to a general impost, yet are now ready to make the most unequivocal surrender of all their property at the call of a Congress without check or controul—the fatal tendency and the aggregate evils that must be the certain consequence of such an imprudent resignation of the purse and the sword—the anticipated view of the miseries introduced in the *venerable garb of ancestorial sanction*, and the short survey of the complicated mischiefs with which the whole system is replete, are delineated with a patriotick zeal and energy of expression, and in an unaffected style and manner, that does honour to the abilities, as well as to the heart, of *mr. Symms*.[17] But a comparative view of abilities or address, of the justice and

rationality of one cause, or of the absurdities and consequential confusions of the other, are of little avail—The temporizing expedient may probably be adopted: then may your friends in both countries pity the total debilitation of that energetick spirit that has made you the admiration of the speculative man of science in his closet, and has gained you the alliance of some of the first nations in Europe; while your enemies will justly ridicule your wanton waste of blood for the bubble of liberty, which you have suffered to be blown away by the breath of those who never inhaled the smallest breezes from the temple of freedom; and your oppressors will laugh that the *gilded trap* has caught the gudgeons in its net. And when the thin vizard that has been cast before your injured opticks shall fall from your lids, you may find the men, who have lured you to the snare, are the least disposed to meliorate your sufferings. But it is said. YOU MUST ACCEPT AND RATIFY THE PROPOSED CONSTITUTION—Then, with your hands tied behind you, and sackcloth on your backs, you may perhaps be permitted to approach the FEDERAL CITY with supplicatory addresses, to mollify the hard conditions of your subjugation; and among other evils you deplore, you may pray that no direct taxes may be assessed, but when the *exigences* of your *masters* require it. But you will remember the *Caudine Forks* cannot be repassed, without bending the neck beneath the yoke of the *Samnites;* you may then, as the humiliated Romans, in the deepest consternation, look with silent agony on each other, but without discovering a ray of hope in the countenance of the brave, reduced by their own rashness to inextricable wretchedness: Nor will you forget that you have been repeatedly warned of your danger by the friendly pen of

Helvidius Priscus.

1. This is Wilson's important speech of 24 November 1787, McMaster and Stone 222.

2. McMaster and Stone 221–22.

3. See 2.1, 2.2, 2.5.

4. The references are of course to Franklin and Washington. See Centinel I, 2.7.5 n. 2. On Franklin's supposed views, see 4.12.5 n. 12.

5. McMaster and Stone 219.

6. Ibid. 220–221. Wilson says that while the Achaean and Lycian leagues and the Amphyctonic Council bear a superficial resemblance to a federal republic, the accounts of them are too vague to supply either a tolerable theory or the details necessary to practical knowledge. Of the discussion of ancient and modern confederacies in Montesquieu, *The Spirit of Laws* IX; *The Federalist* nos. 18–20; James Madison, "Of Ancient and Modern Confederacies," Madison, *Writings* (ed. Hunt) II, 369–90.

7. "What PRISCUS!" replied Honorius, "are those weapons that were employed against the *foreign* enemies of our country, to be turned against our brethren? No, let them rather turn their thoughts to the contemplation of the *proposed System*. . . ." Boston *Independent Chronicle* 3 January 1788.

8. "Speech Delivered on 26th November 1787 in the Convention of Pennsylvania," Robert G. McCloskey, *The Works of James Wilson* (Cambridge, Mass. 1967) II, 761.

9. The "audacious man" has not been identified.

10. The "ancient historian" has not been identified.

11. Benjamin Rush, Pennsylvania ratifying convention, 12 December 1787, McMaster and Stone 420. See Plebeian 6.11.27 n. 21.

12. The reference is to the distorted version of Franklin's concluding speech that appeared in the *Massachusetts Gazette*, 14 December 1787. See Warren 6.14.48 n. 6.

13. McMaster and Stone 420.

14. Cf. Agrippa VII, 4.6.26; XII, 4.6.58 and n. 31.

15. For the essays of A Landholder (Oliver Ellsworth), see Ford, *Essays* 135–202.

16. The reference here is to the essay of "New England," *Connecticut Courant* 24 December 1787, who identified The Federal Farmer as Richard Henry Lee, and whose aspersions on Lee are answered in the following paragraph here. See 2.8 intro. n. 11.

17. See 4.5.13 n. 4.

Letters of A Republican Federalist

MASSACHUSETTS CENTINEL
December 1787–February 1788

The essays of A Republican Federalist were probably written by James Warren, Speaker of the Massachusetts House of Representatives and husband of Mercy Warren.[1] James Warren was the son of the royal sheriff of Plymouth County. He was graduated from Harvard in 1745 and, at the death of his father, inherited his public office as well as his profitable mercantile business. Entering the revolutionary movement early, he served several years in the Provincial Congress of Massachusetts. One historian describes him as representing "the stern and uncompromising republicanism of that day."[2] He and Gerry and (until their reconciliation) Samuel Adams disliked and distrusted Hancock as dangerously ambitious, while also opposing the conservative faction headed by James Bowdoin and representing the commercial and professional classes. After ratification Warren became a staunch Jeffersonian democrat.

A Republican Federalist stays mainly on the surface of the debate over the Constitution, concerning himself with the irregularity and the illegality (from several points of view) of the proceedings of the Philadelphia convention, the tendency towards consolidation, and the inadequacy of the representation. His argument is saved from petty legalism by his understanding of the connection between legality and political faith and stability. The first four papers deal mainly with the question of the proceedings of the Convention, the last three with the question of representation, with the theme of consolidation running throughout.

In the first letter (4.13.1–7) the writer urges the need for fundamental discussion, suggests a postponement of the Massachusetts Convention until the sense of Virginia can be known, and argues that the Massachusetts legislature never intended to authorize essential alterations in the Articles of Confederation. Continuing this discussion in his second letter (4.13.8–11), he argues that in proposing the Constitution the Convention usurped power. Moreover, the Constitution has as its object a consolidation of the states, which (the author again emphasizes) the Convention had no power to propose and which should not be accepted merely on the reputation of some of

its framers. In the third and fourth essays (4.13.12–19) A Republican Federalist contends that the case would have been less serious if the Convention had not gone on to provide a mode of ratification contrary to that laid down in the Articles of Confederation and in fundamental violation of the Constitution of Massachusetts. He elaborates on the dangers of violating political compacts, concluding that a ratification by Massachusetts would be both illegal and fundamentally destructive of political stability. The new system is both usurpation and tyranny; the Constitution gives up too much power; and the provision for amendment will be nugatory. Given these circumstances, A Republican Federalist suggests in his fifth essay (4.13.20) that the only safe courses are either to adjourn until the sense of Virginia can be known or to return the proceedings to the state legislature to be transmitted to Congress for amendments consistent with the Articles of Confederation.

In the remainder of the fifth and the last two essays, the writer turns to a more particular examination of the Constitution. The extensive powers given to the federal government amount to a giving up of everything to our rulers (V, 4.13.21). The representation of slaves is unfair (V, 4.13.22); and to defend it on the ground that slaves are property only confirms the tendency of the new scheme to produce a property-based aristocracy (V, 4.13.23). The representation is too small, and the danger that it might be further reduced is not sufficiently guarded against (VI, 4.13.25). Precautions regarding elections are provided against the states, where they are not needed, rather than against the federal government, where they are needed (VI, 4.13.26). The provisions for representation are further objected to for the easy access they offer to foreigners and thus to foreign influence in the federal councils (VI, 4.13.26). These remarks are interspersed with reflections on the Federalists and descriptions of the rage of party spirit caused by the Constitution (V, 4.13.21; VI, 4.13.24).

1. Harding, *Contest over Ratification* 129, n. 1; Warren, Massachusetts Historical Society, *Proceedings* 64 (1932): 155. Mercy Otis Warren was the author of an essay over the pseudonym A Columbian Patriot (see 4.28) and of a history of the Revolution, an excerpt from which is printed in volume 6 (6.14).

2. Morse, *The Federalist Party in Massachusetts to the Year 1808* 23. See also G. Philip Bauer, "James Warren," *Dictionary of American Biography* XIX, 478–79.

I

29 December 1787

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

You are called on, and will soon convene to conduct a matter of the last importance to your country—the confidence of your constituents in your 4.13.1

abilities and integrity can never be more fully expressed, than by their suffrages on the present occasion—and on your wisdom and firmness is in a great measure suspended, the fate of the United States.

4.13.2 In a free State like this, and under such circumstances, every individual must be anxious at the approach of an event, which will entail happiness or misery, not only on himself, his family, and the community, but also on his and their posterity:—He has therefore a *right* to address you, and your patriotism will prompt you to consider seriously, whatever shall be offered on the subject with reason and candour, and be worthy of your attention.

4.13.3 *Seneca* I think has established this maxim, that in all concerns of life, we should enquire, *first*, what we want, and *secondly*, how we are to attain it?[1]—Apply these to the present case, and the answers are plain: We want a *free, efficient federal* government—and can only attain it, by a *candid, dispassionate*, discussion of the subject. A system of government has been proposed by the federal Convention: Some are for adopting, some for amending, and others for rejecting it: And when it is considered, that a *federal* government must necessarily be more complicated in its nature, than a *simple one*, and that to form the latter, the ingenuity of man has never yet been able to establish fixed principles which will apply in all cases, is it a matter of surprize, that in forming a Federal Constitution, even *sensible, disinterested* men should differ in opinion, and require an investigation of their principles, in order to convince each other, and to correct their mutual errours? Surely not, and the more calm and temperate their discussions are, the greater will be their prospect of success. Some able writers on both sides, have favoured us with their sentiments on the three great questions respecting the adoption, amendment, and rejection of the proposed plan of government, and we are much obliged to them for their diligent researches and ingenious remarks:—Others with little ability and less decency, have continually wounded the feelings of the publick, by railing against every one who has not subscribed their *political* creed; which if good in itself, would be rendered *odious* by the persecuting spirit of such ignorant zealots: But let them be informed, that their *humour* and *petulance* are not criterions for regulating the judgment of the publick; and that every individual has an equal right with themselves, to attend to the greatest of all earthly concerns, *the establishment of good government*.—Even the news-papers of Boston, have been thus disgraced. Boston has been famed for the liberality of its citizens, and for their attachment to liberty: And the reputation of so respectable a community should not be tarnished by illiberal productions.

4.13.4 In investigating the subject of the proposed constitution, let us first inquire, upon what *ground* it stands: Because if it has no *foundation*, the superstructure must *fall*.

The Federal Convention was first proposed by the legislature of Virginia, to whom America is much indebted for having taken the lead on the most important occasions.—She first sounded the alarm respecting the intended

usurpation and tyranny of Great-Britain, and has now proclaimed the necessity of more *power* and *energy* in our federal government: But anxious as that wise State is for the attainment of these great objects, we find her *not precipitate in adopting the new constitution*. She has allowed herself time to consider the subject, and has deferred the meeting of her convention until May next—Several other States are of the same opinion, amongst which are the respectable States of *New-York* and *Maryland*.—Is it not then a matter worthy of your consideration, whether any disadvantage can result, nay, whether the greatest advantages may not accrue from an adjournment of the Convention of Massachusetts, until the sense of Virginia can be known? *Too much light cannot be thrown on the subject, neither can a short delay possibly injure us; but an hasty decision may irretrievably ruin us.*

In consequence of the measures of Virginia respecting the calling a federal Convention, the legislature of this State on the 21st of February last, *Resolved*, "That five Commissioners be appointed by the General Court, who, or any three of whom, are hereby impowered to meet such commissioners as are or may be appointed by the legislatures of the other States in the union, at Philadelphia, on the 2d day of *May* next; and with them to consider the trade and commerce of the United States, and how far an uniform system in their commercial intercourse and regulations may be necessary for their common interest and permanent harmony; and also to consider, how far it may be necessary to alter any of the articles of the present Confederation, so as to render the Constitution of the Federal Government more adequate to the exigencies of the union: And what further powers may be necessary to be vested in Congress for the common welfare and security, and with them to form a report for the purpose—such alterations and additions as may be made, to be however consistent, with *the true republican spirit, and genius of the present articles of Confederation*. Provided that the said Commissioners on the part of this Commonwealth, are hereby particularly instructed, by no means to interfere with the fifth of the articles of the Confederation, which provides *for the annual election of delegates in Congress, with a power reserved to each State, to recal its delegates, or any of them, within the year, and to send others in their stead for the remainder of the year–and which also provides that no person shall be capable of being a delegate for more than three years in any term of six years, or being a delegate, shall be capable of holding any office under the United States, for which he or any other, for his benefit, receives any salary, fees, or emolument of any kind.*" "The report of the said Commissioners from the several legislatures to be laid before the United States in Congress assembled, to the intent, that if they shall judge it proper, they may recommend the said report or any part of it to the legislatures of the several States for their consideration: And if agreed to by them, that the same may become a part of the Confederation of the United States."[2] 4.13.5

This was the resolution of Massachusetts, in consequence of the proposi- 4.13.6

tion of Virginia, but Congress having on the 21st of February, the same day on which this resolution passed, recommended a Federal Convention, our Legislature on the 7th of March last, repealed that, and passed the following resolve—"Whereas Congress did on the 21st day of February 1787, resolve, ['']That in the opinion of Congress, it is expedient that on the second Monday in May next, a Convention of Delegates, who shall have been appointed by the several States, be held at Philadelphia, for the *sole* and *express* purpose of revising the articles of Confederation, and reporting to Congress and the several legislatures such *alterations* and *provisions therein*, as shall when agreed to in Congress and confirmed by the States; render the Federal Constitution adequate to the exigencies of government and the preservation of the union['']—And whereas, the legislature of this Commonwealth did on the 3d day of the present month, elect the Hon. Francis Dana, Elbridge Gerry, Nathaniel Gorham, Rufus King, and Caleb Strong, Esquires, delegates, or any three of them, to attend and represent this Commonwealth at the aforesaid Convention for the *sole* and *express* purpose mentioned in the afore recited resolve of Congress, RESOLVED, That his Excellency the Governour be and he hereby is requested to grant to the said Francis Dana," &c. "a commission agreeably to the said resolution of Congress."[3]

4.13.7 The first of these resolves will shew that when the Legislature in February last, agreed to a Convention, the delegates of the State were to report measures *not* for *abolishing* but for *preserving* the articles of Confederation; for amending them; and for increasing their powers consistently with the true republican spirit and genius thereof—that the report was to have been made to Congress and that so much of it only as should be approved by them, and agreed to by the legislatures of the several States, was to become a part of the Confederation—the last of the resolves will shew, that in March last the legislature altered the powers of their delegates and conformed them to the resolve of Congress—that the utmost extent of this resolve, which united the views of Congress and our legislature, was to call a Convention for the *sole* and *express* purpose of revising the articles of Confederation, and reporting to Congress and the legislatures, such *alterations* and *provisions* therein as shall render the Federal Constitution adequate to the exigencies of government, and the preservation of the union—that neither Congress nor the Legislature had the most distant idea of conducting the matter in a mode different from that presented by the Confederation, which provides "that the articles of Confederation shall be inviolably observed by every State, and the union shall be perpetual, nor shall any *alteration* at any time hereafter be made *in any of them*, unless *such alterations be agreed to in a Congress of the United States, and be afterwards confirmed by the legislature of every state*." That on the other hand, Congress in their resolve, and the legislature in both their resolves before recited, expressly provided, and they would have acted *unconstitutionally* to have done otherwise, that the *alterations* and *provisions* in the articles of Confederation, to have been reported by the Federal Convention, should be agreed to

in Congress, and be confirmed by the legislative of the several States before they become part of the Federal Constitution.

A Republican Federalist

II

2 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens.

4.13.8 It clearly appeared by the resolutions quoted in my last address, that the utmost extent of the views of Congress, and of the Legislature of this State in calling a Federal Convention, was, that it should revise the articles of Confederation, and report such *alterations* and *provisions therein*, as shall render the Federal Constitution adequate to the exigencies of government and preservation of the union—that neither Congress or the Legislature had the most distant idea of conducting the matter in a mode different from that prescribed by the Confederation—but that on the other hand, they expressly provided, and would have acted unconstitutionally to have done otherwise, that the proceedings of the Convention, before they become a part of the Federal Constitution, should be agreed to by Congress and confirmed by the Legislatures of the several states.

4.13.9 No one I presume will deny that the powers of the delegates of this state, were as *full* and *extensive* as either Congress or any of the Legislatures had *authority* to give—that the powers of the other delegate[s] were in general, more *limited*—and that had any of them been more *ample* than those of Massachusetts, they must have been founded in *usurpation* and therefore have been *null* and *void*. And have the Federal Convention, in pursuance of their powers, reported the *alterations* and *provisions* mentioned in the recited resolve of Congress? If they have, let us call on Congress, to inform us, whether they have agreed to the report, and to transmit it when approved, to the Legislature for their consideration: This would be conducting upon constitutional principles, but the *call* would be vain, there is no such report, *and the original design of forming the Convention has not been carried into effect*.

4.13.10 The Convention nevertheless have reported a new system, and the object of it is, *a consolidation of the union*. Mr. Wilson denies this fact, and says "if this was a *just objection*, it would be *strongly against the system:*"[4] But unfortunately for that gentleman, his *memory* appears to be very *defective*, for he forgot that he has said, in the letter to Congress, signed "George Washington, president, *by unanimous order of the Convention*"—"In all our deliberations on this subject, we kept steadily in our view, that which

appears to us the greatest interest of every true American, *the consolidation of the union.*"[5] There the Convention have candidly avowed their intentions, and how Mr. Wilson can reconcile his *jarring* and *contradictory* assertions, I am at a loss to determine. The Convention then having kept *"steadily in view"* "a consolidation of the union," it is incumbent on every one who is zealous for the *infallibility* of the Convention, and liberal in abusing those who *dare* to think for themselves, to admit that the proposed plan *compleatly embraces* the object of *consolidation*, for otherwise he will call in question the *ability* of the Convention to execute their design—indeed it must be evident to every one who will attentively read the new system, that it secures to all intents and purposes the *consolidation intended.* And here permit me to remark on an argument, in favour of the new plan, often urged and drawn from the respectable characters of General Washington and Doctor Franklin: Let those gentlemen have *every honour* that can be paid them, they are justly entitled to *it*—but of what consequence is it to the publick, whether the members who assented or dissented to the new plan, were influenced by *virtuous* and *disinterested*, or by *vicious* and *selfish* motives? If the plan is *properly* before the States, is *good*, and will secure to them "peace, liberty and safety" should it not be adopted, were they even sure that every member who subscribed it was in principle a *Caligula* or a *Nero?* And if the plan is bad and will entail *slavery on the land*, ought it not to be rejected should every subscriber excel in wisdom and integrity *Lycurgus* or *Solon*. Surely the *good* or *bad* effects of the system, depend not on the *characters* of the original *framers*, but on the *system* itself, and on those who may administer it; and no man of candour and discernment will urge *characters*, as an argument for or against this system, however respectable the characters of any particular members, or of the members in general of the federal convention, may be: They had no other authority to act in this matter, than what was derived from their *commissions*—when they ceased to act *in conformity thereto*, they ceased to be a federal convention, and had no more *right* to propose to the United States the new form of government, than an equal number of other gentlemen, who might voluntarily have assembled for this purpose.[6]—The members of the convention therefore, admitting they have the merit of a work of supererogation, have thereby inferred no kind of obligation on the States to *consider*, much less to adopt *this plan of consolidation*. The consolidation of the union! What a question is this, to be *taken up* and *decided* by *thirty nine gentlemen*, who had no publick authority whatever for *discussing it!*—To be submitted to the people at large, before it has been *considered* or even *agitated* by Congress, or any of the Legislatures, and to be transmitted with such precipitation to the States *merely* "for their assent and ratification?" True it is, that neither Congress or the Legislatures could decide this great question; the first are restrained by the confederation, and the last by the federal and state constitutions—but Congress and the Legislatures, if they thought it neces-

sary, might at any time have considered the subject, expressed their sentiments on it, and recommended to the people an election of State conventions to have taken up the matter. Had this been done the important question would have been previously canvassed; and understood by Congress and the Legislatures; and explained to the people; and the publick opinion would have been thus *united* in some salutary measure—but as the matter has been conducted, a *system of consolidation* has been formed with the most *profound secrecy*, and without the *least authority:* And has been *suddenly* and *without any previous notice* transmitted by the federal convention for ratification—*Congress not disposed to give any opinion on the plan, have transmitted it to the legislatures*—The *legislatures have followed the example, and sent it to the people. The people* of this State, *unassisted* by *Congress* or their *legislature*, have not had time to investigate the subject, have referred to the news-papers for information, have been divided by contending writers, and *under such circumstances* have elected members for the *State Convention*—and these members are to consider whether they will accept the plan of the federal convention, *with* ALL *its imperfections*, and *bind* the people by a *system of government*, of the nature and principles of which they have not at present a clearer idea, than they have *of the Copernican system.*

What are we to expect, from such a mode of proceeding? Are not the 4.13.11
people already thrown into great confusion? Are not heats, animosities, and a party spirit very prevalent and daily increasing? Are the citizens of this State in a proper temper to receive information, either of the ratification, or rejection, of the new Constitution? Is there a probability of *its being supported*, if so *precipitately adopted?* Surely it must appear that the plan, although *improperly before the State*, cannot with safety be rejected—that it cannot as it stands, be safely *accepted*—that the people will not be satisfied with a *ratification*, and the *delusive prospect of future alterations*—and that the only hope that remains of preserving the peace and happiness of this Commonwealth, is *from amending the plan in order to its adoption.*

The Republican Federalist

III

9 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

In the preceding numbers it has been shewn, that the original design of 4.13.12
calling the federal convention has not been carried into effect—That they

nevertheless reported a system of government with a professed intention of consolidating the union—That they had not the least publick authority to discuss, much less to decide this great question—That neither Congress or the Legislatures have been disposed to express any opinion on the new system—That although they were constitutionally restrained from deciding, yet they had a right at any time, to have agitated and considered the question, to have explained it to the people, and to have recommended their electing State Conventions to have taken up the matter—That had this been done, the people would have had every necessary information, and probably have united in some salutary measure—That they are now without that information, and by the mode of conducting this matter, are thrown into great confusion—That a party spirit prevails, and is daily increasing—That in the present temper of the people, it will not restore peace or tranquility to reject the system, or to ratify it with or without the *delusive prospect* of future alterations—That if accepted in its present form, there is not a probability of supporting it—and that amendments are indispensibly necessary, in order to its adoption.—These are facts which if any one doubts, will I think, clearly appear when we consider the system itself.

4.13.13 The revolution which separated the United States from Great-Britain, was not more important to the liberties of America, than that which will result from the adoption of the new system. The *former* freed us from a *foreign subjugation*, and there is too much reason to apprehend, that the *latter* will reduce us to a *federal domination*. Had the Convention thought proper, *merely* to have formed the plan, and to have sent it to Congress, and the legislatures, the consequences would not have been so serious, as from their accompanying it with the following resolutions.[7]—"*Resolved*, That the preceeding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates chosen in each state by the PEOPLE thereof, under the recommendation of its legislature, *for their assent and ratification*, and that each Convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled." "*Resolved*, That it is the opinion of the Convention, that as soon as the Conventions of *nine* States shall have ratified the Constitution, the United States in Congress assembled shall fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution: That after such publication, the electors should be appointed, and the Senators and Representatives elected: That the electors should meet on the day fixed for the election of the President; and should transmit *their votes*, certified, signed, sealed and directed, as the Constitution requires, to the secretary of the United States in Congress assembled, that the Senators and Representatives should convene at the time and place assigned—That the Senators

should appoint a President of the Senate, for the sole purpose of receiving, opening and counting the votes for President, and that after he shall be chosen, the Congress together with the President, should without delay, *proceed to execute this Constitution.*" In consequence of these resolutions of the federal convention, Congress "*Resolved,* That the Constitution so reported be transmitted to the several legislatures, in order to be submitted to a Convention of Delegates, chosen in each State by the people thereof, *in conformity to the resolves of the said Convention in that case made and provided*"[8]—and in pursuance thereof, the legislature of this State resolved, "That it be, and it is hereby recommended to the people of this Commonwealth, that a Convention of Delegates be chosen *agreeably to and for the purposes mentioned in the resolution of Congress aforesaid.*["]—It is evident, therefore, that the proposed Constitution is, agreeably to the recommendation of the federal Convention, submitted to the State Convention, *that is,* to a *majority* of its members, for their assent and ratification. Should the plan be adopted by this and eight other States, *every part of the Constitution of this Commonwealth which is contrary to the new Constitution, to the laws that may be made in pursuance thereof, or to treaties of the United States,* will be null and void: for the plan expressly provides, that "this Constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every State shall be bound thereby, *any thing in the Constitution or laws of any state to the contrary notwithstanding*"—And will not such a subjection of the Constitution of this Commonwealth, not only *to the Constitution,* but *to the laws of the union,* and to *treaties,* that are or may be made under the *authority of Congress,* be in effect, a DISSOLUTION OF THE GOVERNMENT OF MASSACHUSETTS? Surely it will. Mr. *Locke,* in his treatise of civil government,[9] *chap.* 19, in *sect.* 212, says, "Governments are dissolved from within, when the legislative is altered," and in *sect.* 215, "*for it is not a certain number of men, no, nor their meeting,* unless they have also freedom of debating, and leisure of perfecting, what is for the good of the society, wherein the legislative consists: when these are taken away, or altered, so as to deprive the society of the due exercise of this power, the *legislative* is *truly altered;* for it is *not names that constitute governments, but the use and exercise of those powers that were intended to accompany them.*" What were *the powers* originally intended by the people of this State, *to be used and exercised by their legislature;* they are contained in the Constitution of the Commonwealth, *part* 2, *chap.* 1, *sect.* 1, under the head of "the legislative power," qualified nevertheless by certain reservations in the Bill of Rights. *Some* of the most *important* of those *powers* will, by the new plan, be transferred to the *federal government,* and *others* be exercised by *their* permission. This, I presume, is too evident to be denied, and will hereafter more fully appear. Our government will then have the *name* that it

now *has*, but not "the use and exercise of those powers that were intended to accompany it." Indeed, it is inconceivable, that a plan of consolidation can be established, without destroying the sovereignty of the respective States, and thus *dissolving their present governments*.

4.13.14 But supposing the adoption of the new plan would only *alter* the Constitution of this State, *by what mode should that alteration be made?* Should it be effected pursuant to the recommendation of a federal Convention, and in direct violation of the Constitution of this State? or should the alteration be made consistently with the Constitution itself? This expressly provides, "That, in order the more effectually to adhere to the principles of the Constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary, the General Court, which shall be in the year of our Lord 1795, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations for the purpose of collecting their sentiments on the *necessity* or *expediency* of *revising the Constitution*, in *order to amendments:* And if it shall appear by the returns made, that two thirds of the qualified voters throughout the State, who shall assemble and vote in consequence of the said precepts, are in favour of such revision or amendment, the General Court shall issue precepts, or direct them to be issued, from the secretary's office to the several towns to elect delegates to meet in Convention, for the purpose aforesaid: The said delegates to be chosen in the same manner and proportion as their representatives," &c.[10]—Here we see, that by the Constitution of this State in the year 1795, the sentiments of the qualified voters on the *necessity* or *expediency* of revising the Constitution, are to be collected, and if it shall then appear that *two thirds* of them are in favour of a *revision* and *amendment*, in that case only, is a Convention to be called *for these purposes*. Should it be a question, whether an alteration in the Constitution can be made before the year 1795, there is nothing in the clause recited, that I can conceive to prevent it: because although in the year 1795, precepts must issue for the purposes mentioned, there is no provision to prevent their issuing, if necessary, before that period. But surely, if any alteration should be made in the Constitution, it must be *in a mode provided by the Constitution itself*, for otherwise *the clause recited must become a nullity*, which is inadmissible, or, which is the same thing, *the Constitution itself must be violated*.

4.13.15 Of all compacts, a Constitution or frame of Government, is the most solemn and important, and should be strictly adhered to. The object of it is the preservation of that property, which every individual of the community has, in his *life*, *liberty* and *estate:* Every measure therefore, that only approaches to an infraction of such a covenant, ought to be avoided, because it will injure that sacred regard to the Constitution which should be deeply impressed on the minds of the whole community—How much more careful

then should we be to avoid an open violation of such a compact? Such a violation must take place, if a majority, or every member of the Convention, should vote for an acceptance of the new Constitution, because a Convention cannot be called for *altering*, much less *dissolving* the government of Massachusetts, before the sentiments of the qualified voters are collected on the *necessity* or *expediency* of *revising* the Constitution in order to *amendment*, and *two thirds* of them shall be in favour of the measure. A ratification, therefore, of the new Constitution by the State Convention, cannot be binding on the citizens of this State, being directly repugnant to an existing covenant. But suppose such a ratification should be supported by a majority of the Convention and of the citizens of this State: What must be the consequence of thus destroying all publick faith and confidence? Are not these the principles that bind and cement the community, and that establish them as a body politick? Are they not the foundation of a free Government? If every individual by such a measure, should have his faith and confidence in the honour and integrity of the community effectually destroyed, (and this must inevitably be the consequence) will he not decline entering into such a nugatory compact in future, or entering into it, will he not disregard it as a mere matter of form, and rather than be at any pains or expense to support it, suffer it to share the fate of the other? Certainly he will, and instead of a government founded in compact, we must hereafter be content with one founded in fraud or force.[11]

Republican Federalist

IV

12 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

Every candid mind will by this time I think be clearly convinced, that if 4.13.16
the constitution of this Commonwealth *has any validity*, the ratification of a plan that would *alter*, much less of one that would *dissolve the government*, cannot be valid, unless by a mode provided by the Constitution itself. There are but two modes, to my knowledge, wherein any alterations can be made: One has been mentioned, and it has been fully shewn that the ratification of the new Constitution by the state Convention would be in direct violation of that mode, and therefore not binding on the citizens of this State.—Let us now consider the other mode. In addition to the political compact contained in the Constitution of this State, it is bound by another as *solemn* and more *extensive, the articles of Confederation*. By the *first*, the "whole people

covenants with each citizen, and each citizen with the whole people:" and by the last ["]*the whole of the States covenants with each State, and each State with the whole of the States,*" and the powers in the articles of Confederation, expressly delegated to the United States in Congress assembled, are *paramount* to and *annul* every power of the State Constitution, that is inconsistent with and opposed to them. A mode is provided in the Confederation for amending it, in the words following, "and the articles of this Confederation shall be inviolably observed by every State of the union, shall be perpetual, *nor shall any alteration at any time hereafter be made in any of them unless such alterations be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State.*"[12] A correspondent provision is made in the fourth article of the Bill of Rights of our State Constitution—(*vide Constitution of Massachusetts*)[13] the exercise then of every power, jurisdiction and right, which is or may hereafter be *by the people* thus expressly delegated, is clearly relinquished on *their* part and will be binding on *them*. Had the federal Convention reported and Congress agreed to alterations in the articles of Confederation, there could I think have been no doubt, that the ratification of such alterations *by the legislatures* would have been as binding *on the people* as if made by *themselves,* because in the article mentioned of the bill of rights *the people* have recognized the articles of Confederation, which on the part of the State were ratified, pursuant to *their* authority: And have *expressly provided* by those articles, that alterations therein which shall *be agreed to by Congress,* and *confirmed by the legislatures,* shall become part thereof: The legislature nevertheless of this State, would probably have applied to the people for their sense on such alterations, before a confirmation thereof, but no one will pretend to say that the federal Convention have reported alterations, or if they had, that Congress have agreed to, or the legislature confirmed them. The federal Convention, have, as has been shewn, reported a system, which destroys the articles of Confederation, and completely embraces the consolidation of the union: They have also recommended, that this new system should be administered, when ratified by nine States, and it must clearly appear, that the ratification of it by the Convention of this State, would not only be *a violation of the State Constitution, but also of the articles of Confederation—would thus be a double act of political perfidy—and would not be binding on any State, not even on those which may thus ratify it.* Such a measure, therefore, would not only *tear up by the roots,* and *annihilate* all confidence in the most sacred and solemn covenants between the *whole people* and *each citizen of this State,* but also between the *whole of the States* and *each State,* and the new Constitution would not stand on the ground of *right, good faith,* or *publick confidence.* Notwithstanding then the good intentions of the federal Convention, it is an unfortunate circumstance that they did not strictly adhere to their powers, because the mode proposed for ratification, as well as the system itself, must produce great convulsions.

Sir William Temple, in treating "of popular discontents," says, "The first safety of Princes and *States* lies in avoiding all councils or designs of *innovation* in *ancient and established forms, and laws, especially those concerning liberty, property and religion* (which are the possessions men will ever have most at heart) and thereby leaving the *channel* of *honour and common justice* clear and undisturbed."[14] The new system was not only *unauthorized*, but altogether *unexpected* by Congress, the legislature, and the people, is not merely an *innovation*, but an *interchange* [entire change?] of the "established form" of government; and will produce as great a change in the laws concerning liberty and property—does not only *disturb*, and some instances *alter* but in others *destroys* the channels of *honour* and *common* justice—and so far is the mode of adoption from being constitutional, as that it violates the Constitutions of the States and of the union, and establishes a precedent, not only for annihilating the new Constitution itself, but for building on its ruins a *compleat system of despotism*—for what will the people have to secure them against an introduction of the most arbitrary government after the *banishment of good faith* from the United States of America? Is it not incumbent then on the State Convention, to consider *seriously* and *thoroughly*, in what a situation they will place this Commonwealth and the union, by the proposed ratification? This State, before it shall have declared in favour of the new system as it stands, may have great influence in promoting an accommodation of this matter, between contending States, and the contending citizens of each State, and having the confidence of all parties, may as a wise mediatrix, promote their common interest: But when the State shall have manifested such a total disregard to the obligations of the most solemn political compacts, as to ratify in the mode proposed, the new Constitution, then will end the confidence of the union, and of our own citizens in the decision of Massachusetts, and she will embark in a precarious bottom, with the gloomy prospect of an approaching tempest, and unnecessarily expose herself to a political shipwreck.—If then, the new Constitution, ratified in its present form and in the mode proposed, will not stand on the ground of *right, good faith*, or *publick confidence*, on what ground will it stand? Mr. Lock[e], in his treatise mentioned,[15] chap. 17, sect. 197, says, "as conquest may be called a foreign usurpation, so usurpation is a kind of domestick conquest, with this difference, that an usurper can never have a right on his side, it being no *usurpation* but when one has got into the possession of what another has a right to." The right of originating a system for consolidating the union, belonged only to the people, but the federal Convention have taken possession of it, when called for a different purpose, and can any one say their proceedings are not founded in usurpation? The same author goes on, "this, so far as it is usurpation, is a change only of persons, but not of the *forms* and *rules* of the government: For if the usurper extend his power beyond what of right belonged to the lawful prince, or governour of the

Commonwealth, it is *tyranny* added to *usurpation*." Had the federal Convention then only exercised the powers of the people in originating a system of consolidation, it would have been nothing more than usurpation; but having changed the *forms* and *rules* of delegating powers to the federal government, the Convention have done what the governours or rulers of the Commonwealth had no right to do, and by promoting State Conventions to violate the most solemn compacts, have also done what the people themselves had no right to do, and as the principles and reasonings of the above celebrated writer apply more forcibly to the *alteration* or *formation*, than to the *administration* of government, are not the proceedings of the Convention, founded not only in *usurpation*, but also in *tyranny?*

4.13.17 To what purpose then is it, to raise this mighty superstructure, which having no foundation, must soon fall and involve those in it in inevitable ruin—the federal Convention were undoubtedly urged to these measures by conceiving, that their system, if well adapted to the welfare of the people, would nevertheless meet with opposition from some of the States, and be thus defeated: But did not an honest zeal lead the Convention, as it has often led others to a *remedy*[16] *worse than the disease?* Should not a proper system have been sent in a constitutional mode to the States, with a presumption that every State would do what was for the good of the whole; and if any of them had withheld their assent from a measure requisite for the general welfare, and thus rendered a *separation* necessary; should *it* not have been preceeded by a declaration, stating the reasons and necessity of such a *separation?* Surely such a *dismemberment* will require as much solemnity as *that* which separated us from Great-Britain, and may produce as important consequences.

4.13.18 Many great objections to the new system have been unanswered, and I conceive, if we mean to support our liberties, are unanswerable: Notwithstanding which the State Convention will in all probability be warmly urged to accept the system, and at the same time to propose amendments—this indeed may take in the *weak* and *unwary*, but not persons of discernment: For a wise people will never place over themselves an arbitrary government, in expectation that it will be so *remarkably* virtuous as to divest itself of unreasonable and unlimitted powers. Is not this contrary to human nature, which is generally grasping at more power, not knowing often times that it would be abused as soon as obtained?

4.13.19 The new Constitution provides "that the Congress whenever two thirds of both houses shall deem it necessary shall propose amendments to this Constitution, or on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress:"—To call a Convention then,

two thirds of both houses of the new Congress must deem it necessary, or the legislatures of two thirds of the several States must make an application to Congress; and can it be doubted that there will not be found such a majority of the new Congress, or of the State legislatures *disposed* to call a Convention *for making amendments?* When the Constitution is adopted, will not the friends of it strenuously contend to give it a trial? Are there not numbers who at this time openly reprobate republican governments? And will not such persons raise numberless objections to the appointment of such a Convention, and endeavour to prevent it? But supposing a Convention, should be called, what are we to expect from it, after having ratified the proceedings of the late federal Convention? They will be called to make "*amendments,*" an indefinite *term*, that may be made to signify any thing. Should judge M'Kean, be of the new Convention, perhaps he will think a system of despotism, *an amendment* to the present plan,[17] and should the next change be only to a monarchial government, the people may think themselves very happy, for *bad* as the new system is, it is the *best* they will ever have should they now adopt it. If therefore, it is the intention of the Convention of this State to preserve republican principles in the federal government, they must accomplish it *before*, for they never can expect to effect it *after* a ratification of the new system.

V

19 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

The proceedings of the federal Convention, having, as has been shewn, originated in usurpation, and being founded in tyranny, cannot be ratified by the State Convention, *without breaking down the barriers of liberty; trampling on the authority of federal and State Constitutions, and annihilating in America, governments founded in compact.* In this predicament, there appears but two measures which can with safety be adopted by the Convention of this State. One has been hinted at, *an adjournment*, until the sense of Virginia can be known. The great danger in this business is, from *precipitation, not* from *delay:* The *latter* cannot injure whilst the *former* may *irretrievably* ruin us; an adjournment would not only ripen the judgment of our own citizens, but give them an opportunity of benefiting by the opinions of those States, which are attentive to, but not *extravagantly* zealous in this matter. The other measure is, to return the proceedings of the federal Convention to the legislature of this State, to be by them transmitted to Con- 4.13.20

gress, and *amended* agreeably to the articles of Confederation: For the system being *improperly* before the State Convention, and they being *incompetent* to a ratification of it, cannot thereby bind the citizens of Massachusetts. Had the system been in itself unobjectionable, it is evident from what has been said, that the sentiments of the qualified voters *on the necessity* of revision, *must* have been taken, and two thirds of them *must* have been in favour of it, before a State Convention could be called for amending the Constitution much more for dissolving the government.

4.13.21 Let us once more particularly attend to the system itself. It begins, "We the People of the United States, in order to form a more perfect union," &c. "do ordain and establish this Constitution for the United States of America"—In other words, *We the people, do hereby publickly declare the violation of the faith which we have solemnly pledged to each other—do give the most unequivocal evidence, that we cannot ourselves, neither can any others, place the least confidence in our most solemn covenants, do effectually put an end in America, to governments founded in compact—do relinquish that security for life, liberty and property, which we had in the Constitutions of these States, and of the Union—do give up governments which we well understood, for a new system which we have no idea of—and we do, by this act of ratification and political suicide, destroy the new system itself, and prepare the way for a despotism, if agreeable to our rulers.* All this we do, for the *honour of having a system of consolidation formed by us the people.* This is not *magnifying,* for such are the facts, and such will be the consequences. Indeed we find *despotism* not only in contemplation of the Pennsylvanians, but openly avowed in their State Convention, in the words following—"DESPOTISM, if wisely administered, is the best system invented by the ingenuity of man." This was declared by chief justice M'Kean;[18] and in such an high office, we must suppose him a man of too much precaution to have made the declaration, had he not known, that a majority of the Convention, and of the citizens, who so highly applauded his speeches, were of his opinion. M. Montesquieu, in his "Spirit of Laws," 1st vol. book 3, chap. 9, says, "As *virtue* is necessary in a *republick,* and *honour* in a *monarchy,* so *fear* is necessary in a *despotick* government: With regard to *virtue,* there is no occasion for it, and *honour* would be extremely dangerous." Thus has a declaration been made in Pennsylvania, in favour of a government which substitutes *fear* for *virtue,* and reduces men *from rational beings* to the *level of brutes;* and if the citizens of Massachusetts are disposed to follow the example, and *submit their necks to the yoke,* they must expect to be governed by the *whip* and *goad.* But it is remarkable, that the resolution of the federal Convention, for transmitting the system to the people, provided, "that the Constitution should *be laid before the United States in Congress assembled,* and afterwards submitted to a Convention of Delegates, chosen in each State by the people thereof, *under the recommendation of its legislature;* thus making Congress and the legislatures,

vehicles of conveyance, but precluding them from passing their judgments on the system. Had it been submitted to their consideration, their members were men of such discernment, that the *defects* as well as *excellencies* of the plan, would have been clearly explained to the people; but immediately on the publication of it, we find measures were taken to prejudice the people against all persons in the legislative, executive and judicial departments of the States and Confederacy (if opposed to the plan) as being actuated by motives of private interest. Mr. Wilson, a member of the federal and Pennsylvanian Convention, in his town meeting speech, adopted this practice, which, to say the least of it, was very *illiberal.*[19] Indeed, it is but justice to observe, that many artful advocates of this plan, to cover their designs of creating a government which will afford *abundance* of *legislative offices for placemen and pensioners, proclaimed suspicions* of others, and diverted the attention of the people from themselves, on whom the odium should fall.

Let us now proceed to the provision in the system for a representation of 4.13.22
the people, which is the *corner stone* of a free government. The Constitution provides, art. 1st, sect. 2, "that representatives and direct taxes shall be apportioned among the several States, which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons." Representatives then are to be "apportioned among the several States, according to their respective numbers," and *five* slaves, in computing those numbers, are to be classed with *three* freemen—By which rule, fifty thousand slaves, having neither *liberty* or *property,* will have a representative in that branch of the legislature—to which more especially will be committed, the *protection of the liberties,* and *disposal of all the property* of the freemen of the Union—for thus stands the new Constitution. Should it be said, that not *the slaves* but their *masters* are to send a representative, the answer is plain—If the *slaves* have a *right* to be represented, they are *on a footing* with *freemen, three* of *whom* can then have no more than an equal right of representation with *three slaves,* and these when qualified by property, may elect or be elected representatives, *which is not the case:* But if they have not a right to be represented, their masters can have no right derived from their *slaves,* for *these* cannot transfer to others what they have not themselves. Mr. Locke, in treating of political or civil societies,[20] chap. 7, sect. 85, says, that men "being in the state of slavery, not capable of any property, cannot, in that state, be considered as any part of civil society, the chief end whereof, is the preservation of property." If slaves, then, are no part of civil society, there can be no more reason in admitting them, than there would be in admitting the *beasts* of the field, or *trees* of the forest, to be classed with *free electors.* What covenant are the freemen of Massachusetts about to ratify? A covenant that will degrade them to the *level of slaves,* and give to the States who have as many blacks

as whites, *eight* representatives, *for the same number of freemen* as will enable this State to elect *five*—Is this an *equal*, a *safe*, or a *righteous* plan of government? Indeed it is not. But if to encrease these objections, it should be urged, "that representation being regulated by the same rule as taxation, and taxation being regulated by a rule intended to ascertain the relative property of the States, representation will then be regulated by the principle of property."[21] This *answer* would be the only one that could be made, for representation, according to the new Constitution is to be regulated, either by *numbers* or *property*.

4.13.23 Let us now inquire of those who take this ground, what right they have to put a construction on the constitution, which is repugnant to the express terms of the Constitution itself? This provides, "that representatives shall be apportioned among the several States, *according to their respective numbers*." Not a word of *property* is mentioned, but the word "numbers" is repeatedly expressed—Admitting however that property was intended by the Constitution as the rule of representation, does this *mend the matter?* it will be but a short time, after the adoption of the new Constitution, before the State *legislatures*, and *establishments in general* will be so *burthensome* and *useless* as to make the people desirous of being rid of them, for they will not be able to support them. The *State appointment* of Representatives will then cease, but *the principle of representation according to property*, will undoubtedly be retained, and before *it is established* it is necessary to consider whether it is a just *one*, for if *once* it is *adopted* it will *not be easily altered*.—According to this principle, a man worth £50.000, is to have as many votes for representatives in the new Congress, as *one thousand men*, worth £50 each: And *sixty such nabobs* may send *two* representatives, while *sixty thousand* freemen having £50 *each* can only send the same number. Does not this establish in the representative branch of the new Congress, a principle of aristocracy, with a vengeance? The Constitution[s] of the several States, admit of no such principle, neither can any freeman with safety thus surrender, not only the intire disposition of their property, but also, the controul of their liberties and lives to a few opulent citizens. Should it be said that the rule of federal taxation, being advantageous to the State, it should be content with the same rule for representation. The answer is plain, the rule gives no advantage, but is supposed to be advantageous to Massachusetts, and to be an accommodation very beneficial to the southern States: But admiting this State will be benefited by the rule, is it disposed to sell its birthright, the right of an equal representation in the federal councils *for so small a consideration?* Would this State give up that right to any State that would pay our whole proportion of *direct* and *indirect taxes?* Shall we relinquish some of the most essential rights of government, which are our only security for every thing dear to us, to avoid our proportion of the publick expense? shall we give up all we have, for a small part of it? This if agreed to, would be no great evidence of our wisdom or foresight. But it is

not probable, in the opinion of some of the ablest advocates for the new system, that *direct taxes* will ever be levied on the States, and if not, the provision for levying such taxes will be *nugatory:* We shall receive no kind of benefit from it, and shall have committed ourselves to the mercy of the states having slaves, *without any consideration whatever.* Indeed, should direct taxes be necessary, shall we not by increasing the representation of those States, put it in their power to prevent the levying such taxes, and thus defeat our own purposes? Certainly we shall, and having given up a substantial and *essential* right, shall in lieu of it, have a mere *visionary advantage.* Upon the whole then, it must be evident, that we might as well have committed ourselves to the parliament of Great-Britain, under the idea of a *virtual representation* as in this manner resign ourselves to the federal government.

VI

30 January 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

Whoever has attended the debates of the Convention, must already be convinced, that the magnitude of the object, and the anxiety of the members, whether for or against the system as it stands, has produced a party spirit which augurs no good:[22] It has now become a struggle for conquest; rather than for conviction: And great as the characters are which compose the Convention, their talents are more employed to make proselytes in favour or against than to investigate precisely and explain clearly the merits and demerits of the proposed Constitution. It must likewise appear, that so many able and eloquent speakers as there are in favour of it, from the supreme executive, judicial and legislative departments, as well as from the bar, desk, medical and military professions, that there is not a prospect of doing justice to the objections against the plan. Should it, therefore, in this state of affairs, be carried by a small majority, what must be the consequences? They are too apparent, and too ruinous to contemplate, and every one is left to form his idea of them. The same would probably be the effect of a negative, and the farther we proceed in this business, the more evident is it, that an adjournment until the sense of Virginia and other States can be known, is not only proper, but indispensibly necessary for the peace and welfare of this State.—To persuade the people that this system will produce advantages which will never flow from it, or to conceal from them the *burthen* and *coercion* that will result from it, will be impolitick in the extreme, for the deception must appear as soon as the plan is administered, 4.13.24

and the new administration itself will be overwhelmed, and all federal government be prostrated by an enraged and disappointed people. I am sensible that many worthy men are for adopting this plan, not because they approve of it, but from an idea that we shall never obtain another; but what reason is there for this apprehension? The whole Continent are desirous of an efficient federal government—The first constitution proposed to the people of Massachusetts was rejected by them; it originated improperly as this did, and if it had not, it was not a good one. The people therefore made a second attempt, and succeeded in it; and is there not the same reason to hope for success in the present case? Or if we fail, that the attempt will probably make us unanimous in adopting this system? But is it not extraordinary, that a Constitution should be proposed by gentlemen, who had no authority whatever to form it—that they should dissolve themselves without knowing the objections of the people, and that the latter should now be told, they must take this or have none?—This may be language adapted to slaves, but not to freemen.

4.13.25 By my last, I think it must fully appear, that the apportionment of representatives by the new system, is to be either according to numbers or property—If according to numbers, that we are to commit ourselves by an unequal representation to the States who are peopled in a great measure with slaves, and if according to property that we are to adopt in our representative branch the most extraordinary principle for establishing an aristocracy, that ever was imposed on a free people. The Constitution further provides, that "the actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct." The whole number of freemen and slaves at this time, according to the best information, is about two millions seven hundred thousand, of which six hundred thousand at least are slaves—two millions one hundred thousand freemen then, and three hundred and sixty thousand, being three fifths of the slaves, will make the present enumeration two millions four hundred and sixty thousand. If we suppose (what considering the continual emigrations from the old to the new States cannot be admitted) that in every twenty years we shall double our numbers, at the end of three years the enumeration will be two millions eight hundred and twenty-nine thousand, and what is to be done with this enumeration? The Constitution in the next paragraph provides, that "the number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative, and until such enumeration shall be made, New-Hampshire shall be intitled to choose three, Massachusetts eight," &c. &c. The people then are called upon to ratify a Constitution, which provides that they shall never have above one representative for thirty thousand inhabitants, without providing that they shall have one for that number: This clause, whilst it restrains the new government from allowing more than one representative to the number

mentioned, authorizes it by making the rule of apportionment one or two hundred thousand inhabitants for each representative, to reduce their number to twenty-eight or even to fourteen. This is so clear, that the warmest advocate for the new system will risque his reputation for candour by denying it. If there was no discretionary power intended to be lodged in the new Congress, to reduce the number of representatives lower than one for every thirty thousand inhabitants, it would have been provided, that "the number of representatives" shall be at least one for every thirty thousand; and not as it now stands, "that it shall not exceed one" for that number. It may be said, perhaps, that the increase of the inhabitants will be such hereafter as that it will be necessary for Congress to have the power to make the rule of apportionment higher than thirty thousand; but why then was it not provided, that the people should be allowed one representative for every thirty thousand, until the representatives amounted to a certain number? Even two hundred representatives for a legislature, invested as this is to be, with almost unlimited powers, over the lives, liberties and property of the citizens of these States, is not too much at this early period:—Why should we then, having but sixty-five representatives, intrust Congress with a power to reduce this to a much less number? Perhaps it will be said, there is only a possibility of this evil; but in the progress of these papers I think it will appear there is a probability if not a certainty, that when Congress shall have established their *revenue-acts* and *standing army*, which will be accomplished in a few years, they will reduce the number of representatives so low, and regulate their elections in such a manner, as effectually to destroy the representation of the people.[23] Some indeed may say, that if it was greater than at present, it would be expensive and burthensome; but this is too trifling an objection to deserve refutation; for the people of the country know well, that their greatest security against a tyrannical government consists in a *full* and *free* representation—*full* as to number of representatives—*free* as to the right of election, and they are not thus to be bubbled out of their liberties. Should it be admitted, that at the end of three years there will be a representative for every thirty thousand inhabitants, the whole number in the federal legislature will then be ninety-four, and this State's proportion thirteen, and after that time no alteration will be made until the year eighteen hundred and one: And are the citizens of this State disposed to commit every thing dear to them, for the space of thirteen years, to a government, constituted as the new one is to be, with only eight representatives for part of the time, and thirteen for the remainder of it?—Are the States having slaves, to have according to the number of freemen a much greater representation than this State? And if there had been no objection of this kind, are the State governments to be subject to annihilation, and, when this is accomplished, is the principle of property, which is now contended for as the rule of apportionment, to be then the rule for electing representatives, whereby sixty or a less number of wealthy men, may elect as

many representatives as sixty thousand yeomen? What is the number of freemen in Great-Britain, and how many representatives have they? The number, I think, is computed to be about eight millions, and "the number of English representatives, is five hundred and thirteen, and of Scots forty-five, in all five hundred and eighty-eight." In this proportion we should have a representative for every thirteen thousand six hundred inhabitants, and this State would have thirty representatives in the new Congress. Will the people of this State intrust themselves to a government which will have the power, and every motive to reduce the number of representatives to one half or to one quarter of what they are now to be, and thus to deprive the citizens of their best security for liberty? I think they will not, and that it ought not to be expected of them.

(To be continued.)

2 February 1788

(Concluded from our last.)

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

4.13.26 I am sensible it will be said the Constitution provides "that the electors in each State shall have the qualification requisite for electors of the most numerous branch of the State legislatures." But the new Constitution was evidently intended to, and must in its operation inevitably produce an abolition of the State governments, and when this is accomplished, the rule of apportionment of representatives according to property, must and will apply to electors, and have the effect mentioned. There would nevertheless be some consolation, if these were the only objections relative to representation in the new system, but in the second sect. of the first art. there is a provision that "no person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States," &c. had this provision extended to the foreigners who under the government of the United States, had contended for the establishment of our independence, it would have met with no objection; but as it now stands, any foreigner having attained the age of twenty five years, having been seven years a citizen of the United States, and being an inhabitant of any State, may be elected a representative—and the right of being elected senators, is confirmed to foreigners who shall have attained "the age of thirty years," and "who shall have been nine years a citizen of the United States, &c." Thus are we to have a supreme legislature over us,

to consist as well of foreigners, as of freemen of the United States.—CITIZENS OF AMERICA! What have you for a number of years been contending for? To what purpose have you expended so freely the blood and treasures of this country? To have a government with unlimited powers administered by foreigners? Will there not be immediately planted in the several States, men of abilities, who, having the appearance of privates, will nevertheless be in the pay of foreign powers? Will not such men ingratiate themselves into your favour, or, which will be much better for them, into the favour of the new government? And after seven years residence, will they not be in your federal house of representatives, or after nine years residence in your senate? Will not the most important secrets of your executive, respecting treaties and other matters, be by these means always open to European powers? Will you not be engaged in their trials? Will not your interest be sacrificed to their politicks? And will you not be the puppets of foreign Courts? Perhaps you will be told that this provision will encourage emigrants, who will bring their money to America; but will you for such precarious and futile prospects consent to part with the right of governing yourselves? How carefully is this point guarded by Great-Britain. Judge Blackstone, book first, chap. tenth, says, "naturalization cannot be performed but by act of parliament, for by this an alien is put in exactly the same state as if he had been born in the king's legiance, *except* only that he is *incapable* as well as a denizen of being *a member of the privy council, or of parliament,* no bill for naturalization can be received in either house of parliament without such disqualifying clause in it."[24] Other European powers are equally careful to exclude foreigners from their councils, whilst we, *too wise* to be benefited by the experience of governments which have existed for ages, and have attained the zenith of power, are adopting new principles, and exposing ourselves to evils which must inevitably lead us to destruction.

What I before hinted respecting the danger of ratifying the new Constitution, as it stands, is now too evident to admit of a doubt: The opposition in Pennsylvania have been so imprudent as to burn in effigy, Judge M'Kean and Mr. Wilson, two of the leading members of their State Convention. The offenders are of obscure, and perhaps contemptible characters, and there is danger, *that* they will be arrested, without considering the probability of their having been excited to this outrage by men of influence—that the government will be opposed—and that a civil war will commence, which will flame through this continent, the consequences of which are to be dreaded: Thus will the fairest prospects that ever a people had of establishing for themselves *good government,* be at once blasted by *imprudent zeal* and *cursed ambition.* 4.13.27

The virulent supporters of the new system, say, as those did in the parliament of Great-Britain, who pushed the American revenue-acts, that the opposition consists principally of men of *low* and *vulgar* minds, but the 4.13.28

event will be much the same in the one case as in the other: The yeomenry supported by men of abilities and integrity in the several States, and standing on the ground of *right*, will *maintain it:* and in case of a war, will derive [drive?] from this continent, many valuable men amongst us, who although now deceived by an aristocratick party, will be considered as *usurpers* and *tyrants*. These are not the apprehensions of a timid mind, they are predictions founded on our own experience, and God grant, that the wisdom of this Convention, on which is suspended the fate of America, may avert the impending evil. You have now the *confidence* of your countrymen, and it is hoped will not be deprived of it, by the arts of any individuals *with interested views:* You are now in possession of an *inestimable jewel*, which if lost by a hasty ratification, will never be regained. It is not my wish to make any objections to the new system that are not well founded, and such I conceive to be those against biennial elections: For, considering the extent of the continent—the complicated business of the legislature—the experience requisite for its members—the necessity of their punctual attendance—and their arrangements for quitting their States, and familiar biennial elections, are not *lengthy* or *dangerous;* but can there be any reason, that in the first Congress, when the most important institutions and provisions will be made for carrying into effect the new system, Massachusetts, who according to her numbers of freemen, is entitled to nearly eleven out of sixty-five, should have but eight representatives? It must clearly appear, by my former numbers, that by the clause for regulating representation, we are to be reduced to the level of slaves, and that we shall soon be such, if the planters of the south are to send to the new Congress, representatives for three fifths of their *negroes*. But if this rule was even admissible, we are entitled to above nine representatives according to the present enumeration, and are told, as a consolation for having but eight members, that New-Hampshire has the deficient member, which to us is the same thing. This to me is unintelligible, for the members of both houses are to be paid out of the continental treasury, to which we shall contribute a full proportion according to our property: Why then should we give up to any State whatever, the important privilege of sending a representative? New-Hampshire is a good neighbour, but like other States, has her separate interests, and in pursuit of it, our's may and will be sacrificed, by such an unreasonable concession. It is remarkable, that in the new system there is no qualification of property, for members of either branch of the federal legislature. It is surprizing to some gentlemen in Convention, that others should wish "to exclude from the federal government *a good man*, because he was not a rich one"[25]—No such thing is in contemplation, but on the other hand, they wish to send him there, and want to know what security there is, that a good man, not being wealthy, shall long continue to be eligible to such an office? If there was provision in the Constitution, that any citizen having three, six, or even nine hundred pounds estate, should be eligible, and that one of those sums

should be requisite to qualify him, the publick would be equally guarded against a representation of persons having no property at all, and an exclusion of good men, because not wealthy: But the objection to the Constitution is, that it has no provision for securing the eligibility of good men. If good members without much property, should oppose the wealthy but unprincipled ones in Congress, and prevent their passing oppressive acts, such as revenue-acts, calculated to promote peculation—to protect defaulters—and to plunder the people, (as this system undoubtedly will of all their property) will not those unprincipled members exert themselves to pass an act, requiring for senators and representatives so high a qualification of property, as to exclude for ever from Congress, the good men who have not great estates? Surely they will, being fully authorized thereto by the *omnipotent* clause, enabling Congress "to make *all laws* which shall be *necessary* and *proper* for carrying into execution the foregoing powers and *all* other powers, vested by this Constitution, in the government of the United States, or in any department or office thereof." This I call an *omnipotent* clause, for I must believe the man who says, that he can see in its *aphelion*, a comet which requires a century for its revolution, as soon as him that says, he can see the extent to which an artful and arbitrary legislature, can by this clause *stretch* their powers. We shall next consider the most important clause respecting representation, in art. 1st. sect. 4th. which provides, "that the times, places, and manner of holding elections for senators and representatives, shall be prescribed in each State by the legislature thereof: But the Congress may at any time by law, make or alter such regulations, except as to the places of choosing senators."—Great *ingenuity* has been manifested in attempts to explain away the *meaning* and *tendency* of this *fatal* clause—a clause destructive of the *small* but *best* security which the people by the new system will have for preserving their liberties: Let us candidly attend to the arguments urged on this occasion. One is, that the legislatures, or as they are called the *sovereignities* of the States, are to be the constituents of the federal senate, and the people, the constituents of the house of representatives; that in the frequent struggles and contentions between these two branches to depress and controul each other, each will be supported by its constituents, and therefore that the State legislatures, if uncontrouled by the federal legislature, would endeavour so to regulate the times, places, and manner of holding elections, as to deprive the people of their right of representation—Here, besure, is the *appearance* of great tenderness for the *rights* of the people, and *nothing but the appearance;* for an *imaginary danger* of losing[26] their rights is held up to them to introduce a *remedy* which must inevitably deprive them of those rights. That there will be such struggles and contentions between the two branches, is admitted—but is it natural to suppose, that the State legislatures, in aid of the federal senate, will wish to destroy the federal representation? Are not the members of one branch of the State legislatures *in all the States* and of the other branch, in

most of them, elected annually, or for a less time? Are not those members dependent on the people for re-elections, and equally with them affected by all federal and state laws? Can those members have any *separate* interest from the people for destroying the balance in the federal legislature? And if they could have such a separate interest, and should attempt to impair or destroy the right of choosing federal representatives, would not the people instantly feel the injury, and leave out of the legislature men so inimical to their rights? Was there no controuling power in the federal legislature for altering or regulating the times, places, and manner of holding elections, would not the people, by annually electing those who are to make the regulations, have every check requisite for securing the right of elections? If, indeed, the members of the State legislatures held their offices independent of the people, and had separate interests, there would be some ground for the argument—but, dependent as they are, and having the same interests with the people, they cannot.

VII

6 February 1788

To the Members of the Convention of Massachusetts.

Honourable Friends, and Fellow Citizens,

4.13.29 Let us, however, suppose the federal senate, in such a mighty squabble calling on their constituents, the State legislatures, for aid to impair or destroy the democratical federal branch.Is it possible that the members of any State senate or house, would "introduce such regulations, as would render the right of the people, insecure," or "make an unequal and partial division of the State into districts," or "disqualify one third of the electors," as has been urged?[27] Would the members from Worcester, or Hampshire, in either branch consent to regulations which would deprive their constituents of their suffrages and increase the privileges of the electors of Suffolk, or any other county? Could the members in either branch of the State legislature, ever have a motive to adopt such measures, as would deprive *themselves* as well as their constituents from influencing the elections of federal representatives? Will not the members of the State legislatures, *as part of the collective body,* be the constituents of the *federal representatives?* Will not the State legislatures, being thus the constituents of both branches, be the only *safe* and *proper* umpire for preserving the harmony and ballance of the federal legislature? Will not the State legislatures knowing there can be no security for property under a *rapacious aristocracy,* leave out of the federal senate every member that shall aim at an undue controul of the house, and endeavour to produce by the people the

same change of such federal representatives, as shall encroach on the rights of the senate? Surely they would; and it is unnatural to suppose that the State legislatures can have any interest in aiding the federal senate to destroy the ballance of the federal legislature, or if they had, that the measure would be attempted; or if it was, that the people would need any other assistance, than their rights, under the State Constitutions to defeat the attempt. But let us suppose there is some danger of this evil, is it to be avoided by incuring one much greater? The federal senators, except two thirds of the first senate, will be always elected for *six* and the house for *two* years. The members of both the federal branches from the *duration* and *respectability* of their appointments, and from their *lucrative* establishments, *to be made by themselves,* will have a great interest in their *offices,* and every motive to *perpetuate them.* This will be a common interest, and may, (as I think will evidently appear) be attained without even altering the form of the new Constitution, so excellently well adapted is it, to the establishment of *a baleful aristocracy.* The federal legislature may, as has been shewn, and undoubtedly will, make the qualification of property so high, as that few in each State can be elected to either the senate or house: Whilst the revenue laws and other civil establishments in the executive and judicial departments of the union, will necessarily produce through the Continent, *swarms* of officers, who being nominated by the President, and appointed by and with the advice and consent of the *senate,* will be in *their interest,* and in the *interest* of the *house* likewise, as grants will be made by their joint concurrence. All the federal *military* officers will be appointed in the same manner, and be in the same interest—all the *militia* officers, through the continent, where appointments are by the new system, reserved to the States, will nevertheless, as the military officers under the present Confederation, be commissioned by the President of the United States, and attached to the congressional interest. All the late officers of the army who are a very reputable and influential body of men, and who are united by an institution, which gives them ten times the influence, they would otherwise have, will have the same attachment to federal government. How easy then, will it be *with such support,* for a body of such able men as will compose Congress, to establish the elections of federal representatives at the *metropolis* as at *any other place,* in each state, and when this is effected, to collect the *congressional* or *crown* officers (as they soon will be called) at that place, and carry the elections for these senators and representatives who shall be in the aristocratical interest of the federal government, leaving out all *honest republicans,* who shall have been so vulgar as to have paid any regard to the interest of their constituents?

1. Seneca, *Of a Happy Life* VII, 1–2.
2. The date of this resolution was 22 February. *Acts and Resolves of Massachusetts, 1786–1787* (Boston 1893), 1786, January session, ch. 43A.
3. The date of this resolution was 10 March. Ibid. ch. 147.

4. Wilson told the Pennsylvania ratifying convention on 28 November, "I freely confess that if its adoption will necessarily be followed by the annihilation of the state governments, the objection is of very great force, and ought to be seriously weighed." McMaster and Stone 264. See Federal Farmer XVII, 2.8.204 n. 123.

5. The letter from the Convention transmitting the Constitution to Congress is reprinted in Elliot I, 305–6; Farrand II, 666–67.

6. Indeed, since these men were convened and presumably acting under the authority of their several commissions, it might well be argued that they had *less* right than a private group to propose a new form of government. James Wilson agreed substantially with A Republican Federalist. Farrand I, 253 (16 June); cf. Hamilton's justification, ibid. 283 (18 June). On the legal authority of the Convention, see Lowndes 5.12.2 n. 9. On the character and authority of the framers, see Centinel I, 2.7.5 n. 2; Federal Republican 3.6.5 n. 4.

7. Printed in Elliot I, 306–7; Farrand II, 608–9.

8. Printed in Elliot I, 319. A Republican Federalist makes some modifications in the language of the resolution, notably in his failure to write, "Resolved *unanimously* . . ."

9. *Second Treatise of Civil Government.*

10. Massachusetts Constitution, 1780, ch. VI, art. 10, in Thorpe, *Federal and State Constitutions* III, 1911.

11. Cf. Martin 2.4.35–36; Centinel XV, 2.7.164; Cornelius 4.10.5 n. 3; Lowndes 5.12.1 n. 2; Impartial Examiner 5.14.1; Denatus 5.18.4 n. 1; Countryman 6.7.4; Plebeian 6.8.11.

12. Articles of Confederation, Art. 13, which in fact reads, "shall be inviolably observed by every state, and the Union shall be perpetual . . ." etc.

13. "The people of this commonwealth have the sole and exclusive right of government in themselves, as a free, sovereign, and independent state; and do and forever hereafter shall, exercise and enjoy every power, jurisdiction and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled." Massachusetts Constitution, 1780, Declaration of Rights, Art. IV, Thorpe, *Federal and State Constitutions* III, 1890.

14. Sir William Temple, *Of Popular Discontents*, in *Works* (London 1731) I, 26. The quotation should read "known and common justice."

15. See III, 4.13.13.

16. The original reads, "led others if to a remedy. . ."

17. See below, n. 18.

18. See McMaster and Stone 280, 282. McKean's remarks are discussed by Poplicola 4.11.1.

19. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 149.

20. See above, n. 9.

21. It is difficult to guess how the author meant this sentence to read. "Increase" is probably a typographical error (for, e.g., "erase"?), but even at that, the sentence is incomplete. See C. C. Pinckney, Elliot IV, 283; *The Federalist* no. 54.

22. The Massachusetts ratifying convention had met on 9 January 1788 and was still in progress as this was written.

23. Cf. *The Federalist* no. 58.

24. *Commentaries* I, 373–74.

25. In reply to an argument by General Thompson in the Massachusetts Convention that there should be some property qualification for representatives, Federalist Theodore Sedgwick said that the argument was anti-democratic and that he "was surprised that gentlemen who appeared so strenuously to advocate the rights of the people should wish to exclude from the federal government a *good* man, because he was not a *rich* one." Elliot II, 25.

26. The original reads, "loosing."

27. Quoting a comment made by Theophilus Parsons in the Massachusetts ratifying convention, 16 January 1788, Elliot II, 27.

Essay by Samuel

(BOSTON) INDEPENDENT CHRONICLE AND
UNIVERSAL ADVERTISER
10 January 1788

While this short essay contains many of the standard Anti-Federalist objections—the extensive powers of Congress, the absence of a declaration of rights, the destruction of the states, the violation of the provisions for amendment of the Articles of Confederation—it is notable chiefly for its discussion of representation and taxes. Samuel examines the relation between the initial representation laid out in the Constitution for each state, the population, and the most recent distribution of the continental taxes, and contends that the eastern states are under-represented (4.14.1–2). The essay contains, in addition, a strong objection to the Constitution's "rejection" of religion, on the ground that no state can exist without adopting some system of religion (4.14.7–8). Samuel argues that the oath to support the Constitution will preclude the possibility of any amendments and, more pertinently, observes the significance of the fact that the oath requires support, not of the United States or the people thereof, but of the Constitution: "it may from this no doubt be expected that Proclamations will conclude GOD SAVE THE CONSTITUTION!" (4.14.6).

Mess'rs. Adams & Nourse,

By inserting the following in your paper, you will gratify some of your Readers, and I hope not disserve the Public.

I was at first in favour of the proposed national Constitution's taking place: 4.14.1
But when I noticed the following thing in it, I cannot wish to have it adopted, unless I could be convinced that I am herein altogether mistaken. For by looking in said Constitution, Art. I, Sect. 2.—I find that the number of Representatives from each State, and direct taxes, are ostensively both fixed on the same basis, viz.—The numbers.—But when it comes to apportion the Representatives, to the several States, it diverges extremely wide from that basis; as appears by the Continental tax, which issued from the

Congress nearly the same time.[1] According to which, Georgia (as in said Constitution apportioned) is represented six fold Rhode-Island; more than five Massachusetts; nearly five Connecticut.—Connecticut pays more tax than York; yet York sends most Representatives. The mean number in said tax, for sending a Representative, in the New-England States, is in comparison with the mean number in all the rest, nearly as 5 to 4. For the mean number of said tax, in the New-England States, to send a Representative, is 29,447 dollars. In all the rest of the States, it is but 24,996 dollars. Or if we take the numbers, according to the last enumeration I find extant, it will stand about as 7 to 6. For the mean number of persons in the New-England States, to send a Representative, is 42,941,—In all the rest of the States, it is but 36,666. But some perhaps will say, Georgia is a growing State, and has increased, since said enumeration. 'Tis likely they are increased, since that enumeration: But the tax was about the same time of the Constitution; and the disproportion by the tax, as to Georgia, is nearly the same, as by that old enumeration. But suppose Georgia is increased, since said old enumeration; perhaps no one will pretend the other States have grown less; if they have in numbers, they have not in taxes, in proportion to Georgia. But the other States have not their proportion of Representatives, according to said old enumeration.

These Representatives are to set their own wages, to be paid out of the Continental Treasury; therefore the New-England States will have to pay nearly every fifth dollar, to support Representatives in the other States, according to the apportionment in said Constitution.

4.14.2 I at first flattered myself, that this inequality would be remedied, when the actual enumeration is made.[2] But on further notice found my mistake that there is no prospect of its being better, but worse. For tho' the Constitution says, that the Representatives shall be apportioned among the several States, according to their respective numbers; yet it says, they shall not exceed one for every 30,000: But does not say, we may have one for every 30,000; and it cannot rationably be supposed, that it is designed it ever should be so. For they have not set out so, by a very great proportion: For allowing every State its one Representative for every 30,000, according to said old enumeration, and throwing away the fractional parts of 30,000, in each State, would make thirteen more Representatives in the whole; and six of those thirteen, would be in the New-England States, almost half of what is left out; yet those four States, send but about a quarter, as now apportioned. Yet Georgia is allowed to send three times as many as the proportion which the Constitution says it shall not exceed. And if such strides are made now, while we are invited to accept of it, we may fully conclude that if once we should adopt it, these four States, which are now so far reduced below par, would be reduced to no more than one Representative to each State; and therein would not stride the letter of the Constitution, as they have now, in the case of Georgia: For it would not transgress the letter of the Constitu-

tion at all, to reduce any State or States they please, to one Representative each. And they may, as well as what is done now in the case of Georgia, exaggerate the number of Representatives, in any other State to what number they please; and we should have to maintain them, at any price they shall please to lay upon us. And this would serve, not only to secure an over-bearing ballance in the House of Representatives, when the Congress please, against any State or States; but also the choice of the President and Vice-President, to any favourite party of States, that the Congress shall think proper. For the number of electors, and the number of Senators and Representatives, are always to be equal in each State. For the satisfaction of all who would be curious to know, the following Table shows the number of dollars, each State pays in said tax, and the number of persons, according to said enumeration, to one Representative.

		Dollars.		*Persons to a Representative.*
New-Hampshire,	pays	19,894	and has	33,333
Massachusetts,		31,779		43,750
Rhode-Island,		36,558		60,000
Connecticut,		29,995		44,000
New-York,		24,299		33,333
New-Jersey,		23,593		30,000
Pennsylvania,		29,077		43,750
Delaware,		25,506		45,000
Maryland,		26,724		36,666
Virginia,		29,077		40,000
North-Carolina,		24,690		40,000
South-Carolina,		21,799		40,000
Georgia,		6,064		8,333

And the whole of the purse, and of the sword, is put into the hands of the President, and a Congress so unequal, and which also may consist, of men of no principle or property. For no religion or property is required, as any qualification, to fill any and every seat in the Legislative, Judicial and Executive departments, in the whole nation. That a Pagan, a Mahometan, a Bankrupt, may fill the highest seat, and any and every seat; nothing but age and residence, are required, as qualifications, for the most important trusts. And there is nothing to hinder their keeping a standing army, at all times, peace or war. Nor is there any provision made for the people or States, to petition or remonstrate, let their grievances be what they will. Should Massachusetts, for instance, be reduced to one Representative, it cannot complain, but is liable to be construed into sedition and rebellion; and the standing army employed to suppress it; as the British standing army were to subdue America. And there is nothing to hinder, but ample provision made, for Congress to make themselves perpetual. For by Art. I, Sect. 4. the 4.14.3

Congress may at any time, make and alter the time, place and manner of choosing Representatives; and the time and manner of choosing Senators. They may also make the President, and Vice-President perpetual; or he, the President, may make himself so, by the help of a little more than a sixth part of the Congress. For the Congress are to appoint the time, and place of choosing the electors, and the day of their giving their votes. Art. II, Sect. 1st. paragraph 4. And if the Congress don't see cause to appoint a time and day for those purposes, there can be none chosen, the old ones continue; or if the majority of the Quorum, appoint the time and day for choosing the electors, and of their giving their votes, the President may so far negative it, as that there must be two thirds of both Houses to make it valid; and the standing army they may keep in time of peace, they may canton where they please, to suppress any complaints that may arise by oppression, or loss of rights or privileges.

4.14.4 And thus also, they may exempt themselves, and all their dependants from all taxation; not only Continental, but State taxation, laying heavy burdens on others, and not move them with one of their fingers. How then will they represent the people? For it is essential to a Representative that he feels all the burdens he lays on the community he is to represent. This is not a mere chimera, for the Constitution appears evidently calculated, to swallow up all State government and authority. For tho' there is frequent mention made of State Legislatures; yet they have no power or authority, as plainly hinted in several places, but very expressly declared, article VI, paragraph 2d, "This Constitution, and the laws of the United States, which shall be made, in pursuance thereof; and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the Judges in every State shall be bound thereby; any thing in the Constitution or laws of any State to the contrary notwithstanding." This is a bold and decisive stroke, whereby all State authority is at once absorbed, or annihilated; and especially when considered in connection with article III, Sec. 2d. "The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made" &c. But there is no provision made for any tryal by Jury, except in criminal cases, and how they are to be packed we don't know. And the President with two thirds of the Senators present, is to make those omnipotant treaties. Art. III. Sect. 2d, which are to supercede all State laws, and which may be, to cede any part of the territory, to a foreign Prince, to hire him to guarantee to him the President to be the sole absolute despot of the rest; or any other purposes he pleases. And this two thirds of the members present, may consist of no more than two persons; for there is no quorum affixed to them, only in their Legislative capacity. But make the best we can of it, and apply the Legislative quorum here, it will require no more than the Senators of five States, viz. ten Senators, to make any treaties the President pleases; which may affect the

territory, laws or commerce, of some States to advantage; at the expence, or to the prejudice of other States; or even to the giving up some States, to a foreign Prince, as before suggested.

The most complaints, that I have heard made about the proposed Con- 4.14.5
stitution, are that there is no declaration of rights. In the confederation, there is a declaration of rights, of the contracting parties, viz. The several States. But here is none, either of States or of people. And we by this time see the reason of that omission, viz. because there are no rights left, either to the States or people; and it would have been inconsistent to have attempted any thing of that kind; or declared any rights remaining, after all was given up claimed by this Constitution.

But some have supposed, they have a *salvo* for all difficulties, that may 4.14.6
arise in said Constitution, by the 5th Art. entitled *amendments provided.* But all amendments, are effectually guarded against in the next Art. paragraph 3. For there we find, all the members of Congress, and all the members of the several State Legislatures, and all the Executive and Judicial officers, both of the United States, and of the several States, are to be bound by oath or affirmation to support this Constitution. How then can we have any amendments, as speciously pretended in said 5th Article? When all those from whom only it can originate, are to be bound by oath, to support this as it is. Besides, it is not likely, that the President, or Congress, would be so impolitic, as to oppress so large a proportion of the States at once, as two thirds; therefore, there is no probability, and scarcely possibility, that ever a motion of two thirds should arise. Moreover, could we obtain a Convention, and by them amendments proposed; they might lie dormant forever, if the Congress did not see cause to appoint how the amendments should be ratified; which is not to be expected, if the amendments should be to diminish their power; so that all the parade about amendments, comes to nothing. But to return to the oath; there is something very singular in the manner of the oath; that all Continental and State officers, should be bound by oath, to preserve, protect, defend and support this Constitution. And not rather be under oath, to preserve, protect, defend and support the United States, or the people thereof, in their rights and privileges; it may from this no doubt be expected that Proclamations will conclude GOD SAVE THE CONSTITUTION![3]

In the same paragraph, in which the above oath is instituted, all religion is 4.14.7
expressly rejected, from the Constitution. Was there ever any State or kingdom, that could subsist, without adopting some system of religion?[4] Not so much as to own the being, and government of a Deity; or any acknowledgment of him! or having any revelation from him! Should we adopt such a rejection of religion as this, the words of Samuel to Saul, will literally apply to us,—*Because thou hast rejected the word of the Lord, he hath also rejected thee from being king.*[5] We may justly expect, that God will reject us, from that self government, we have obtained thro' his divine

interposition: Or being able to keep up government and order among us; for he has commanded the rulers of the earth, to kiss the son, lest he be angry, and they perish from the way.

4.14.8 If civil rulers won't acknowledge God, he won't acknowledge them; and they must perish from the way. And there can be no rational doubt, that the prevailing neglect of acknowledging God in the time of the revolution, and since, is the cause of our having such convulsions as have been among us; we are perishing from the way.[6]

4.14.9 Again, I find in the last acts of the Constitution, that it is an open professed resolution, to break a solemn covenant, made by the several States, in the confederation *of the United States of America*. Which having named the States, in the 3d, article, says "the said States hereby severally enter into a firm league of friendship, with each other, for their common defence, &c."—Then going on to describe this *firm league*, till it comes to the last Art. it concludes, "And the articles of this Confederation, shall be inviolably observed by every State; and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to, in Congress of the United States, and be after-wards confirmed by the Legislatures of every State." But this new Constitution, does not appear to be agreed to by Congress, neither is it a Confederation of the States; but professedly of the people, as in the very first words of it; and concludes, that the ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution, between the States so ratifying the same." This is expressly repugnant to the Confederation, the sacred national covenant we are under; and to set up a schism in the nation.[7] This is not proposed to be done by the same contracting parties. For that was a covenant of union between the States. This is to be by the people of the States, to throw off all their allegiance to the federal Constitution of the nation, and the covenant Constitutions of the several States: And if the conventions in nine States will adopt it, then to seperate, and set up this in violation of all covenant obligations, of the most solemn important kind and consequence.

4.14.10 But almost every one is possessed with a persuasion, that some farther powers are necessary to be vested in the National Head, the Congress; perhaps I am as strongly possessed of that apprehension as any one; therefore, at first, I felt passive, or rather inclined that this Constitution should be adopted, not considering the nature of it. But why should we break such solemn covenant, as this Constitution resolves to do? And plunge ourselves into such a labyrinth of innovation, which it is impossible for any one to for-see, or perhaps to guess where it will land us, or what we shall meet by the way? This Constitution does not wear the complexion of uniting the nation—but of dividing it. Had we not much better keep on our old ground? The national covenant we are under, solemnly ratified to be perpetual, and amend that: It is, no doubt, as easy to amend that, as it will be to amend the

new one. And this I understand, was the *sole purpose* the federal Convention was appointed for, viz. To revise the articles of confederation, not to destroy the covenant. Why should we be fond of another revolution so soon? Why should we be fond of such an innovation? Let us hear what a sage old politician, once said on a similar occasion, after having described to the people, the nature and consequence of the innovation, they were urging for, says, *Ye shall cry out in that day, because of your King, which ye have chosen you: and the LORD will not hear you.*[8]

Samuel.

1. Report of Board of Treasury on Requisition of 1787, *Journals of the Continental Congress* XXXIII, 569–85.
2. See references to Federalist arguments to this effect, Federal Farmer V, 2.8.137 n. 88.
3. Cf. the charming proposal by Thomas Paine for crowning the Constitution. *Common Sense* (1776), "Thoughts on the Present State of American Affairs."
4. Cf. Federalist and Anti-Federalist discussions of need for religion, Turner 4.18.2 n. 2.
5. I Samuel 15:23.
6. Cf. Benjamin Franklin's speech on 28 June at the Federal Convention. Farrand I, 450–52.
7. See Republican Federalist III, 4.13.15 n. 11.
8. I Samuel 8:18.

Essays by Hampden

MASSACHUSETTS CENTINEL
January–February 1788

Hampden favors adopting the proposed Constitution conditional upon adopting at the same time certain amendments. He would deprive the Congress of the power to lay taxes other than impost and excises, but otherwise his proposed amendments deal with individual rights and the jurisdiction of the federal courts. In his second essay Hampden agrees that amendment of a constitution should normally be difficult but contends that amendments prior to approval are both desirable and likely to meet general agreement. Harding speculates that the author may have been James Sullivan, but the grounds are extremely treacherous.[1]

1. Harding relies mainly upon some similarities between objections of Hampden and objections made by Sullivan elsewhere; but Sullivan appears to have written a series of Federalist essays as Cassius, and Hampden says that he had written nothing else. Harding concedes these facts but does not try to explain them. See Harding, *Contest over Ratification* 31–32. Warren is dubious of the identification; Massachusetts Historical Society, *Proceedings* 64 (1932): 147, n 6.

26 January 1788

Mr. Russell,

4.15.1 I have had no hand in the productions respecting the proposed plan of government—but I feel interested as a citizen. I have waited to see if any motion might be made, or any disposition appear in the Convention, to prevent one of two evils taking place; the first is, *that of rejecting the Constitution;* the second is, *that of adopting it by a bare majority.*

4.15.2 I am not contented with it as it now stands, my reasons are assigned:—

I am not satisfied with the provision for amendments, as it stands in that system, because the amendments I propose, are such as two thirds of the Senate will perhaps never agree to—the indictment by grand jury, and trial of fact by jury, is not so much set by in the southern States, as in the northern—the great men there, are too rich and important to serve on the juries, and the smaller are considered as not having consequence enough to

try the others; in short, there can be no trial by peers there:—The middle States gain advantages by having the legal business done in one of them, which may prevent their leading men, from engaging seriously in amendments:—I therefore propose the adopting the Constitution, in the following manner, in which I conceive there will be great unanimity.

THAT this Convention do adopt and ratify the Constitution, or frame of government for the United States of America, proposed by the Federal Convention, lately holden at Philadelphia; upon the following conditions, viz. 4.15.3

That the first Congress which shall be holden under the same, shall before they proceed to exercise any powers possessed under the Constitution, excepting those of organising themselves, and of establishing rules of procedure, take into consideration all amendments proposed by the Convention of this or any other State, and to make such amendments therein proposed as aforesaid, as any seven of the States shall agree to; and which amendments shall be considered as a part of the Constitution.

And that the Senators and Representatives of the several States, shall set together in one body, and vote by States, in considering such amendments;—but the President or Vice-President elect, shall have no vote therein.

THE AMENDMENTS PROPOSED.

FIRST. *In the fourth section of the article of the Senate strike out these words*, "But Congress may, at any time, by law, make, or alter, such regulation, except as to the place for choosing Senators;" *and insert these words, "But if any State shall refuse to prescribe time and place for such elections, Congress shall provide therefor by laws made for that purpose."* 4.15.4

Remark—this amendment takes off the main objection made to this article, and gives Congress power to perpetuate its own existence.

2d. In the second clause of the ninth section insert the words—"And the Supreme Judicial Courts of the several States and either Judge thereof, shall have power to issue this writ."

This secures the right of Habeas Corpus, without going to Pennsylvania for it.

3d. In the eighth section of the powers of Congress, strike out the word, "Taxes."

This leaves the powers of impost and excise to Congress. And should war, or any other circumstance render internal taxes necessary to be in Congress, they may have the power granted hereafter.

4th. In the second section of the Judiciary Power, strike out the following words, "Between a State and a citizen of another state, between citizens of different States."

Laying a State liable to be sued, robs it of all its sovereignty, and in this case may lay the several States liable to be sued for their publick securities.[1]

5th. In the second clause of the same section, strike out the words, "Both as to law and fact," *and add to that clause these words*—Provided nevertheless, that all issues of fact shall be tried by a jury to be appointed according to standing laws made by Congress.

This will preserve the inestimable right of a trial by jury—This right is the democratical balance in the Judicary power; without it, in civil actions, no relief can be had against the High Officers of State, for abuse of private citizens; without this the English Constitution would be a tyranny—See Judge Blackstone's excellent Commentary on this privilege, in his third volume, page[2]

6th. In the last clause in the same section next after the word State, insert these words, In, or near the County.

This keeps up the idea of trial in the vicinity. See the Massachusetts declaration of rights on this point—Also, that of other States, &c.[3]

7th. At the end of the same clause, add these words—Provided that no person shall be held to answer to any charge of a criminal nature, unless it be upon indictment of a Grand Jury, appointed, sworn and charged according to known and standing laws.

This is the greatest security against arbitrary power; without this, every person who opposes the violation of the constitutional right of the people, may be dragged to the bar, and tried upon a bare information of an Attorney-General.—The loss of this privilege carries with it the loss of every friend to the people.—There is no instance yet, in England, or in America, excepting in the Stuart's reign, of a person's being tried for his life, otherwise than upon indictment. It was attempted before the Revolution, but successfully opposed.

Hampden

2 February 1788

Mr. Russell:

4.15.5 As I understand the fifth article in the proposed Constitution, it is provided by it, that when two thirds of the Senate, and two thirds of the House, (that is, as it appears to me, when two thirds of these bodies, separately) shall deem it necessary, they shall propose amendments, or when the legislatures of two-thirds of the States, shall apply for it, Congress is to call a Convention of all the States; this Convention when called, are not to be authorised to make amendments, but are only to propose them to the legislatures of the several States, and then if the legislatures of three fourth parts of the States shall agree to the amendments proposed, they are to be considered as a part of the Constitution.

I am exceedingly pleased with this mode, so far as it regards the purpose which it was intended to effect. When a government is in exercise, all innovations are dangerous; the forming, or amending a government, opens a wild field for speculation, and men of genius and ability will throng it: One amendment begets another, and that a third, until, perhaps, the parties are lost in the windings of their own arguments; and the people thrown into dreadful factions. Ideas like these have prevented, and do still prevent, the people in England, from attempting to regain an equal representation in Parliament. The exceeding *slow*, *precarious*, and *expensive* method for amendments, proposed in this Constitution, will prevent those frequent attempts which otherwise might create parties, to the great injury of the general government. 4.15.6

But this remedy is by no means calculated for those defects, which appear upon the plan, before it is adopted. It is only intended for those which may appear upon the exercise of it. The United States are under great obligations to the honorable gentlemen who formed this plan; but in a country, where learning, ability, and particularly the knowledge of politicks, are so universally disseminated, it would be very extraordinary, if those men, however great and learned, should produce a system in which no amendments, by others, should not be justly proposed. Yet if none could be proposed without introducing the confusion, which some people apprehend, we had, it may be said, better take it as it is. If there is no alternative but the ratifying this, or having no government, this position may be supported. But whether we had better adopt this as it is, or lay a foundation to obtain amendments before it is carried into exercise, is quite another question, and one which clearly exists. To ratify this, as it is, would be clearly deciding, that it is right, and a motion for immediate amendments would be preposterous: There are amendments, stated in my other paper, which are by no means local, and some of which, respecting the right of juries, I believe a majority of States will agree to. Mr. *Wilson*, has said that the Convention could agree upon no mode of expression to place this, as a constitutional right in the system.[4] I see no objection to the modes of expression, I have used in my other paper. If there is not, this secures the right. But should not seven states, assembled in Convention, as proposed, agree to any amendments, the Constitution remains as it is—but should they agree to any, those will be a part of it. 4.15.7

Hampden

1. See Brutus XIII, 2.9.161 n. 102.
2. Blackstone, *Commentaries* III, 23; see Democratic Federalist 3.5.6 n. 6.
3. Thorpe, *Federal and State Constitutions* III, 1891 (Art. XIII). See Plebeian 6.11.15 n. 13.
4. Wilson's speech to the Citizens of Philadelphia, 6 October 1787, McMaster and Stone 145.

Letter from A Customer

(PORTLAND, MAINE) CUMBERLAND GAZETTE
March 1788

In his first paragraph A Customer gives economical expression to a very characteristic Anti-Federal persuasion: the Constitution is derived from a political theory that would deflect popular attention from politics and religion to the pursuit of wealth and from direct responsibility for government to a remote representative system. The author goes on to object that the Constitution does not explicitly provide that a new President shall be elected after four years and that the Congress might decide to have the Chief Justice act as President.

Friend Wait,

4.16.1 We are now in a hopeful way. The lower class fall in with the views of some of the better sort who reprebate the old-fashioned ideas of 1775, viz. that the common people were good judges in the affairs of government; and that their time was well spent when it was devoted to the study of politicks and religion—the latter of which was then supposed to be necessary to the well being of civil society.[1] We leave our share in the general government, to ten men; and our State matters may soon be reduced. As to religion, our great folks are not obliged to make a declaration on that score; and if the lower class, who are desirous to imitate those who move in a higher sphere, should once be made to believe it unfashionable, we may turn our clergy a grazing—and employ our time, that heretofore has been employed in politicks and religion, to the pursuit of wealth, to enable us to pay our debts, and support the dependants on government in the style of the great men of the east.

4.16.2 I have one difficulty in my mind respecting our admirable Constitution, which I hope somebody will attempt to remove. Art. 3, sect. I—"The executive power shall be vested in a President of the United States of America: he shall hold his office during the term of four years." Here is no declaration that a new one shall be chosen at the expiration of that time. "Congress may determine the time of chusing the electors; and the day on which they shall give their votes." But suppose they should think it for the

publick good, after the first election, to appoint the first Tuesday of September, in the year *two thousand*, for the purpose of chusing the second President; and by law empower the Chief Justice of the Supreme Judicial Court to act as President until that time. However disagreeable it might be to the majority of the States, I do not see but that they are left without a remedy, provided four States should be satisfied with the measure. The President elected is not to receive any other emolument; yet the Chief Justice is not disqualified as a Judge. Why did our worthy Chief Justice, at Cambridge the year past, in his address to the Grand Jury, call upon them to support "that free and excellent Constitution, which it has lost the blood of thousands of our friends and fellow citizens to establish: that Constitution which has carefully separated and distinguished the principal departments of power—that they might never combine against the liberty of the subject:"[2] if it is not a necessary article in a constitution? If necessary in a State constitution, why not in one for the whole people? Was it not as easy to have said the President should be chosen every fourth year, as to have said the Representatives shall be chosen every second year? The celebrated Mr. King observes that this is not a confederation of States—for the style is in the name of the people:[3] therefore, it appears to me, the rights of the people should be as well guarded, on this point, here, as in the constitution of a State.

I send you a few pounds of flax—a most excellent article. It will employ 4.16.3
the idle, who may be out of business, to turn it into cloth; and when reduced to rags, it will be useful to make paper for your business. And if in some future day your press should be stopped, it will make small cords to tickle the idle and restless, and to bind the turbulent to their good behaviour.

Your press is free: therefore you will oblige me by inserting the foregoing in your useful paper.

A Customer

1. See below, Charles Turner 4.18.2 n. 2.
2. William Cushing was Chief Justice from 1777 to 1789.
3. Elliot II, 55–57. See Pennsylvania Convention Minority 3.11.30 n. 15.

Essays by A Farmer

(NEW HAMPSHIRE) FREEMAN'S ORACLE AND NEW HAMPSHIRE ADVERTISER
January–June 1788

The essays of A [New Hampshire] Farmer were published in the *Freeman's Oracle and New Hampshire Advertiser* from 11 January 1788 through 13 September 1788. The first essay elicited a response from Alfredus, which was published in the *Freeman's Oracle* on 18 January; A Farmer replied to it on 1 February; Alfredus responded on 8 February; and A Farmer returned to the attack on 6 June.

In the interesting first essay, the writer contends that even if James Wilson is correct that all powers not granted are reserved, the powers granted under the new Constitution are so generous, especially when taken together with the supremacy clause, as to invite expansion and to require the specific restraints of a bill of rights. He proposes a national jury to sit with the "judicial court of the United States." He urges the importance of protecting the freedom of the press, understood as freedom from "prior restraints." His argument against a standing army is more significant than most, for he shows not only its tendency to tyranny, but also the dangers of war to the morals of the people and the conduct of public affairs. After a (much less strong) discussion of the excessive salaries the legislators are likely to pay themselves and the need somehow to provide constitutional limits, A Farmer analyzes the commercial interests favorable to the Constitution and contrasts them with the interest of the farmers—who cannot put their land on their backs and leave if things turn out badly. The essay concludes with a proposal that men be elected to the state ratifying convention pledged to secure a bill of rights and other amendments to the Constitution.

The second and third of A Farmer's essays contain some further discussion of the issues of a standing army and trial by jury in civil cases. Regarding the latter, A Farmer includes a long quotation from Blackstone that is important in the Anti-Federalist argument. The debate then degenerated into personal abuse, and the subsequent exchanges, which contribute nothing of substance to the debate over the Constitution are not reprinted here (see note 5 to text below). They do, however, identify A Farmer as Colonel Thomas Cogswell, Chief Justice of the New Hampshire Court of Common Pleas.[1]

1. The identity is revealed on 13 June by Alfredus' reference to the military office held by his antagonist. Cogswell defended himself by name in the essay of 4 July. Alfredus also identified Cogswell as the author of *The Anti-foederalist*, No. 2, which appeared in the *Freeman's Oracle* on 8 February 1788 and is reprinted below, 4.23.4. In the American Antiquarian Society copies of the pertinent numbers of the *Freeman's Oracle*, the same hand that correctly labels A Farmer as Thos. Cogswell identifies Alfredus as Samuel Tenny (or Tenney), a New Hampshire surgeon and public figure. This is consistent with identification of Alfredus as a doctor by both A Farmer (4.17.13, 16) and the Anti-Federalist, Philo (*Freeman's Oracle* 16 August 1788). See *Dictionary of American Biography* (ed. Francis S. Drake, 1872) 204, 899.

I

11 January 1788

My Friends, and Fellow-Farmers,

Much has been said respecting the new Constitution offered you, by the Convention, under the direction of Congress; and much ought to be said, in favour of it, not only from the characters of those gentlemen who composed the Convention (whose characters I revere) but from the many excellencies it contains—Yet, neither the characters of the gentlemen, the excellencies it contains, nor the deranged state of our public affairs, ought to have so much influence upon your minds, as to adopt this Constitution, if it is incompleat. Examine it, my friends, with discernment and candor, and judge for yourselves—I think you will find the foundation is laid, and materials are wanting to render it compleat. 4.17.1

In order to adopt it, as it now stands, with any degree of safety, in my humble opinion, a Bill of Rights is absolutely necessary, to secure the liberties of the people. Although the celebrated Mr. Wilson, in his address to the citizens of Philadelphia, respecting a Bill of Rights, urged, that in a state constitution, every thing that was not reserved, was given; but, in a Federal Constitution, the reverse of the proposition prevailed, and what was not given was reserved.[1] I must confess it was ingeniously got over, but not to my satisfaction, (in many instances people may be silenced, but not convinced) for upon the very principle that Mr. Wilson urged, that there is no need of a bill of rights, for what is not given is reserved, would be the foundation I should go upon to urge the great necessity of one,—for if we look into the Constitution, we shall find the different articles therein contained, are expressed in very general and extensive terms; ONE, in particular, which is sufficient to show the necessity of a Bill of Rights, viz.—"This Constitution and the laws of the United States, which shall be hereafter made in pursuance thereof, shall be the supreme law of the land, and the judges, in every state, shall be bound thereby, any thing in the Constitution or law of any state to the contrary not withstanding;"—Therefore, I say, take this clause, together with the extensive latitude given in several other 4.17.2

articles, is too much power to lodge in the hands of any set of men, however virtuous they may be without being properly guarded; nor can I think it in the least derogatory to the honour of the supreme authority of the United States, to have a Bill of Rights stated in the Constitution, wherein it shall be declared, thus far you may go and no further. We have found by experience, the great advantage of a Bill of Rights in our State constitution; when the legislature passed sundry laws infringing on the Bill of Rights, we had it in black and white to show them they were wrong; and to their honour be it spoken, they have repealed one; and so far as the necessities of the people would admit the other.[2]

4.17.3 Much has been said respecting Congress exercising exclusive legislation in all cases whatsoever over a jurisdiction, not exceeding ten miles square, in such a place as Congress agree to reside in. If that is a Hobby Horse that Congress wishes to mount, and the state they conclude to reside in will give them the jurisdiction, and the individuals consent to it;—Let them mount, for if we prevent them they may get worse mounted. But on our part,—Let us secure the liberties of individuals of the United States, and guard and fetter the hobby horse, in such a manner, as not to let him kick our heads off, if we should have occasion to pass thro' or remain in that district a certain time—The judicial court of the United States is an object worthy of our serious attention, and to have a jury always to attend the same when sitting, composed of members from each state, is necessary to secure the liberties of the people. In order to this, let the President of each state cause a box to be made, and with the advice of council, enroll thirty of the most respectable characters in the state, and on the first Monday in January, every year, or any other convenient time; let the President order his Secretary to draught out two of the names of those persons so enrolled and put in the box, to attend the grand court of the United States as jurymen, whenever they shall sit. If any accident should prevent one or both said jurymens' attendance, and the obstructions appear sufficient to the President, then he shall proceed to a new choice; if otherwise, let them be fined for non attendance. And those two persons so draughted, having served one year, let their names be taken out of the box, and two others put in, and so in rotation. And once in three years let the box be examined by the President and council and corrected as circumstances require. The pay and travel, and mode of payment to be fixed by Congress.—Perhaps some will object against this, as being too expensive; but when we consider that here will be the result of causes of great magnitude; and the respectable appearance such a court will make; and the honour that will redound to the United States; I think, as a Farmer, I should be willing to contribute largely toward it; there will be two jurors, and one may be empannel'd no ways interested in the cause, but to do justice—The liberty of the Press is essential to a free people, it ought therefore to be inviolably preserved and secured in the Bill of Rights, and no duty or tax to be imposed thereon, of what name or nature

soever. But if individuals will publish indecent pieces, leave them to the law of the land to abide the consequence.[3]

Something has been said respecting the state of Vermont. I heartily wish 4.17.4
Congress would admit them into the union. The legislature of this state, in my opinion, ought to give it in charge to their members in Congress, to urge their admittance. As it now stands, they are daily draining off a large number of inhabitants from these northern states, from the idea that they pay no taxes, and finally will not have to pay any part of the Continental debt. It is certainly high time, that matter was decided, it is now about ten years since they declared their independence and have governed themselves accordingly—Standing armies are dangerous *in time of peace to the liberties of a free people*, provided they are kept and voted their continuance yearly, they soon get ingrafted into and become a part of the Constitution, therefore they ought not to be kept up, on any pretext whatsoever, any longer than till the enemy are driven from our doors. War is justifiable on no other principle than self-defence, it is at best a curse to any people; it is comprehensive of most, if not all the mischiefs that do or can afflict mankind; it depopulates nations; lays waste the finest countries; destroys arts and sciences, it many times ruins the best men, and advances the worst, it effaces every trace of virtue, piety and compassion, and introduces all kind of corruption in public affairs; and in short, is pregnant with so many evils, that it ought ever to be avoided if possible; nothing but self-defence can justify it.[4] An army, either in peace or war, is like the locust and caterpillers of Egypt; they bear down all before them—and many times, by designing men, have been used as an engine to destroy the liberties of a people, and reduce them to the most abject slavery. I have both summered and wintered with an army: You, my friends, in general, know nothing of the evils that attend it; guard and secure it well in your Bill of Rights, that it may not be in the power of any set of men to trample your liberties under their feet with it. Organize your militia, arm them well, and under Providence they will be a sufficient security. I have once born arms in defence of my country;—I am now willing to risque myself and property, together with my liberties and privileges, (with a well regulated militia) and when they are invaded, I will gird on my sword and appear in their defence. And, if my children after me will not do it, let them loose theirs with their heads into the bargain.[5]

Great complaint has been made, that Congress has been too liberal in 4.17.5
their grants of salaries to individuals, and I think not without just cause; for if I am rightly informed, there has been men whose salaries have been fifteen hundred dollars per year, and some of them did not do business at any rate, that the sum they negociated would amount to their yearly salary. And some men now in office, at twenty-five hundred dollars per year, who I think, would have been glad to have set down at one hundred pounds a year before the war,[6] and would have done as much or more business. The truth is, when you carry a man's salary beyond what decency requires, he im-

mediately becomes a man of consequence, and does little, or no business at all. Let us cast your eyes around us, in the other departments, the judges of the superior court have but about one hundred pounds salary a year. The judges of the courts of common pleas, on an average, not more than sixty dollars per year. The ministers of the gospel, a very valuable set of men, who have done honour to themselves, and rendered great service to their country, in compleating the revolution have salaries but from sixty to an hundred pounds a year in general. The contrast is striking. I heartily wish that all ranks of men among us, ministers of the gospel as well as others, would turn their attention toward the Constitution, they may be more concerned in the event than they at present think of.

4.17.6 Rouse up, my friends, a matter of infinite importance is before you on the carpet, soon to be decided in your convention, viz, The New Constitution—Seize the happy moment—Secure to yourselves and your posterity the jewel Liberty, which has cost you so much blood and treasure, by a well regulated Bill of Rights, from the encroachments of men in power. For if Congress will do these things in the dry tree[?] when their power is small, what wont they do when they have all the resources of the United States at their command?—They are the servants of the public;—You have an undoubted right to set their wages, or at least to say, thus far you and those under you may go and no further.—This would in the end ease Congress of a great deal of trouble, as it would put a stop to the impertinence of individuals in asking large salaries. I would say that the wages of a Representative in Congress do not exceed five dollars per day, a Senator not to exceed six, and the President seven per day, with an allowance for his table. And that the wages of no person employed in the United States exceed the daily pay of a Representative in Congress, but be paid according to their service, not exceeding that sum. Perhaps it may be said that money may depreciate, or appreciate—Let a price current be taken when this Constitution is compleated of the produce of each state, and let that be the general standard.

4.17.7 My friends and countrymen, let us pause for a moment and consider,—we are not drove to such great straits as to be obliged to swallow down every portion offered us by wholesale or else die immediately by our disease. We can form a Constitution at our leisure; and guard and secure it on all sides. We are paying off our state debt, and the interest on the domestic as fast as Congress call upon us for it. As to the foreign debt, they have the promise of more interest from us than they can get any where else, and we shall be able to pay them both interest and principal shortly. But it is said they will declare war against us, if we don't pay them immediately. Common sense will teach them better; we live at too great a distance, and are too hardy and robust a people, for them to make money out of us in that way.

4.17.8 But it is said, the trading towns are fond of this Constitution. Let us consider how they stand including their interest.

1st. The merchant wishes to have it adopted, that trade might be reg-

ulated. 2dly. Another set of men wishes to have it adopted, that the idea of paper money might be annihilated. 3dly. Another class of men wish to have it take place, that the public might be enabled to pay off the foreign debt, and appear respectable abroad among the nations. So do I, with all my heart; but in neither of these cases do I wish to see it adopted, without being guarded on all sides with a Magna Chartha, or a Bill of Rights, as a bulwark to our liberties. Again, another class of men wish to have it adopted, so that the public chest might be furnished with money to pay the interest on their securities, which they purchased of the poor solidiers at two shillings on the pound. I wish the soldiers were now the holders of those securities they fought so hard for: However, as the public finances were such that they could not be paid off as they became due, and they have carried them to market, and sold them as the boy did his top; we must pay them to the holders; but we need not be in a hurry about it, certificates will do for that.

Consider, my friends, you are the persons who must live and die by this Constitution—a merchant or mechanick may dispose of his goods, or pack them up in trunks, and remove to another clime in the course of a few months; but you cannot shoulder your lands, or dispose of them when you please, it therefore behoves you to rouse up, and turn your most serious and critical attention to this Constitution. You are called upon by the legislature to appoint men to meet in Convention, to consider and decide upon the proposed Constitution. Seek, and make choice of such men as served you faithfully through the war, and know the difficulties and dangers of a revolution. No man is debared by our state constitution from sitting in this convention. And let each town, or district, qualified by law to send a member, give him instructions to insist upon the additions of a Bill of Rights to the Constitution, and to have such amendments made in it, as shall effectually secure it on all sides; it had better be done now, in the first setting out, than to have to do it seven years hence—it may be at the purchase of blood. 4.17.9

I think the state of Virginia have ordered their convention to object, amend, or make a new one as they please. I wish every state would do the same, then a continental convention would have a fair chance to frame a constitution most agreeable to the general sense of the people, and then let it be returned for their approbation. I assert as a fact, that the gentlemen had not a fair chance in forming this. They were shut up as it were, from the world, and could hardly converse with their intimate friends on the important subject, and they formed it on those generous and liberal principles agreeable to their own sentiments, and were they always to rule, I should not have much to fear from them. But I have some where read, that men in power ought above all others to be narrowly watched and checked on all sides, with restraints stronger than their temptations to break them, and even crimes of theirs ought to be more penal as it is evident they are more pernicious. 4.17.10

4.17.11 To conclude—as the Fox in the Fable, wanting to rob a hen-roost, or do some such like prank, humbly besought admittance and house room only for his head,—his whole body presently followed—. So courts more crafty as well as more craving than that designing animal, have scarce ever gained an inch of power, but they have stretched it to an ell; and when they have got in but a finger their whole train has soon followed.

A Farmer

II

1 February 1788

Messieurs Printers,

4.17.12 When a man enters the list of your correspondents, and publishes his sentiments to the world, with a design for the public good, I read him with candor; and like a bee on the flower, extract the most useful parts; and if for want of information, or a slip of the pen, he should publish any thing not quite so agreeable, I had rather cast a vail over it than any thing else.—But when a man (like Alfredus)[7] enters for the sake of criticizing upon a few words, and snarling at every sentence, because they are not entirely agreeable to his wish, I generally treat him, as I do the Puppy, which barks with a great deal of impudence, at every traveller; and with the good humor of Uncle Tobey, I say to him, go, Poor Devil, Go, return to thy cell, there is room enough in this world for both of us.

4.17.13 I wish young gentlemen, would not be quite so anxious, to crowd down this Constitution. If they are not Quacks in Law, Physick, or Speculation, they may be in politicks: But, leave it to old and experienced hands to decide, who can look to the end of things.[8] It calls to my mind, an observation made in a grand council held at New-York, when our army was about evacuating the city; it was warmly urged to set fire to the city, as it might prove a temporary advantage to the British troops; after some altercation, an old sage arose and addressed himself as follows: I am surprised to hear the sentiments of so many wise and worthy gentlemen, to burn the city of New-York, that has cost so much time and treasure to erect. But however, war has not ripened your minds to that maturity which is necessary to look to the end of things. If we burn the city, how many hundreds of worthy inhabitants shall we distress and many wholly ruin, who have only left the city to escape the dangers of war, and perhaps may return again in a few months. If the British troops burn it let them take the curses of an innocent people: for my part I can see no more reason, for burning the city, than that a wealthy farmer should burn his Barns, because the rats have got into them. And on my part, I can see no more reason for adopting the Constitu-

tion as it now stands, upon the General conversation, that if we dont adopt this we shall never have any, than that a man should quit his house, and expose himself, and his family to the inclemency of the weather, because his house may take fire, in the night, and burn them up.

As to the lofty strains of a Wilson,[9] he has never entered into the spirit of the Constitution, so far as has come to my knowledge, he has in my opinion, kept aloof, on the surface, and with a great deal of falacy set forth the difficulties that attended forming the Constitution; those difficulties, will always arise where the views are not intended for the general good. 4.17.14

But let Mr. Wilson, and his lofty strains, go off, with a puff of wind, and soar above the clouds in an Air Balloon, he seems better calculated for that region than to make laws for a free people.

There is the nervous reasonings of a Brutus, and the ingenious sentiments of a Candidus;[10] they have opened the sore and probed it to the bottom; if any man, after reading their strictures upon the Constitution, can lay his hand upon his heart, and say it is best for us to adopt it, I shall in return pronounce, that he ought to be a slave forever, and will freely doom him to the cold and dreary regions of Nova-Scotia, there to wind up his days on clams and potatoes. 4.17.15

My friends and fellow farmers, I intended here to have made an end, and left Alfredus, with all his impudence to return peaceably to his cell, where I sent him in the first paragraph—But when I came to read over his piece a second time couched in such language, it made me shudder to see how abusively he has treated our juries, the grand palladium of liberty. I will for your observation copy his sentiment, it appears to be written with blood. These are his words—"*What are the advantages of this* boasted Trial by Jury, *and on which side do they lie, not certainly on the side of justice, for one unprincipled juror, secured in the interest of the opposite party, will frequently divert her course, and in four cases out of five, when injustice is done, it is by the ignorance or knavery of the jury.*"[11]—This is a bold stroke, my friends, and shows you at once the disposition of Mr. Alfredus, that he is no friend to your liberties. I shall make no further observation on this particular, but when a leisure hour offers, I will give him a further combing for his insolence to the juries.[12] Then we may see who wants the medicine to cure the *Hypocondriac*. In the mean time I shall advise Mr. Alfredus to examine his Apothecaries shop and take a little *Hypocacuana* and a few pills for fear he should get past recovery. 4.17.16

As to armies, I shall conclude with a quotation from a celebrated author, viz. "In free states, the profession of a soldier taken merely, and singly as a profession, is justly an object of jealousy, and an army though they are voted yearly, soon get engrafted to, and become a part of the Constitution.["][13] 4.17.17

A Farmer

III
6 June 1788

Messirs. Lamson and Ranlet,

4.17.18 When I sent you the last piece to be published, under the signature of the FARMER, in which I gently advised Mr. Alfredus to take a little Ipecacuanha, and a few pills to cure him of the Hypochondriack—I had no idea of his taking so large a dose. It evidently appears, by his conduct, that the disorder had taken very deep hold of him, otherwise he never would have taken so large a portion at once; for, to appearance, if he had swallowed the whole of an apothecarie's shop, it would not have operated more violently, nor have discharged more filth than he did in his last publication. But so it is—We will consider it as a wonderful phenomenon perhaps, suited to attract the notice and observation of the Medical Society at their next meeting. However, it is the duty of an able Physician to watch carefully the ebbings and flowings of nature; and when a patient has received so violent a shock to throw in a few Lenitives, which, it may be hoped, will in a short time recover him to *compos mentis et corporis* to be of sound mind and body, and so make him an useful member of the community. I shall therefore, rather pity than complain of, Alfredus, while he is under the severe operation of medicine; for he appears to be conscious that he deserves the curses of Ernulphus, by expecting them; and as conscience has begun to do its office, I shall leave that monitor to compleat it, and proceed to make a few remarks on his performance.

4.17.19 He observed that "old heads are not always wise;" he should also have recollected that young heads are not always steady and judicious; if they had have been, he never would have complained of my using him ill with regard to language; for when I published my sentiments they were open to the strictures of any person. But Mr. Alfredus being conscious that my observations were founded upon reason and fact; and a *Truth* is a hard thing to get over, he begins by ridiculing the Author under the character of Don Quixot, and then abusing and vilifying our juries (which I shall say more of presently) and finally concludes by saying, "To follow this writer, Messieurs Printers, through every scandalous innuendo, foolish proposition, impertinent observation, and groundless assertion, would fatigue the patience of your readers." This gentleman ought to have pointed out here to the public the groundlessness and falsehood of my assertions, and shown by facts well attested, that Congress had never been lavish of public money or given in any instance exorbitant salaries to any of her servants, had he done this it would have been to the purpose, he might have drawn his conclusions, as he does, but instead of this, without the least shadow of proof, he lumped the whole together as false and groundless assertions, wherein it appears he is really himself chargeable with the same impertinence, folly and falsehood he unreasonably charged me with.

Information and instruction is the grand design in writing for the public, and where these are neglected by an Author, and he descends to low banter and scurrility, or to bold, impudent negations, or positive dogmatical assertions instead of reason and argument, as Alfredus did in his first publication, and more especially in his last, he deserves to be despised, or rather to use his own simile, "to have the musket he has overloaded burst upon him with horrible recoil." Mr. Alfredus should have considered this when he was charging so high, and if by accident, in going off she sent him back to his cell, with all his impudence, he ought to have born it patiently, and considered that he himself was *the moving cause*. 4.17.20

I shall now make some observations on the unjust and illiberal sarcasms, passed by Mr. Alfredus, on our jurors:—And, as he has such a peculiar nack of leaping over important things, by saying "they are nothing to the purpose," or by stigmatizing them, "as impertinent observations, groundless assertions," etc. I shall copy his own words, and then follow, with the sentiments of the Hon. Justice Blackstone, who is one of the most celebrated Authors now extant. 4.17.21

Sir, in your publication of Friday, January 18th, ult. you say, "What are the advantages of this boasted trial by jury, and on which side do they lie? *Not certainly on the side of justice,* for one unprincipled juror, secured in the interest of the opposite party, will frequently divert her course, and in four cases out of five where injustice is done, it is by *the ignorance or knavery of the jury*." This, I may venture to affirm, is an impudent and bold stroke; it attacks the whole community at once, and has a tendency to sap and undermine the best preservative of liberty, and therefore ought to be held in abhorrence by every freeman; it is totally repugnant to the sense of the best writers on the subject, and especially to the ideas of the renowned author above mentioned, whose sentiments I shall now quote, vol. 3, page 378.[14] "*When the jury have delivered in their verdict, and it is recorded in court, that ends the trial by jury; a trial which besides the other vast advantages which we have occasionally observed in its progress, is also as expeditious and cheap as it is convenient, equitable and certain: upon these accounts—the trial by jury has been, and I trust ever will be looked upon as the glory of the English law; and if it has so great an advantage over individuals in regulating civil property, how much must that advantage be heightened, when it is applied* to criminal cases; *it is the most transendant privilege which any subject can enjoy or wish for; he cannot be affected either in his property, his liberty or his person, but by the unanimous consent of twelve of his neighbours and equals; a Constitution that I may venture to affirm has, under Providence, secured the just liberties of the English nation for a long succession of ages; and therefore a celebrated French writer (Montesque) who concludes, that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta and Carthage, at the time when their liberties were lost, were strangers to the trial by jury.* 4.17.22

4.17.23 *Great as this eulogium may seem, it is no more than this admirable Constitution, when traced to its principles, will be found, in sober reason, to deserve. The impartial administration of justice, which secures both our persons and properties, is the great end of civil society; but if that be entirely entrusted to the magistracy of a select body of men, and those generally selected by the Prince, or those who enjoy the highest offices in the state, their decision, in spite of their own natural integrity, will have frequently an involuntary bias toward those of their own rank and dignity; here therefore, a competent number of sensible and upright jurymen, chosen by lot from among those of the middle rank, will be found the best investigators of truth, and the surest guardians of public justice; for the most powerful individual in the state, will be cautious of committing any flagrant invasion of another's right, when he knows that the fact of his oppression, must be examined, and decided by twelve indifferent men, not appointed till near the hour of trial: and that, when once the fact is ascertained, the law must of course redress it—This therefore preserves, in the hands of the people, that share which they ought to have, in the administration of public justice; and prevents the encroachments of the more powerful and wealthy citizens.*

4.17.24 *Every new tribunal erected for the decision of facts, without the intervention of a jury, whether composed of justices of the peace; commissioners of the revenue; judges of a court of conscience; or any other standing magistrate, is a step towards establishing aristocracy, the most oppressive of absolute government. It is, therefore, upon the whole, the duty which every man owes to his country, his friends, his posterity, and himself, to maintain to the utmost of his power, this valuable Constitution in all its rights, and above all to guard with the most jealous circumspection against the introduction of new, and arbitrary methods of trial, which, under a variety of plausible pretences, may in time, imperceptibly undermine this best preservative of LIBERTY,*"—Added to this, there is a late law of this state, which puts the pay, and travel of our jurors upon a very respectable footing—And lest Mr. Alfredus should say, this is nothing to the purpose, because the trial, by jury, under the English Constitution, may be very different from what it is in ours,—I will just mention, wherein they differ, under the English Constitution,—The jurors are returned by the sheriff.—under ours they are draughted by lot, from each town, which, I think, is the most equitable method, and as to the modes of process through the trials, they are nearly the same, both endeavour to do justice to the parties.[15]

4.17.25 To conclude, Mr. Alfredus, I will give you a word of advice—Do you, in future, attend the business that God and nature has formed you for and placed you in, for you make a much more respectable appearance *there* than you do in writing for a free people,—and should the proposed Constitution take place, let us see who will make the best member of it.

The Farmer.

1. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1788, McMaster and Stone 143–44; see references in Federal Farmer IV, 2.8.50 n. 39.

2. See Crosskey, *Politics and the Constitution* 968–71.

3. A Farmer thus accepts the general view at this time that freedom of the press meant a prohibition against prior restraint. See McMaster and Stone 308 (Wilson).

4. In this elaboration of the ground for the opposition to any but defensive war, A Farmer indicates the deeper issues behind the disagreement of Brutus and Publius. See Brutus VII, 2.9.86 n. 59.

5. The exchanges between Alfredus and A Farmer that are not printed here deal principally with the nature of Colonel Cogswell's military service. See *Freeman's Oracle* 13 June, 4 July, 11 July, 16 August, 23 August.

6. About a six-fold increase according to a report of a committee consisting of James Madison, Oliver Ellsworth, and Alexander Hamilton accompanying a resolution on a congressional impost, on 18 April 1883, £1 = $4.44. *Journals of Continental Congress* XXIV, 287. See McDonald, *We the People* 385. See also Mason 2.2.5 n. 3.

7. Alfredus replied to the first essay of A Farmer in the *Freeman's Oracle* of 18 January 1788.

8. In his next essay, Alfredus replied to the charge here by inquiring, "Is all knowledge confined in grey heads? Was not Hercules competent to manly deeds even in his cradle? And have not some gentlemen of *twenty* more sagacity and skill in the sciences of polity and government than others who have grown hoary in public business?" "Old heads are not always the repositories of wisdom, nor do 'Young Gentlemen' always deserve the contempt in which you affect to hold them." New Hampshire *Freeman's Oracle* 8 February 1788. For A Famer's final rebuttal, see 4.17.18–20.

As Charles Warren, among others, has pointed out, the controversy over the Constitution was in some respects a controversy between generations, the young nationalists against the old revolutionaries. Massachusetts Historical Society, *Proceedings* 64 (1932): 145–46. See also Stanley Elkins and Eric McKitrick, "The Founding Fathers: Young Men of the Revolution," *Political Science Quarterly* 76 (June 1961): 181–216. Cf. [Maryland] Farmer II, 5.1.19 n. 13.

9. A substantial portion of Alfredus' original reply had consisted of a quotation from James Wilson on the Bill of Rights. He quoted, not from the 6 October "Address to the Citizens of Philadelphia," to which A Farmer referred in his first essay, but from a speech of Wilson in the Pennsylvania ratifying convention on 28 November 1787. In this speech Wilson gives an argument in defense of the absence of a Bill of Rights that is different from and not altogether consistent with the one in the 6 October speech. In the earlier speech he had argued that in the case of the state governments "everything which is not reserved is given; but in the [case of the federal government] the reverse of the proposition prevails, and everything which is not given is reserved" (McMaster and Stone 143). But in the convention speech he argued much more broadly that the necessary implication of any constitution of civil government is that anything not given is reserved, that there is no necessity of explicit reservation, that in fact many of the states have no bill of rights, and that a bill of rights is not only unnecessary but may be dangerous in implying that what was not expressly reserved was meant to be given. Alfredus apparently quotes from the version of Wilson's speech printed in the *Pennsylvania Herald* 12 December 1787, and reprinted in McMaster and Stone 252–54. (A different report of the same speech is given in Elliot II, 434–37). See Federal Farmer IV, 2.8.50 nn. 38–40.

10. See 2.9, 4.9.

11. Alfredus goes on: "The fact is that under the present regulation, which most unreasonably (at least in civil cases) requires an unanimity in the verdict, juries favor the guilty much more than the innocent party." 18 January. See Old Whig III, 3.3.16 n. 17.

12. See 4.17.22–24.

13. The source of this quotation has not been found. Alfredus had contended, among other things, that the Constitution does not provide for a standing army, which he defines as "that which the supreme executive magistrate can raise by his own authority and support by permanent revenues beyond the controul of his subjects."

Regarding A Farmer's quotation, Alfredus replies in his essay of 8 February 1788: "Observe, Sir, where the force of the expression lies—'The profession of a soldier, *taken merely and singly as a profession* is justly an object of jealousy,' When considered as a security against inimical powers situated in the vicinity, the case is entirely different. While the present State of hostility between neighboring nations continues, troops will ever be necessary for the defence of frontier settlements, dock-yards, sea-ports, etc. Whatever may *possibly* be the consequence of annually voting such an army as these compose, the public security requires and will warrant our investing Congress with authority to do it. There is but one circumstance that can ever necessitate any other standing groups in times of peace, and that is the opposition that factious and licentious subjects will make to the execution of a firm and energetic government, when inconsistent with their interests and views."

14. The reference is correct and the quotation is substantially accurate, although A Farmer omits some words and phrases (e.g. the passage in Blackstone ends, "of English liberty," rather than "of liberty," as A Farmer has it).

15. Alfredus continues his criticism of trial by jury in the *Freeman's Journal* of 13 June, contending that the original purpose of the trial by jury, to stand between the powerful barons and the defenseless vassals, no longer exists in our governments. Trial by jury is nevertheless an eligible mode of trial in criminal and some civil cases, but it should be judged by actual results, the tendency of which is to give an advantage to the defendant. "If the design of judiciary courts is to protect guilt, or in better terms, to give the transgressor every chance to escape punishment, then some modes of trial as facilitate this impunity are just and right.—But if the strict and impartial administration of justice is the only object of their establishment, then such modes must be extremely faulty."

Charles Turner
Speeches in the Massachusetts Ratifying Convention

17 January and 6 February 1788

Charles Turner is described by Samuel Bannister Harding as "unquestionably the ablest and most dignified, as well as one of the most sincere, opponents of the new government."[1] Although both of these speeches from the Massachusetts ratifying convention are short, and although the latter explains Turner's vote *for* the Constitution, they provide an unusually clear view into the heart of the Anti-Federalist argument.

In the first speech (4.18.1) Turner argues against granting to Congress powers that may be abused, particularly the power to alter the place of choosing federal representatives. He denies that Congress can be trusted with wide powers on the assumption that it will be composed of sober and upright men. He contends, in fact, that there has been a moral deterioration in the country, arising from the operation of paper money and privateering, and that, while this increases the need for efficient government, the governors must be taken from the corrupt mass and will be further corrupted by their elevation. Turner's solution, to give no power that can be abused, is clearly at best a mitigation.

Turner presses more deeply into the problem of genuine self-government and the kind of leadership it requires in his second speech (4.18.2). He voted in favor of the Constitution (with amendments to be recommended) because of the vital and immediate need of efficient government; but he argues that the Constitution will not save the country from slavery and ruin without the prevalence of Christian piety and morals. He hopes that the new government will promote religion and moral principles and thus render the people more capable of being a law unto themselves, a far nobler task than building more and more rigorous governments to control a more and more turbulent and unjust people.

The speeches are taken from the contemporary publication of the Massachusetts debates.[2]

1. *Contest over Ratification* 66.
2. *Debates, Resolutions and other Proceedings, of the Convention of the Com-*

monwealth of Massachusetts, Convened at Boston, on the 9th of January, 1788, and continued until the 7th of February following, for the purpose of assenting to and ratifying the Constitution recommended by the Grand Federal Convention (Boston 1788).

17 January 1788

4.18.1 Mr. President, I am pleased with the ingenuity of some gentlemen in defence of this section [Art. I, sec. 4]. I am so impressed with the love of our liberty so dearly bought, that I heartily acquiesce in compulsory laws, for the people ought to be obliged to attend to their interest. But I do not wish to give Congress a power which they can abuse; and, I wish to know whether such a power is not contained in this section? I think it is. I now proceed, sir, to the consideration of an idea, that Congress may alter the place for chusing representatives in the general Congress—they may order that it may be at the extremity of a state, and by their influence, may there prevail that persons may be chosen, who otherwise would not; by reason that a part of the qualified voters in part of the state would be so incommoded thereby, as to be debarred from their right as much as if they were bound at home. If so, such a circumstance would militate against the constitution, which allows every man to vote. Altering the *place* will put it so far in the power of Congress, as that the representatives chosen will not be the true and genuine representatives of the people, but creatures of the Congress; and so far as they are so, so far are the people deprived of their rights, and the choice will be made in an irregular and unconstitutional manner. When this alteration is made by Congress—may we not suppose whose re-election will be provided for? Would it not be for those who were chosen before? The great law of self preservation will prevail. It is true, they might, one time in an hundred, provide for a friend, but most commonly for themselves. But, however honourable the convention may be who proposed this article, I think it is a genuine power for Congress to perpetuate themselves—a power that cannot be unexceptionably exercised in any case whatever:—Knowing the numerous arts, that designing men are prone to, to secure their election, and perpetuate themselves, it is my hearty wish that a rotation may be provided for. I respect and revere the convention who proposed this constitution. In order that the power given to Congress may be more palatable, some gentlemen are pleased to hold up the idea, that we may be blessed with sober, solid, upright men in Congress. I wish that we may be favoured with such rulers; but I fear they will not all, if most be the best moral or political characters. It gives me pain, and I believe it gives pain to others, thus to characterize the country in which I was born. I will endeavour to guard against any injurious reflections against my fellow citizens. But they must

have their true characters, and if I represent them wrong, I am willing to make concessions. I think that the operation of paper money, and the practice of privateering, have produced a gradual decay of morals—introduced pride—ambition—envy—lust of power—produced a decay of patriotism, and the love of commutative justice; and I am apprehensive these are the invariable concomitants of the luxury, in which we are unblessedly involved, almost to our total destruction. In the lower ranks of people, luxury and avarice operate to the want of publick duty and the payment of debts. These demonstrate the necessity of an energetick government: As people become more luxurious, they become more incapacitated of governing themselves. And are we not so? A like people, a like prince: But suppose it should so happen, that the administrators of this constitution should be preferable to the corrupt mass of the people, in point of manners, morals, and rectitude; power will give a keen edge to the principles I have mentioned. Ought we not, then, to put all checks and controuls on governours for the publick safety: therefore, instead of giving Congress powers they *may* not abuse; we ought to withhold our hands from granting such, as *must* be abused if exercised. This is a general observation.[1] But to the point: At the time of the restoration, the people of England were so vexed, harrassed and worn down, by the *anarchical* and confused state of the nation, owing to the commonwealth not being well digested, that they took an opposite career; they ran mad with loyalty, and would have given Charles any thing he could have asked—Pardon me, sir, if I say I feel the want of an energetick government, and the dangers to which this dear country is reduced, as much as any citizen of the United States; but I cannot prevail on myself to adopt a government, which wears the face of power, without examining it. Relinquishing an *hair's breadth* in a constitution is a great deal; for by small degrees has liberty in all nations, been wrested from the hands of the people. I know great powers are necessary to be given to Congress, but I wish they may be well guarded.

5 February 1788

Mr. President,—Being advanced in life, and having endeavoured, I hope, with a faithful attention according to my ability, to assist my country in their trying difficulties and dangers, for more than twenty years; and as for three weeks past my state of health has been such as to render me unable to speak in this assembly, I trust I shall be heard with some indulgence while I express a few sentiments at this SOLEMN CRISIS. I have been averse to the reception of this Constitution while it was considered *merely* in its original form: But since the Hon. Convention have been pleased to agree to the recommendation of certain amendments, I acknowledge my mind is rec- 4.18.2

onciled. But even *thus* amended, I still see, or *think* I see several imperfections in it, and *some* which give me *pain*. Indeed, I never expect to see a Constitution free from imperfections; and considering the *great* diversity of local interests, views and habits; considering the *unparalleled* variety of sentiments among the citizens of the United States, I despair of obtaining a more perfect Constitution than this *at present*. And a Constitution preferable to the confederation must be obtained, and obtained *soon*, or we shall be an *undone* people. In my judgment there is a *rational probability*, a *moral certainty*, that the proposed amendments will meet the approbation of the several States in the Union. If there is any respect due to the *hoary* head of Massachusetts, it will undoubtedly have its proper influence in this case. The minds of gentlemen throughout the nation, *must* be impressed with *such* a sense of the necessity of *all important* UNION, especially in our present circumstances, as must strongly operate in favour of a concurrence. The proposed amendments are of such a *liberal*, such a *generous*, such a *catholic nature* and *complexion*, they are so *congenial* to the soul of every man who is possessed of a patriotick regard to the preservation of the just rights and immunities of his country, as well as to the institution of a good and necessary government, that I think they *must*, they *will* be UNIVERSALLY *accepted*. When in connection with this confidence I consider the *deplorable* state of our NAVIGATION and COMMERCE, and various branches of business thereon dependent, the *inglorious* and *provoking* figure we make in the eyes of our European creditors, the *degree* in which the landed interest is burdened and depreciated, the tendency of depreciating paper and tender acts, to destroy mutual confidence, faith and credit, to prevent the circulation of specie, and to overspread the land with an inundation, a chaos of multiform injustice, oppression and *knavery;* when I consider *that* want of *efficiency* there is in our government, as to obliging people seasonably to pay their dues to the public, instead of spending their money in support of *luxury* and *extravagance*, of consequence the inability of government to satisfy the just demands of its creditors, and to do it in *season*, so as to prevent their suffering *amazingly* by depreciation; in connection with my anxious desires that my ears may be no longer *perstringed*, nor my heart *pained* with the cries of the injured, suffering WIDOW, and ORPHAN; when I also consider *that* state of our finances which daily exposes us to become a prey to the despotick humour even of an impotent invader, I find myself constrained to say, before this Assembly, and before GOD, that I think it my duty, to give my vote in favour of this Constitution, with the proposed amendments; and unless some further light shall be thrown in my way to influence my opinion, I shall conduct accordingly. I know not whether this Convention will vote a ratification of this Constitution, or not. If they should do it, and have the concurrence of the other States, may that GOD, who has always in a remarkable *manner* watched over us and our fathers for good, in all difficulties, dangers and distresses, be pleased to

command his Almighty Blessing upon it, and make it instrumental of restoring justice, honour, safety, support and salvation to a *sinking land*. But I hope it will be considered by persons of all orders, ranks and ages, that without the prevalence of *Christian piety, and morals*, the best republican Constitution can never save us from slavery and ruin.[2] If vice is predominant, it is to be feared we shall have rulers whose grand object will be (slyly evading the spirit of the Constitution) to enrich and aggrandize themselves and their connections, to the injury and oppression of the *laborious* part of the community; while it follows from the *moral constitution* of the DEITY, that prevalent iniquity must be the *ruin* of any people. The world of mankind have always in general, been enslaved and miserable, and always will be until there is a greater prevalence of Christian moral principles; nor have I an expectation of this, in any *great* degree, unless some superiour mode of *education* shall be adopted. It is EDUCATION which almost entirely forms the character, the freedom or slavery, the happiness or misery of the world.[3] And if this Constitution shall be adopted, I hope the Continental Legislature will have the *singular honour*, the *indelible glory*, of making it one of their *first* acts, in their *first* session, most *earnestly* to recommend to the several States in the Union, the institution of such means of education, as shall be *adequate* to the *divine, patriotick purpose* of training up the children and youth at large, in that solid learning, and in those pious and moral principles, which are the *support*, the *life* and SOUL of the republican government and liberty, of which a free Constitution is the body; for as the body without the spirit is dead, so a free form of government without the *animating* principles of piety and virtue, is dead also, being alone. May *religion*, with sanctity of morals prevail and *increase*, that the patriotic civilian and ruler may have the *sublime*, *parental* satisfaction of *eagerly* embracing every opportunity of mitigating the rigours of government, in proportion to that increase of morality which may render the people more capable of being *a law to themselves*. How *much* more blessed THIS, than to be employed in fabricating Constitutions of an higher tone in obedience to necessity, arising from an increase of turbulent vice and injustice in society. I believe your Excellency's patience will not be further exercised, by hearing the sound of my voice on the occasion, when I have said; may the *United States of America* live before GOD! May they be enlightened, pious, virtuous, free and happy *to all generations!*

1. The notes kept by Chief Justice Parsons of this part of the speech are probably more accurate: . . . He thinks a rotation is necessary in the lower house to guard against the deep arts of popular men; has well grounded fears that some of the rulers would be bad men—we must therefore guard against them; that paper money and privateering has introduced corruption and immorality, and a disregard to private and public justice. In consequence of that corruption, it requires a more energetic Federal government; but the rulers will be taken out of this corrupt mass. *Like prince like people*, and promotion will increase the corruption. Every possible guard must be devised, therefore, against rulers; therefore, Congress must not have the power in the

fourth section, because they cannot use it without abusing it." "Minutes kept by Chief Justice Parsons, of the Debates in Convention," *Debates and Proceedings in the Convention of the Commonwealth of Massachusetts* . . . (Boston 1856) 295 (notes of Mr. Turner's speech of 17 January 1788). On reliance on good men see Federal Farmer VIII, 2.8.110 n. 72; on the relation between the character of the people and their laws see ibid. III, 2.8.24 n. 19.

2. For other Anti-Federalist dicussions of the need for religion, see Aristocrotis 3.16.14–15 n. 9; Samuel 4.14.7; Customer 4.16.1; Friend to the Rights of the People 4.23.3(9); David 4.24.1; Proposal for Reviving Christian Religion 5.8.3; Denatus 5.18.10; Warren 6.14.135–40. For Federalist replies, see David 4.24.1 n. 1. Cf. *The Federalist* no. 10, 61; Madison to Jefferson, 24 October 1787, Madison, *Writings* (ed. Hunt) II, 17–41.

3. See Denatus 5.18.9–12.

Letter from The Yeomanry of Massachusetts

MASSACHUSETTS GAZETTE
25 January 1788

This typical Massachusetts assault on the "aristocratic party" contains a defense of Elbridge Gerry and is notable for its attack on Washington as a slaveholder.

Mr. Allen,

Please to insert the following in your FREE PAPER, and you will oblige a number of free born people.

To the Publick.

Many are the arts made use of by our aristocratick gentlemen, to accommodate the federal constitution to the taste of the yeomanry of the country. But it is very unlucky for them, that they should be so far misled, as to attempt to trump up *one* thing which appears by no means to be founded in truth, viz. that none but placemen and pensioners are opposed to it.[1] This is so far from quadrating with truth, that we conceive it to be an absolute falshood. We would ask the disinterested part of the community just to look over the characters which are so fond of swallowing this creature, which exhibits all the pourtraits of an over-bearing aristocracy, and see if *they* are not chiefly composed of salary men and pensioners, and those who at least think themselves fair candidates for places of honour and emolument, whenever the aristocratick wheels of the federal chariot shall be set in motion. 4.19.1

When we see the adherents to this constitution chiefly made up of civil and ecclesiastical gown men, and their dependents, the expedient they have hit upon is not likely to have the intended effect. There are many men destitute of eloquence, yet they can see and hear—They can think and judge, and are therefore not likely to be wheedled out of their senses by the 4.19.2

sophistical reasonings of all the advocates for this new constitution in the country combined. We know this is not true; and as we well know the design of such representations, we would have those gentlemen know, that it will not take. They must pull upon some other string, or they must fail. Another thing they tell us, that the constitution must be good, from the characters which composed the Convention that framed it.[2] It is graced with the names of a Washington and a Franklin. Illustrious names, we allow—worthy characters in civil society. Yet we cannot suppose them, to be infallible guides, neither yet that a man must necessarily incur guilt to himself merely by dissenting from them in opinion.

4.19.3 We cannot think the noble general, has the same ideas with ourselves, with regard to the rules of right and wrong. We cannot think, he acts a very consistent part, or did through the whole of the contest with Great Britain: who, notwithstanding he wielded the sword in defence of American liberty, yet at the same time was, and is to this day, living upon the labours of several hundreds of miserable Africans, as free born as himself; and some of them very likely descended from parents who, in point of property and dignity in their own country, might cope with any man in America. We do not conceive we are to be overborne by the weight of any names, however revered. "ALL MEN ARE BORN FREE AND EQUAL;" if so, every man hath a natural and unalienable right to his own opinion, and, for asserting this right, ought not to be stigmatized with the epithets of tenacious and dogmatical. If we were to pin our faith on any sleeves but our own (without derogating in the least from the merit of any one of the Massachusetts delegates in the federal convention) we should be as likely to pin it on the sleve of the hon. mr. Gerry as any one of them.[3] But we mean to see with our own eyes, and thus seeing to act for ourselves. In this view, as a tribute due from us to that hon. gentleman, we must acknowledge his tenderness, his care for the preservation of the liberties of the people, and his desire on all occasions to preserve them from invasion. This hon. gentleman was one who assisted in rearing the pillars of a republican government, he has ever since aided in the support of them, and thus hath acted a much more consistent part than those his brethren, who, after all the expense and fatigue of rearing the building, are now for razing the foundations, destroying instead of repairing the frame, and erecting another, which by no means can answer the good purpose of sheltering the people from storms. But, to lay aside metaphor—

4.19.4 This gentleman is much more consistent, than those who are for turning our republican government into a hateful aristocracy. And we must think it very dishonourable in the aristocratical party, to treat the worthy gentleman, in the manner they have done in the publick papers: We can assure them it has been far from helping their cause. We do not wish to tire the publick, but would hint to those gentlemen, who would rob the people of their liberties, that their sophistry is not like to produce the effect. We are willing to have a federal constitution. We are willing another trial should be

made; this may be done without derogating from the gentlemen, who composed the late convention. In framing a constitution for this commonwealth, two trials were made before one would stick. We are willing to relinquish so much, as to have a firm, energetick government, and this we are sensible may be done, without becoming slaves, to the capricious fancies of any sett of men whatever. It is argued, that there is no danger that the proposed rulers will be disposed to exercise any powers that this constitution puts into their hands, which may enable them to deprive the people of their liberties. But in case, say they, they should make such attempts, the people may, and will rise to arms and prevent it;[4] in answer to which, we have only to say, we have had enough of fighting in the late war, and think it more eligible, to keep our liberties in our own hands, whilst it is in our power thus to do, than to place them in the hands of fallible men, like ourselves, who may if they please, entirely deprive us of them, and so we be at last reduced to the sad alternative of losing them forever, or recovering them back by the point of the sword. The aristocratick party are sensible, that these are the sentiments of the majority of the community, and their conduct plainly evinces the truth, of a well known ancient adage—"*Nothing cuts like the truth.*"

The Yeomanry of Massachusetts.

1. On this widespread claim, see Martin 2.4.118 n. 44.
2. See Federal Republican 3.6.4 n. 4.
3. See above 2.1. For other criticisms of Washington, see Centinel I, 2.7.5 n. 2; on slavery see Martin 2.4.65 n. 24.
4. This was a very common Federalist argument. See Federal Farmer X, 2.8.127 n. 80.

Essay by An American

(BOSTON) AMERICAN HERALD
28 January 1788

In another attack on Washington, An American interprets Washington's letter to Charles Carter to imply that the Constitution will be imposed by force.

4.20.1 We have been frequently advertised in the public papers, that General Washington, when he set his hand to the proposed Constitution, uttered these words—"THIS IS, PERHAPS, THE LAST TIME THE AMERICANS WILL HAVE AN OPPORTUNITY, COOLLY, TO SET DOWN, AND AGREE UPON A FORM OF GOVERNMENT."[1] The mode of expression from a Soldier,—from a Man, who, besides the CINCINNATI, could call out many followers—from a Man, who stands in the public eye, the sole candidate for Chief Ruler of all the States: From such a one, it was as void of prudence as it was of foundation.—This has alarmed many patriots, and given pain to many of his friends—but they all feel a respectful delicacy towards that Great Man, and have therefore been silent, while they might have observed, that, as the motion made by Virginia for a General Convention, was so readily agreed to by all the States; and that as the people were so very zealous for a good Federal Government, though this plan, which was aided in its birth by that Great Man, should fail, the people could again *set themselves down coolly, to make another*.—The mode of expression might have been animadverted upon. THE LAST TIME they would have an OPPORTUNITY!—From whom do they receive this OPPORTUNITY, but from Heaven?—And who shall withhold the boon?

4.20.2 Had not his letter appeared in the papers, fully explanatory of his ideas, still the regard all feel for him, might have constrained a decent silence.[2] In this letter he says, "MY DECIDED OPINION IS, THAT THERE IS NO ALTERNATIVE BETWEEN THE ADOPTION OF IT (that is the proposed Constitution) AND ANARCHY." One would suppose it very strange, that a Convention of fifty members, however respectable, should have such an opinion of their own

sagacity, that when they had performed a task *which they took upon themselves*, they supposed that three millions of people could not amend it, or wish an alteration! and that unless this identical System, with every letter and figure thereof should be adopted, all Government would be at an end, "Old Chaos would come back again, and nothing but anarchy ensue!"—No new Convention, no new set of men can ever agree again, why?—Because miracles have ceased.

But he goes on,—"IF ONE STATE, however important it may conceive itself to be, or a minority of them, should suppose, that they can dictate a Constitution to the Union, unless they have the power of applying the ULTIMO RATIO, to good effect, they will find themselves deceived."—One expression more ought to be attended to, in order to find the General's meaning:—"GENERAL GOVERNMENT IS NOW SUSPENDED BY A THREAD—I MIGHT GO FURTHER, AND SAY, IT IS REALLY AT AN END."—The proposed Constitution, is by the recommendation of the Convention, to be in force when nine States shall ratify it; if seven or eight out of 13 agree to it, yet the old Confederation remains until the people agree upon another.—But General Washington tells us, that the General Government is at an end already, and that unless the New Plan is adopted, anarchy and confusion takes place, and that a minority, unless they can apply the Ultimo ratio with good effect, will find themselves deceived. I do by no means wish to put an uncandid construction upon this letter, but I cannot resist the conclusion, that the General has declared, that this Constitution shall be supported by the ULTIMO RATIO, that is by force. 4.20.3

What is a Tyranny, but a Government forced by the stronger upon the weaker?—How imprudent then must the General be to make these declarations?—Does our soil produce no more Washington's? Is there none left who would oppose the attempt to establish a Government by force?—Can we not call from the fields, the counters, the bar, and mechanics' shops, any more Generals?—Is our soil exhausted?—And does any one suppose that the Americans, like the Romans, will submit to an Army merely because they have conquered a foreign enemy? 4.20.4

The truth is that we cannot exist without a General Government, and that great thanks are due to the Convention for the plan they offer; but should the body of the people, or even a majority of the States, wish for alterations, before they ratify the work, surely they may be obtained without bloodshed, without the ULTIMO RATIO. And the majority with usual American candour, will yield to their brethren. 4.20.5

An American.

1. "Should the States reject this excellent Constitution, the probability is that an opportunity will never again offer to cancel another in peace—the next will be drawn in blood." *Pennsylvania Journal* 14 November 1787; *Massachusetts Centinel* 24 November 1787; *Massachusetts Gazette* 3 December 1787; *Boston Gazette* 3 December 1787, etc. Curtis, *Constitutional History* I, 672; Charles Warren, *The Making of*

the Constitution (Cambridge, Mass., 1937) 717. Warren points out that, since the remark is not given by Madison in his notes on the Convention, there is some doubt of its authenticity. See Cato II, 2.6.7 n. 4.

2. In a letter to Charles Carter, Washington wrote: "My decided opinion of the matter is that there is no alternative between the adoption of it and anarchy. If one State however important it may conceive itself to be should suppose, or a minority of the States, that they can dictate a Constitution to the Majority unless they have the power of administering to good effect, administering the *Ultema ratio* they will find themselves deceived. . . . General Government is now suspended by a thread. I might go farther and say it is really at an end, and what will be the consequence of a fruitless attempt to amend the one which is offered, before it is tried, or of the delay from the attempt, does not in my judgment need the gift of Prophecy to predict." *Documentary History of the Constitution* IV, 406–7. The meaning of the "ultema ratio" comment is not entirely clear, but it was taken by the Anti-Federalists, in the context of this letter, as a threat to impose the Constitution by force if necessary. While Washington complained of the unauthorized publication of this private letter, containing some hastily written "exceptionable language," James Madison thought it may have been of service, "notwithstanding the scandalous misinterpretations of it which have been attempted." See *Documentary History of the Constitution* IV, 440–41, 456, 465, 477–78, 517.

Letter from A Bostonian

(BOSTON) AMERICAN HERALD
4 February 1788

A Bostonian urges that judges should be excluded from the legislature. The constitution of a democracy requires simplicity and brevity, not the vagueness and ambiguity favored by the men of the law.

Mr. Powars,

While the hon. Convention are attending to amendments to the Constitution before them, it is presumable, they will not omit *one*, which, in my opinion, will tend to the greatest security of the liberty of the people—That an effectual barrier be made against the legislative and judicial departments being constituted in the same persons—I say *effectual*. In doing which, it will become evidently necessary, that the gentlemen of the law, who are expounders thereof in the judiciary department should be excluded from a seat in the legislative.—I need not explain the evil tendency which an union ever had, and ever will have: It has been acknowledged, I believe, the greatest defects in the Massachusetts Constitution, and while 99 out of 100 of its inhabitants acknowledge the reasonableness of this proposition, no wonder those gentlemen are so extremely anxious for the present adoption of this Constitution, knowing, that should it go out to the people, that this security would be the first object of their attention, and that an adjournment would have this effect. But, say the '*order*,' "shall we be divested of our privileges as citizens?"—Pray, why do not the Judges of the Judical Court, the State Attorney, the Judges of Probate complain? Is it not evident, that if it is thought expedient to prohibit those characters from a seat in the legislature, gentlemen who have stated salaries, and therefore cannot be thought to have that local interest in view that may reasonably be supposed the other branch of the same court have, that they also should be debarred?—Is it not contradictory to every precept of human wisdom and inconsistent in its nature, that the expounders of law, men whose fortune and dependence depend principally on its inaccuracy, its vague and ambiguous terms, its incomprehensibleness, should be the framers thereof?—I say no wonder those gentlemen are for swallowing it down in its present form, while they

4.21.1

naturally suppose they are conceived necessary agents in making laws to be the supreme law of the land, and at the same time harvesting in the Judicial department.—Business enough to be sure, stepping from one court to the other, within the circuit of a *court-yard,* while almost every civil action of considerable magnitude between citizens of different states, besides a multiplicity of other trials are to pass thro' their hands.—I say there are many alterations necessary to be made in the new Constitution before it will suit the people not only of Massachusetts but of New-England in general, but no one of so much consequence as the one proposed; for when the legislature of a nation are composed of men only, whose happiness depends on the simplicity and brevity as well as energy of the laws of their country, then may we expect to find a *code* suited to the genius of the people, and applicable to a republican government.—It is inconsistent to suppose, that the same laws substituted to a *monarchial,* or *aristocratical* government, should be adequate to the simple and comprehensive constitution of a *democracy*—I cannot but wish the Constitution to be adopted, with amendments; but, inasmuch as I conceive this Convention has no authority or power to make any, they will prove futile in Congress with respect to a ratification, as Congress has not power to take cognizance of them by the proposed Constitution.—If the Constitution is good, and cannot be amended for the better, then no injury can happen by delay, as its advocates will naturally increase, and its opponents diminish.

A Bostonian.

Address by A Watchman

WORCESTER MAGAZINE
February 1788

The essay of A Watchman is unusual in three respects. It is one of two significant Anti-Federalist essays from the western part of Massachusetts; it is explicitly democratic in its principles; and the author defends the government of Rhode Island. Written in the accents of the backcountry, the essay appeared in the *Worcester Magazine* for the first week of February 1788 (vol. 4, no. 19). A Watchman warns against the destruction of Massachusetts democracy by the aristocratic principles of the proposed Constitution. Of special interest among his list of objections (and not untypical) are the claims that liberty of conscience is not provided for and that the door is opened for Jews, Turks, and Heathen to enter public offices. Samuel Bannister Harding suggests that the essay "illustrates, probably, the effect of inflammatory articles, such as those by 'A Republican Federalist' and 'John deWitt,' upon the mind of the average farmer, and may be looked upon as representing the sentiments of the majority of the Antifederalists of that section."[1]

1. *Contest over Ratification* 35.

(The following was a few days since sent us for publication; as it is the first piece written in this county, against the Federal Constitution, that has been offered to us for publication, we think proper, in order to shew impartiality, to publish it, notwithstanding the author evidently appears to be much mistaken in some of his assertions.)

To the Citizens of the United States.

Men, Brethren, and Sisters,

Hearken! it is now a critical time with us, and a time in which we ought to be upon our watch, and upon our guard. Now is the time for us to look out; 4.22.1

now is the time for us to take care; now is the time for us to see that nothing is done to deprive us of our religious, or our civil liberties.

Our government at present is democratical, that is, the power is in the people; we are allowed to choose our rulers, make our own laws, and perform religious worship according to the dictates of our own consciences; and by our constitution a freedom of speech, and the liberty of the press, are allowed to every one of us. But although we are under such an excellent constitution, behold a new one is presented to us for our reception, which appears much like an aristocratical form; and will, if it is established, demolish a part of our democratical government, and deprive us of a part of our liberties.

4.22.2 Before we suffer this new constitution to be established, we ought to consider seriously what it contains, and whether it is calculated to promote our felicity? or whether, like a wolf in sheep's clothing, it is calculated to vest certain men with more power, deprive us of our liberties, and bring our land into lordships, and lead us into vassalage and slavery, like the poor people in Holland, who, after they had obtained their independency, lost their power, and were not suffered to have any voice in their government, no not so much as to choose their representatives.

4.22.3 How often has it been ringing in our ears from every quarter of the United States, that our present constitution is the best that ever was or ever could be established; if that be true, pray what need is there of an alteration—what need have we to alter a constitution that is every way perfect; if we should suffer our democratical government to be demolished, and an aristocratical one established, it is probable that in a few years some designing men will attempt to pull that down, and set up one that is monarchical, and so bring the country under a military government.

4.22.4 Permit me then, my beloved brethren and sisters, to point out wherein this new constitution is deficient.

1st. There is no bill of rights in it. 2d. Although different religions are allowed to set in Congress, yet there is no liberty given to the people to perform religious worship according to the dictates of their consciences. 3d. There is a door opened for the Jews, Turks, and Heathen to enter into publick office, and be seated at the head of the government of the United States. 4th. There is nothing said about the people being allowed the freedom of speech and the liberty of the press. 5th. It divides Congress into three branches, as President, Senate, and a house of Representatives, which will be a great clog to business, and a hindrance to the making of laws with expedition and dispatch. 6th. It deprives men that are endowed with the wisdom that is from above, from entering into Congress; unless they have arrived at a certain age, and have abode in the states a certain quantity of time. 7th. It augments the members of Congress, and makes the government more expensive. 8th. It deprives the people of the liberty of choosing their delegates to Congress annually, and of recalling them when they please. 9th.

It almost annihilates the state governments, and deprives their legislation of the power of making their own laws. 10th. It makes no provision against the keeping a standing army in a time of peace. 11th. It deprives the people of the power of levying and collecting their own taxes. 12th. It vests Congress with power to tax all the states, to send forth collectors, and enforce the payment of taxes by a standing army. 13th. It vests Congress with power to run the people into debt, by borrowing money of foreign nations, upon the credit of the United States; and it doth not oblige the members of that assembly to render any account of the expenditure of the same, if they shall see fit to secret it. 14th. No provision is made in it against having the civil power subject to the military, nor against having people that do not belong to an army or navy tried and punished by the military laws. 15th. It deprives the people in the several states of the liberty of making their own constitution, and vests it in the hands of Congress. 16th. It deprives the inhabitants of each state of the power of choosing their superiour and inferiour judges.

Thus have I exhibited some of the deficiencies in our new Constitution, 4.22.5
perhaps more might be mentioned; but although there are some deficiencies, yet there are many excellent things that are worthy of our reception and establishment, providing our constitution is deficient. Some people are averse to a democratical government, because they esteem it to be the most expensive and irregular; but the governments of Connecticut and Rhodeisland have been such from their first settlement; they have chose their own officers, and made and executed their own laws, and where can we find cheaper and more regular governments than they have been?

Thus, my beloved friends, have I given you the foregoing hints, that you may be upon your guard, and ward off the impending danger. Keep the power in your own hands, and let nothing be established that may deprive you of your liberties and make you unhappy.

A Watchman.

A Friend to the Rights of the People
Anti-Fœderalist, No. I

and

A Friend of the Republic
Anti-Fœderalist, No. II

(NEW HAMPSHIRE) FREEMAN'S ORACLE
8 February 1788

The first of these two essays is addressed to the inhabitants of New Hampshire and the other to the New Hampshire ratifying convention. At least one of them seems to have been written by Thomas Cogswell, author of the essays of A [New Hampshire] Farmer. The reason for the different pseudonyms is probably the different audiences addressed rather than different writers, but it is quite possible that the essays were written by different men and that it was the printer who labeled them (what the opponents of the Constitution seldom called themselves) "Anti-Fœderalist I and II."[1]

The essays exhibit a typical Anti-Federalist distrust of political authority and fear of the corrupting effects of luxury and the taste for foreign manners, which the new Constitution encourages. Two points in the first essay are of particular interest. In discussing the powers of Congress, A Friend to the Rights of the People declaims warmly on the need for frugality, on the growth of luxury and European fashions that will be stimulated by the Constitution, and on the effects of the federal city, with its probable palace for the president, amphitheater, circus and assembly (4.23.3[3–4]). He criticizes the discarding of all religious tests and makes an emphatic if not profound defense of the civil utility of religion (4.23.3[9]). He also criticizes the excessively lengthy terms of office, the provision for congressional alteration of the times, manner and place of elections, the sanctioning of the slave trade, the President's powers of appointment, the extensive judicial power, and the provision for new states, which amounts to a guarantee by the rest of the states of New York's claims to Vermont.

The essay by A Friend to the Republic is shorter but similar in tone. The "republic" of which the author is a friend appears to be New Hampshire, the essay beginning with a warning that ratification of the Constitution will

amount to a surrender to Congress of all the liberties, privileges, and immunities of New Hampshire. The writer scorns James Wilson's explanation of the absence of a bill of rights, advises the delegates to read the writings of critics of the Constitution, and, in the most interesting passage in the essay (4.23.8), denies that such mighty talents are necessary for government as some claim. Plain honesty and common sense are sufficient; great abilities are more often than not employed to mislead the multitude and to deflect them from the "open and plain paths of public virtue and public good."

1. A Federalist writer, Alfredus, identifies Cogswell as the author of Anti-Federalist No. II (A Friend to the Republic), which is not denied. See the New Hampshire *Freeman's Oracle* 13 June 1788. However, the same hand that correctly identifies A [New Hampshire] Farmer as Thomas Cogswell on the pertinent American Antiquarian Society copies of the *Freeman's Oracle* also identifies Cogswell as the author of A Friend to the Rights of the People but not of A Friend to the Republic. See [New Hampshire] Farmer 4.17 intro. n. 1.

Anti-Federalist, No. I.

To the Inhabitants of New-Hampshire.

The grand topick of the day is the New-Constitution, much has been said 4.23.1
for, much has been said against it by able writers—On one side, it is warmly asserted, that the liberties of the people, are sufficiently secure, as it now stands—On the other it is urged with equal vehemence, they are not, amendments must be made—a Bill of Rights prefixed, or we are undone; so that it is very difficult, for common people to know what is right, any thing that may serve to throw light upon the subject, may be very useful at this juncture. Both sides, it appears to me, so far as I have had opportunity of reading, have kept the Constitution too much out of view. There seems to be a necessity of a more particular and impartial examination of the thing itself, which is the bone of so much contention.

If the plan of Federal Government, proposed for our consideration and 4.23.2
acceptance, is secure, and well expressed in all its branches, then it will appear so upon a candid explanation, and no man ought to oppose it; or say any thing privately or publickly to prejudice any person against it; no good citizen would, in so doing, he would manifest himself to be an enemy to this country and posterity; and would deservedly be dispised by all the virtuous part of the community.—But if there are a number of things insecure, and of dangerous tendency in the Constitution itself, they may be made to appear upon fair and faithful examination; and no wise man would wish to rest the vast weight of national government upon a sandy foundation, which may give way, and let the fair structure of liberty, erected at such an infinite

expence of blood and treasure, fall into ruins.—Certainly no good citizen would approve of such an establishment, nor could be recommend it to the choice and adoption of others; if he did he must counteract his own, and the general interest and all the benevolent sentiments of reason and humanity. It is therefore of vast importance that the constitution should be well considered, and carefully examined, for upon that and nothing else, rationally explained, according to the common usage of words, must we found our judgment of its goodness or badness;—My design therefore is to quote, and make some remarks upon some of the most capital propositions.

4.23.3 *Remark,* I. Upon the time for which Congress is to be chosen on the new plan, Art. 1. Sect. 2.—The house of Representatives shall be composed of members chosen every second year by the people of the several States—Sect. 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for *six years*—Art. 2. Sect. 1. The executive power shall be vested in a President of the United States, he shall hold his office during the term of *four years,* and the Vice President shall be chosen for the *same term.* By this it plainly appears, that the Representatives of Congress are to hold their offices, for *two,* each of the Presidents for *four,* and the Senators for *six years successively.* This appears to me with not so favorable an aspect upon the liberties of the people, as if their session had been for a shorter term—Common sense teaches, that when public officers are chosen annually, or only for a short time at once; they naturally feel themselves more dependent upon the people, and consequently their obligations will be stronger to fidelity in their public trust—their fears will be alarmed on the one hand against maladministration, lest they be displaced at the next election—their hopes animated, on the other, to good conduct, in prospect of the approbation of their citizens, in a new choice; the people therefore have the strongest hold of their rulers, by having it in their power, soon to displace them upon misconduct; and consequently their liberties are more firmly established, by frequent elections than otherwise. It may be said here, that the longer men continue in office, the better they will be qualified for it, and consequently capable of doing more good. It may be so, and if they behave well, I would have them chosen again, and again, and so long as they approve themselves faithful to the public. But, on the supposition of their proving ill, the shorter their term in office the better—they will do much the least mischief to the community—and the chance of their proving ill, is at least as great, if not greater, than the contrary. There were more wicked kings in the nation of Israel, than good ones—and human nature is still the same, the bias to evil stronger than to good; the balance therefore preponderates against electing any persons for a long time together in any office; common prudence will teach us better. No wise man will contract with a menial servant for four or six years at once; he will chuse to engage him for a short term first, and if he proves faithful, he will renew the contract, if otherwise, he can easily dis-

card him. The case holds equally good, with the honorary servants of the state: Here therefore, were I to give my opinion, I would advise, that no person be chosen into any office in Congress, for more than one or at the most *two years* at a time.—We choose all our legislative body annually, our members of Congress have been chosen but for one year at a time; and in that, short as it is, they have taken some pretty large strides—What may we not expect, in treeble the term, furnished with such very extensive powers. The long parliament in England was one of the worst, that ever disgraced the annals of mankind—the truth is, power long continued, makes men giddy, turns the head, and heart too, many times. The most promising characters, at first, have proved the worst in less than six years. Nero was one of the best among the Roman Emperors, at his first entering the Imperial throne, in a short time, he proved a monster of iniquity.

Remark 2. Upon the election of Senators and Representatives, Art. 1. Sect. 4.—The time, places, and manner of holding elections, for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but Congress may, at any time, by law make, or alter such regulations, except as to the place of choosing Senators—By this it evidently appears, that Congress are to have power to alter, only the regulations the legislature may make respecting the time and manner of choosing Senators; the place which is much the most important is secured to the electors—But in the choice of the representative body, Congress may alter, not only the regulations of the time and manner, but *the place* of the election—the consequence is plain, Congress will, upon this plan, have full power to order all persons qualified, to appear at their shire towns, or their respective capitols, or even at the ten mile district to give in their votes for representatives—by this means nine tenths, or ninety-nine hundredths of the people, may be, yea must be wholly excluded from having any voice in the election. Where there is equal liberty, what privilege will the people have left: Fair & equal representation includes the whole privilege of the people, and if this may be curtailed, shackled or impeded at the pleasure and controul of Congress, farewell freedom—we may welcome tyranny with her galling chains. It may be said, this is overstraining the article, and no such thing was ever designed, or tho't of by the framers of the Constitution; if not, I would ask, how come the exception of *place* of election to be made; in one case, and not in the other—Was it not just as easy to have made the reserve to the people, as to the legislature. The making it to the one and not to the other, looks like a design to have an undue controul over the popular election; this breaths the spirit of British tyranny. The parliamentary influence is so great in England in the election of the members of the house of Commons, that some sensible writers have observed, that the people there have only the shadow, not the reality of liberty—This great and fundamental priviledge of the people, ought therefore to be well secured in the national plan of government—It is so in our State Constitution: all persons qualified shall be

intitled to vote within the town, destrict, or parish where they dwell in the choice of Representatives; I can see no reason why the people ought not to have equal liberty, in the choice of Representatives for Congress—they must abide the consequence of what they do; they must pay taxes and duties laid by them—They ought therefore to have a full voice in their appointment; and so far as they may be deprived of it, by the alteration of the places of election, so far they are deprived of real liberty.

Remark 3. Upon the mode of paying Congress, art. 1, sect. 6. The Senators and Representatives, shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States, art. 2. The President shall at stated times receive a compensation for his services, &c.—Here, it is plain, that the salaries of the members of Congress are to be ascertained and fixed by law—But who are to make this law? It is not said—I presume it is not the several state legislatures—They are an inferior order and cannot give law to a superior—It must then be a law of their own making, by which their salaries will be ascertained—How far Congress will extend this power (provided the Constitution is adopted) there is no man alive can tell—It is left without bound or limitation—and we may be sure, from the craving appetites of men for gain, it will be stretched as far as the patience, and abilities of the people will bear—European fashions have been transplanted into America—The high taste of foreign Courts will be relished by Congress—They must live in all the splendor of equipage and attendance—Their revenue must be equivalent—This being an infant country, and besides loaded with a large debt, will by no means be able to support it. It appears to me therefore, it would be very imprudent, in the United States to let Congress go to the continental Chest, and take out as much money as they please for their services, tho' under form of law—Common sense will teach us better—No wise householder will let her servants make a law to fix their own wages, or dip as deep as they please in his coffers—Nor will any wise community give a greater liberty to the ruling servants of the state—Some bounds ought to be set, otherwise there is no safety.[1]

It may be objected here, that our General Court vote their own salary, and yet they are very moderate in their demands. It is true, but they stand, only for a year at a time, are under the constant inspection of the people; and the Representative branch draw their wages directly from their Constituents, who watch them very narrowly; so that they have no opportunity to be lavish of publick money—The case will be very different with Congress upon the new plan—They will stand on an average three or four times as long—The greater part will be several hundred miles distant from their constituents—They will draw from the Continental Treasury, over which they themselves will have the most ample controul, and besides by another power granted, art. 1. They have liberty to secrete such parts of their conduct, as in their judgment, may require secrecy—It is easy for men to

believe secrecy, when it is for their own interest, how much soever it may be against the publick—Thus then, the disposal of publick money may constitutionally become one of the *Arcana Imperii* of Congress—For my part, I think here is a wide door open for great abuse; and it will be the wisdom of the states to shut it, by setting some bound to the salaries of their own officers—and this seems to be the more necessary, because we are loaded with a heavy debt, in order to clear it the greatest Œconomy is requisite in all our public expences. America is like a man who has a fine homestead and some out lands, but owes a large sum taken up, on interest; with care and frugality in all his expences, he can clear the interest and sink a little of the principal annually, and so finally discharge the whole. But if he drinks and games, and squanders in riotous living, he will very soon become a bankrupt; so we may, by care and prudence in our public expences, support our own government, pay the interest of our public debt, and a small part of the principal; so as in time to sink the whole—But if we lavish away our public money, and the ruling part of this young nation, will pattern after all the luxuries of European Courts, our revenue will not be sufficient to support our own government, and pay the interest to France and Holland; more money must be borrowed (if we have credit) the consequence follows, we shall sink deeper and deeper into debt, till the United States become a bankrupt.[2]

Remark 4. Upon the power of Congress, Sec. 8—They shall have power to raise and support armies; to provide and maintain a navy.—It is not mentioned expressly here when these armies are to be raised, and supported by Congress, whether in a time of peace, or war; it will be said in a time of war, or expectation of actual invasion, where there is a necessity of them, let it be so—But what is there here or in any other part of this Constitution to limit, or oblige Congress to disband the army when the war is at an end, for my part I can find nothing, it is true, in the following clause, it is said, that no appropriation of money for that use shall be for a longer term than two years; this amounts to no more, than that every second year, there shall be a new vote of Congress to appropriate money to the support of the army, upon this plan, an army may be continued, as long as they can get a vote for it; it will then be in the breast of Congress wholly to say, whether they shall exist in a time of peace; if they say they shall be kept up, they may tax the people to support them, and upon their non-compliance send the army to enforce payment, at the point of the sword; it will then to all intents and purposes upon this constitution, be in the power of congress to keep a standing army, in time of peace, their being voted every two years does not alter the case; great Britain has, as real a standing army as France, or Spain, and yet they are voted every year by parliament—Standing armies are ever dangerous, and have, always been accounted inconsistant with the liberties of a free people: it is not therefore safe, to entrust this power in the hands of any set of men without some greater limitation than is to be found in this

Constitution;—As to the power of building a navy, it is also left unlimited in the hands of Congress, it is not said, where they shall begin, nor how far they shall proceed, in the exercise of it, they may, if they please, immediately upon the adoption of this plan, lay heavy and burthensome taxes upon the people to build and maintain a fleet of ships, and yet go exactly according to the Constitution—Another unlimited power to be vested in Congress is that of exclusive Legislation, in all cases whatsoever, over such a district (not exceeding ten miles square) as may, by the cession of particular states, and the acceptance of Congress become the seat of government of the United States—We are not told in particular, what use is to be made of this district, but, no doubt, great designs are to be accomplished here equal to the authority to be delegated—A magnificent city, must be built to be the capital of the Empire—A spacious Congress house erected; A splended palace for the President—An amphitheatre for plays—A circus for games—An assembly for balls &c. (they will need no churches for public worship, for by the Constitution there is to be no religious test required in Congress)—All this will be done at the expence of the United States, for it is said, Congress shall have authority to make all laws necessary, and proper to carry into execution the foregoing powers; therefore they may constitutionally make laws for the accomplishment of the above purposes, and taxes may be levied of the people, or money borrowed of some European Power to defray the enormous expence.

How idle then is the notion that some entertain, that the establishment of this plan of government will speedily extricate us out of debt, and make us a rich and flourishing people—My opinion is the reverse, that in the complete operation and effect of it, it will be an insupportable burden, that will sink us the deeper under our present embarrassments.—It may be objected by the friends of the constitution, that this is all conjecture, and we have no reason to think or even suggest, that Congress will make such a use of their power to enslave the people—I would answer—Have we any reason to think they will not—they are to take a solemn oath to administer the Constitution faithfully, or according to the spirit of it, and if they do, the effect must necessarily be arbitrary government; this has always been pleasing to rulers—and there is no doubt, but they will make use of it, when it is voluntarily given them by the people—And when it is not, they have ever grasped after it—thus the nobles of Rome, after they had unanimously assisted the people, in abolishing the regal tyranny, were for enlarging their own power and exercising the very same tyranny, tho' under another name—So, tho' British tyranny is expelled out of these states yet, have we not reason to fear the same, tho' it may be under a different form.

Remark 5. Upon the slave trade, sect. 9. The migration, or importation of such persons, as any of the states shall think proper to admit, shall not be prohibited by Congress prior to the year eighteen hundred and eight—By the importation of the persons above-mentioned is doubtless meant the Guinea trade, by which thousands and millions of poor negroes have been

wrested from their native country, their friends and all that is dear to them, and brought into a state of the most abject slavery and wretchedness—By the above article, this cruel and barbarous practice is not to be prohibited by Congress for twenty years to come, and even then, it is not said, it shall cease—Here is a permission granted, for the enslaving and making miserable our fellow men, totally contrary to all the principles of reason, justice, benevolence and humanity, and all the kind and compassionate dictates of the Christian Religion. Can we then hold up our hands for a Constitution that licences this bloody practice? Can we who have fought so hard for Liberty give our consent to have it taken away from others? May the powers above forbid.[3]

Remark 6. Upon the appointment of the officers of the state, by the President, article 2, sect. 2—He shall have power by and with the advice and consent of the senate, to appoint Ambassadors, publick Ministers, and it is added all other officers of the United States whose appointments are not herein otherwise provided for, those appointments before provided for, in this Constitution, are the military officers reserved to the legislature; all other officers therefore, in the judicial department; such as justices of the peace and quorum judges of the inferior and superior courts must be appointed, and receive their commissions and salaries from Congress which will be improper and dangerous—The distance between so great, unworthy characters may get into office for want of proper information, and besides they will be independent of the people, and consequently suitable tools for the purposes of tyranny and oppression; as the Mandamus counsellors were under British government.

Remark 7. Upon the extent of the judicial power, art. 3, sect. 2. The judicial power shall extend to all cases in law and equity—to all controversies between two or more states—between citizens of the same state—between citizens of different states—citizens and subjects—In the larger cases there is to be original jurisdiction in the smaller appellate—What exceptions and regulations, Congress may make to this is uncertain—But as it now stands, it extends to all cases, and disputes which may happen between man and man; and so may prove, in the issue, a source of mischief and ruin to thousands—The rich and the wilful citizen may, after passing through the lower forms of law, appeal up to this federal court, at four, or five hundred miles distance; there the other party must repair, at an amazing expence, or else loose his case however just and righteoce—Hereby the course of public justice may be much obstructed, the poor oppressed, and many undone—Every door therefore against such a pernicious effect, ought to be shut in the Constitution—All wise communities would choose such an establishment, as that individuals might obtain justice, with the greatest ease, and least expence.

Remark 8. Upon the admission of new states, art. 3, sect. 3. New States may be admitted by Congress into the Union: But no New State shall be formed or erected, within the jurisdiction of any other state without the

consent of the Legislature of the state concerned—From this, it is evident, that Vermont can never be admitted as a state into the union without the consent of New-York, because of her claim of jurisdiction over it; that this consent will be obtained, is very improbable, such has long, and still continues to refuse it, the consequence is, Vermont must be obliged, either to remain as she is, and do nothing to defray the public expence which will be very impolitick, or else, submit to the government of New-York; this she will never do without a conquest by the sword: For this purpose New-York must have assistance, upon the adoption of this Constitution, she has a right to demand it of the United States; We shall consequently be bound to keep an army to cut the throats of our Brethren, a horrid scene is opened of blood and carnage. Nature shudders at the thought. We ought seriously to consider this, and not give our vote hastily to that, which we can never comply with in its operation and effects.

Remark 9. Upon the discarding of all religious tests, Art. 6, clause 3—But no religious test shall ever be required as a qualification to any office, or public trust under the United States, according to this we may have a Papist, a Mohomatan, a Deist, yea an Atheist at the helm of Government: all nations are tenatious of their religion, and all have an acknowledgment of it in their civil establishment; but the new plan requires none at all; none in Congress, none in any member of the legislative bodies; none in any single officer of the United States; all swept off at one stroke totally contrary to our state plans.—But will this be good policy to discard all religion? It may be said the meaning is not to discard it, but only to shew that there is no need of it in public officers; they may be as faithful without as with—this is a mistake—when a man has no regard to God and his laws nor any belief of a future state; he will have less regard to the laws of men, or to the most solemn oaths or affirmations; it is acknowledged by all that civil governments can't well be supported without the assistance of religion; I think therefore that so much deference ought to be paid to it, as to acknowledge it in our civil establishment; and that no man is fit to be a ruler of protestants, without he can honestly profess to be of the protestant religion.[4]—To conclude I have now given my sentiments freely and honestly upon this important subject; if it serves to throw any light upon it, I have my desire and should be heartily glad, that the respectable Convention to set at Exeter upon the decisive question, might have all that has been said for, and all that has been said against the Constitution laid before them, that they may have the fullest means of information possible and if, after judiciously and candidly weighing every argument, it is their judgment that it will be for the general good of the community to adopt, let them adopt it; but if not let them reject it; and let us make another trial for a new plan, that may in more respects be agreeable, and better secure the liberties of the subjects.

A friend to the Rights of the people.

Anti-Foederalist, No. II.

An Address to the members of the Convention, for the State of New-Hampshire, to meet at Exeter, on the second Wednesday in February 1788, for the important purpose of deciding upon a Constitution offered by the late Convention, through the medium of Congress.—

Not, Gentlemen, that I presume to think myself capable of informing you of your duty; or that you want such information, or would accept it from me. But, I would show my good wishes to my countrymen, and prepare them to reap the happy effects of their discrete choice.— 4.23.4

You, Gentlemen, have been chosen to deliberate and decide, upon the most important matter, perhaps, that ever was entrusted in the hands of any set of men; it is, in my opinion, the most dangerous crisis of our publick affairs, that any of us have beheld, in all the course of the late long and tedious war. May the God who governs the universe direct your steps.

If you adopt this constitution, as it now stands, it is my settled judgement, that you will, at once, surrender up all the liberties, privileges, and immunities of the state of New-Hampshire into the hands of Congress.— 4.23.5

Consider gentlemen—Whether it is the part of wisdom, or fidelity to your constituents, to give up all at once. Congress may thank you perhaps, for the mighty surrender, and may use you favourably at first, but, by and by, they may chastize you most severely with the rod you put into their hands. I have known men in private life, in a fit of good nature give up all their property into the hands of a favorite; and go mourning the remainder of their days, half starved and half naked to the grave.—But it is the first time, that I ever heard of a people, so soon after a long and tedious struggle for liberty attempt to surrender it to a set of men without their asking for it.—Men in power generally ask for enough—Let Congress have, what they have hitherto asked for, to regulate *Trade and Commerce*. They have told you that was sufficient, why will you give them more?

It has been said by Mr. Wilson, in support of this Constitution, and against a Bill of Rights, who dare be bold enough to enumerate all the Rights of a people:[5] Such sophistical assertions may do for his phlegmatick Germans, but will not answer for the bold, free and enterprizing people of New-Hampshire—Every honest man ought to be bold enough to declare his rights—at least, such great and essential ones, as never ought to be trusted to the caprice of any set of men—And you, gentlemen, I hope will be bold enough to spurn at a Constitution, offered you without a Bill of Rights; and receive none unless the most essential ones are enumerated—But I shall say no more on this particular, as abler pens have gone before me.— 4.23.6

But as many of you gentlemen are from the country; and have not had the advantage of hearing what has been said; I should advise you to collect 4.23.7

some of the most sensible writers, with their strictures upon the Constitution, and have them read in the Convention, and think and judge for yourselves, and decide cooly upon it—Beware of artful and designing men; (if any should be among you) as there may be those whose cunning and sophistry would deceive (if possible) the very elect.

4.23.8 Consider, gentlemen, how lavish Congress have been with your money! what exorbitant salaries they have given, and are daily giving to men, no better than yourselves, who would blush to have such salaries offered you, when, at this time, the public creditors are suffering for want of their just dues. If poverty has not made Congress frugal, it is in vain to give them the command of your purses.—Be not too much influenced, gentlemen, by the mighty sound of the great and exalted characters of those who formed this Constitution—We have thousands, as great, and good men as they, in the United States. Besides, gentlemen, there are not such mighty tallents, requisite for government as some who pretend to them (without possessing them) would make us believe—Honest affection for the general good and common qualifications are sufficient—Administration has always been best managed, and the public liberty best secured, when plain honesty and common sense alone governed the public affairs. Great abilities have for the most part been employed to mislead the honest, but unwary multitude, and to draw them out of the open and plain paths of public virtue and public good[6]—Consider for God's sake gentlemen, the sacredness of your office and the magnitude of your trust, your country, its Religion, and Laws are in your hands: if you adopt this Constitution, you overturn the whole at once; and subject yourselves and your constituents to be bound by such laws as the will and pleasure of Congress may hereafter make—Be as zealous to ward off *public evil,* as *others are to bring it on;* and you have a fair chance to prevent it for ages yet to come.—I had rather trust my purse in the hands of a sharper, than my liberties in the hands of any set of men, unless they are secured with restraints stronger than their temptations to destroy them; for the former by industry may be replenished; but liberty once lost, is scarce ever recovered, almost as rarely as human life, when it is once extinguished.

A Friend to the Republic.

1. See Mason 2.2.5 n. 3.
2. See Candidus 4.9.18 n. 6.
3. On the slave trade, see references in Martin 2.4.65 n. 24.
4. For other Anti-Federal discussions of this important matter, see Turner 4.18.2 n. 2.
5. James Wilson's speech in the Pennsylvania Convention 28 November 1787, McMaster and Stone, 253–54: ". . . for who will be bold enough to undertake to enumerate all the rights of the people?—and when the attempt to enumerate them is made, it must be remembered that if the enumeration is not complete, everything not expressly mentioned will be presumed to be purposely omitted." See Federal Farmer XVI, 2.8.196 n. 116.
6. This is taken from John Trenchard, *Cato's Letters or Essays on Liberty, Civil*

and Religious, and Other Important Subjects, 3d ed. (London 1733) I, no. 24, pp. 177–78: "Besides, there are not such mighty Talents requisite for Government, as some, who pretend to them without possessing them, would make us believe: Honest Affections, and common Qualifications, are sufficient: and the Administration has been always best executed, and the publick Liberty best preserved, near the Origin and Rise of States, when Plain Honesty and common Sense alone governed publick Affairs, and the Morals of Men were not corrupted with Riches and Luxury, nor their Understanding perverted by Subtleties and Distinctions. Great Abilities have, for the most part, if not always, been employed to mislead the honest but unwary Multitude, and to draw them out of the open and plain Paths of publick Virtue and publick Good."

Letter by David

MASSACHUSETTS GAZETTE
7 March 1788

Although not explicitly Anti-Federal, the essay of David is a reply to a Federalist defense of the absence from the Constitution of any religious test, and it is an excellent statement of an important Anti-Federalist theme: the need to promote civic virtue through the public protection and promotion of religion. "[I]t is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the publick protection of religion" (4.24.6).

Mr. Allen,

4.24.1 A Connecticut writer, whose very curious production, under the signature of Elihu, was *honoured* with a place in your Gazette of the 26th of February, in treating of religious acknowledgements and professions, appears to consider all who retain any symptoms of religion, as rogues or fools.[1] It is not my intention to become a polemick divine, nor to enter into a dispute with those, whose argument, if it proves any thing, proves that their own hearts are not under the influence of religion. I mean only to consider the matter in a political view, in order, if we can, to determine whether the state ought or ought not to interfere at all in religious concernments.[2]

4.24.2 It is agreed on all hands, that the business of government is to secure the subjects in the enjoyment of their lives, liberty and property, and that it must be furnished with all the powers necessary to attain so desirable an object. It is clearly impossible to secure the subject unless the invasions of lawless men can be restrained. There have been but three ways hitherto invented by which the turbulent passions of mankind are controlled; 1st. By punishing offenders, 2d. By rewarding virtuous actions, and 3d. By prepossessing the people in favour of virtue by affording publick protection to religion. The first method is least eligible of them all unless when it is absolutely necessary; and the more frequent it becomes, the less efficacious it is. The second is in its own nature very confined, and can take place only in a few of the most exalted instances, so that it can produce no effect upon

the body of mankind. The third method then, by forming the opinion of the people at large in favour of virtue and religion, is in theory the most probable, and if we find in practice it has been most successful, we shall hardly hesitate to say, that religion is a proper subject for publick protection and encouragement.

If we examine the history of mankind, under whatever dispensation of religion they lived, we find, that while their circumstances were improving, they attended much to their religious system. They frequently acknowledged the superintendence of the Gods, and sought their protection. They are careful to train up their children in the religion of their ancestors, and it has been generally if not always a fundamental article that moral offences would be punished by the Deity, even if they escaped the laws of human society, unless satisfaction was made to the sovereign of the universe for the violation of good order. Every nation, I believe, has committed the care of religion to the government, and almost every government has adopted some institution for instructing the subjects both old and young in principles, which had a direct tendency to secure the practice of good morals and consequently the peace of society. In Europe it has been carried to an absurd extreme. It gave rise to an elective monarchy, which claimed jurisdiction over the different states and princes, and pervaded all parts of their dominions. As it was an empire, founded in opinion, and in principles which took fast hold of the human mind, kings could not always defend themselves by force from its encroachments on their prerogatives. After the reformation, which Luther boldly begun, the reformed countries deprived the pope of his supremacy, and transferred it to themselves. Still however they took care to provide means for the instruction of the subjects, because that religion had always been found to attach the professors of it to what they conceived to be good order and the constitution they lived under. No good reason has been given why the government should not provide for their instruction in such principles as tend to secure internal peace, any more than for instructing the people in the arts of defence. The power indeed, like any other power, may be abused; but it by no means follows that government should not be possessed of it under certain limitations. 4.24.3

The practice of our own country has been uniformly in favour of a limited power of this kind in the government. We have from the beginning had laws in favour of a learned and able clergy, and have provided means for their education and support. We have had and still have laws for a due observance of the Sabbath; and our annual fasts and thanksgivings are not only uniform proofs of the exercise of such a power; but are instances of the propriety of our conduct in making frequent and publick acknowledgments of our dependence upon the Deity. Never did any people possess a more ardent love of liberty than the people of this state; yet that very love of liberty has induced them to adopt a religious test, which requires all publick 4.24.4

officers to be of some Christian, protestant persuasion, and to abjure all foreign authority. Thus religion secures our independence as a nation, and attaches the citizens to our own government.

4.24.5 I know it is a common objection against religious tests, that they bind only those who are good men, and do not exclude bad ones. The same remark is true of oaths; yet every government requires them, and an oath is, as much as a test, a religious declaration. Nothing can be urged in favour of one which does not apply to the other. It is true, indeed, that bad men will agree to either. Still however, those, whose avowed principles are unfriendly to the system of the country, will be excluded: And there are two descriptions of men that ought to be excluded. These are Papists and Atheists. The latter should be excluded because they have no principles of virtue, and the former because they acknowledge a foreign head, who can relieve them from the obligation of an oath. There is therefore no publick dependence upon either, and men publickly and avowedly of either description should be excluded.

4.24.6 We have now seen what have been the principles generally adopted by mankind, and to what degree they have been adopted in our own state. Before we decide in favour of our practice, let us see what has been the success of those who have made no publick provision for religion. Unluckily we have only to consult our next neighbours.[3] In consequence of this publick inattention they derive the vast benefit of being able to do whatever they please without any compunction. Taught from their infancy to ridicule our formality as the effect of hypocrisy, they have no principles of restraint but laws of their own making; and from such laws may Heaven defend us. If this is the success that attends leaving religion to shift wholly for itself, we shall be at no loss to determine, that it is not more difficult to build an elegant house without tools to work with, than it is to establish a durable government without the publick protection of religion. What the system is which is most proper for our circumstances will not take long to determine. It must be that which has adopted the purest moral principles, and which is interwoven in the laws and constitution of our country, and upon which are founded the habits of our people. Upon this foundation we have established a government of influence and opinion, and therefore secured by the affections of the people; and when this foundation is removed, a government of mere force must arise.

David.

1. The essay of Elihu was originally printed in the Hartford, Connecticut, *American Mercury* 18 February 1788; it was reprinted in the *Massachusetts Gazette* 26 February 1788, to which David replied. Elihu took up the argument of William Williams, a supporter of the Constitution, that the Constitution should contain a preamble expressing a belief in God and an acknowledgment that "all rightful powers among men are ordained of, and mediately derived from God" and that a religious test along these lines should be required of officers of the government. (For Williams'

essay, see Ford, *Essays* 203–9. This matter was discussed at some length in both the Connecticut and Massachusetts conventions; see A Landholder [Oliver Ellsworth], Ford, *Essays* 167–71, 195; Elliot II, 44, 90, 118–20.) Elihu argued that a declaration of belief in God is unnecessary (the belief being universal), that it would exclude only those nonbelievers fools enough to declare their opinions, that it cannot be presumed to be needed or desired by God Himself, and therefore that the proposal must be some kind of political trick. "The time has been when nations could be kept in awe with stories of God's sitting with legislators and dictating laws; with this lure, cunning politicians have established their own power on the credulity of the people, shackling their uninformed minds with incredible tales. But the light of philosophy has arisen in these latter days; miracles have ceased, oracles are silenced, monkish darkness is dissipated, and even witches at last hide their heads. Mankind are no longer to be deluded with fable. Making the glory of God subservient to the temporal interest of man, is a worn-out trick: and a pretence to superiour sanctity and special grace, will not much longer promote weakness over the head of wisdom." "The most shining part, the most brilliant circumstance in honour of the framers of the constitution is their avoiding all appearance of craft, declining to dazzle even the superstitious, by a hint about grace or ghostly knowledge. They come to us in the plain language of common sense, and propose to our understanding a system of government, as the invention of mere human wisdom; no deity comes down to dictate it, not even a god appears in a dream to propose any part of it." See also Ford, *Pamphlets* 55–56 (A Citizen of America); Aristocratis 3.16.14–15 n. 9.

2. Cf. the speech of Charles Turner 4.18.2 n. 2.

3. The reference is, of course, to Rhode Island. This is one of the rare statements in the Federalist–Anti-Federalist debate connecting the widely agreed-upon political excesses of Rhode Island and her religious toleration.

Essay by A Newport Man

NEWPORT MERCURY
March 1788

This brief essay is distinguished chiefly by the fact that it contains what appears to be the only reference to Rousseau in the Anti-Federalist literature. A quotation from Rousseau, together with the examples of the Swiss cantons and the republics of San Marino and Lucca, are used to urge the dangers of giving up power to representatives.

Mr. Barber,
Please to insert the following in your impartial paper.

4.25.1 Trusting to the force of truth, and the ingenuity of abler men, I had determined to continue, as I have hitherto been, silent on the subject of the new Constitution; but seeing the unwearied attempts for innovation by a set of men who seem to consider government as

"intended
"For nothing else, but to be mended."[1]

I think it my duty, however feeble the effort, to throw in my mite to oppose the torrent of sophistry and misrepresentation that is weekly obtruded on the public.

4.25.2 I perceive in your last a piece signed "*A Rhode-Island Man,*" it seems wrote with an air of confidence and triumph—he speaks of reason and reasoning,[2] I wish he had known or practised some of that reasoning he so much pretends to, his essay had been much shorter—We are told in this piece, as well as others on the same side, that an ability given to British subjects to recover their debts in this country will be one of the blessings of a new government, by inducing the British to abandon the frontiers, or be left without excuse,—but the British have no other reason for holding the posts, after the time named in the treaty for their evacuation, than the last reason of Kings, that is, their guns,—and giving them the treasure of the United States is a very unlikely means of removing that,—if the British subject met with legal impediments to the recovery of his debts in this

country, for British government to have put the same stop on our citizens would have been a proper, an ample retaliation; but there is nothing within the compass of possibility, of which I am not perfectly sure, that I am more fully persuaded of, than I am, that the British will never relinquish the posts in question until compelled by force; because no nation pays less regard to the faith of treaties than the British, witness their conduct to the French in 1755, when they took a very great number of men of war and merchant ships before war was declared, because the French had built some forts on the south side of an imaginery line in the wilde of America,—and again, the violation of the articles by which the people of Boston resigned their arms, and the violation of the capitulation of Charles-Town,—again we are told that Congress has no credit with foreigners, because they have no power to fulfill their engagements, and this we are told, with a boldness exceeded by nothing but its falshood, perhaps in the same paper that announces to the world the loan of a million of Holland gilders, if I mistake not the sum—a sum equal to 250,000 Spanish Dollars, and all this done by the procurement of that very Congress whose insignificancy and want of power had been constantly proclaimed for two or three years before,—The Dutch are the most cautious people on earth, and it is reasonable to suppose they were abundantly persuaded of the permanency and efficacy of our government by their risking so much money on it.

We are told that so long as we withhold this power from Congress we shall 4.25.3
be a weak, despised people—we were long contending for Independence, and now we are in a passion to be rid of it—but let us attempt to reason on this subject, and see to which side that will lead us—Reason is truly defined, in all cases short of mathematical demonstration, to be a supposing that the like causes will produce the like effects; let us proceed by this rule—the Swiss Cantons for an hundred years have remained separate Independent States, consequently without any controuling power; even the little Republic of St. Marino, containing perhaps but little more ground than the town of Newport, and about five thousand inhabitants, surrounded by powerful and ambitious neighbours, has kept its freedom and independence these thirteen hundred years, and is mentioned by travellers as a very enlightened and happy people; if these small republics, in the neighbourhood of the warlike and intriguing Courts of Paris, Vienna, and Berlin, have kept their freedom and original form of government, is it not reasonable to suppose, that the same good sense and love of freedom, on this side the Atlantic, will secure us from all attempts within and without; and the only internal discord that has happened in Switzerland was on a religious account, and a supreme controuling power is no security against this, as appears by what happened in Ireland in the time of Charles the first, and in France in the time of Henry the fourth,—It seems rational in a case of this importance to consult the opinion of the ablest men, and to whom can we better appeal than to J. J. Rouseau, a republican by birth and education, one of the most

exalted geniuses and one of the greatest writers of his age, or perhaps any age, a man the most disinterested and benevolent towards mankind, a man the most industrious in the acquisition of knowledge and information, by travel, conversation, reading, and thinking, and one who has wrote a Volume on Government entitled the Social Contract, wherein he inculcates, that the people should examine and determine every public act themselves[;] his words are, that "every law that the people have not ratified in person, is void, it is no law. The people of England think they are free, they are much mistaken, they are never so but during the election of members of Parliament, as soon as they are elected, they are slaves, they are nothing, and by the use they make of their liberty, during the short moments they possess it, they well deserve to lose it."[3]—This is far from advising that thirty thousand souls should resign their judgments and wills intirely to one man for two years, to a man, who, perhaps, may go from home sincere and patriotic, but by the time he has dined in pomp for a week with the wealthy citizens of New-York or Philadelphia, will have lost all his rigid ideas of oeconomy and equality—he becomes fascinated with the elegancies and luxuries of wealth, these splendid appearances with some hints from his prerogative acquaintance, that if Government were fixed, and the perquisites of office sufficient to induce a man of abilities to accept, no doubt you, or one of your sons, would be the man for your quarter; objects and intimations like these soon change the champion for the people to an advocate for power, and the people finding themselves thus basely betrayed, cry that virtue is but a name. We are not sure that men have more virtue at this time and place than they had in England in the time of George the 2d[;] let any one look into the history of those times, and see with what boldness men changed sides and deserted the people in pursuit of profit and power. If to take up the cross and renounce the pomps and vanities of this sinful world, is a hard lesson for divines, 'tis much harder for politicians.—a Cincinnatus, a Cato, a Fabricious, and a Washington, are rarely to be found. We are told that the Trustees of our powers and freedom being mostly married men, and all of them inhabitants and proprietors of the country, is an ample security against an abuse of power[;] whether human nature be less corrupt than formerly I will not determine; but this I know that Julius Caesar, Oliver Cromwell, and the nobles of Venice, were natives and inhabitants of the countries whose power they usurped and drenched in blood. Again, our country is compared to a ship of which we are all part owners, and from thence 'tis gravely concluded that no officer can ever betray or abuse his trust; but that men will sacrifice the public to their private interest, is a saying too well known to need repeating, and the instances of designed shipwrecks, and ships run away with by a combination of masters, supercargoes, and part owners, is so great that nothing can equal them, but those instances in which pretended patriots and politicians have raised themselves

and families to power and greatness, by destroying that freedom, and those laws, they were chosen to defend.

If it were necessary to cite more precedents to prove that the people ought not to trust or remove their power any further from them, the little Republic of Lucca may be mentioned, which, surrounded by the Dukedom of Tuscany, has existed under its present constitution about five hundred years, and as Mr. Addison says, is for the extent of its dominion the richest and best peopled of all the States of Italy—and he says further, that "the whole administration of the government passes into different hands every two months."[4] This is very far from confirming the doctrine of choosing those officers for two years who were before chosen for one. The want of a decisive efficient power is much talked of by the discontented, and that we are in danger of being conquered by the intrigues of European powers.—But it has already been shewn that we have delegated a more decisive power to our Congress than is granted by the Republic Swiss Cantons to their General Diet; these Republics have enjoyed peace some hundreds of years, while those governments which possess this decisive, efficient power, so much aimed at, are as often as twenty or thirty years, drawing their men from the plough and loom to be shot at and cut each others throats for the honour of their respective nations. And by how much further we are from Europe than the Swiss Cantons with their allies, and Lucca and St. Marino are from France, Prussia, and Austria, by so much less are we in danger of being conquered than those Republics, which have existed some earlier than others, but the youngest of them one hundred and thirty years, without being conquered. As for the United Provinces of Holland they are but nominal Republics, their Stadtholder, very much like our intended President, making them in reality a monarchy, and subject to all its calamities; but supposing that the present constitution penned by the ablest men, four or five years in completion, and its adoption considered as the happiest event—supposing, I say, the present Constitution destroyed, can a new one be ratified with more solemnity, agreed to in stronger or more binding terms? What security can be given that in seven years hence, another Convention shall not be called to frame a third Constitution? And as ancient Greece counted by olympiads, and monarchies by their Kings reigns, we shall date in the first, second, or third year, of the seventh, eighth, or ninth Constitution. 4.25.4

In treating this subject I have not presumed to advise, and have intruded but few comments. I have mentioned the state of those countries which most resemble our own and leave to the natural sense of the reader to make his own conclusions. The male-contents, the lovers of novelty, delight much in allegory. Should I be indulged a few words in that way, I should not compare the new Constitution to a house, I should fetch my simile from the country, and compare it to Siberian Wheat (otherwise called Siberian cheat) 4.25.5

which is known to have been the most praised, the most dear, the most worthless, and most short lived thing that was ever adopted—but if the freemen of this continent are weary of that power and freedom they have so dearly bought, and so shortly enjoyed—the power of judging and determining what laws are most wholesome, that taxes are requisite and sufficient, I say, if the people are tired of these privileges, now is the time to part with them forever. Much more might be said to shew the bitterness and mischief contained in this gilded pill, but being fond of brevity, I shall rely on the good sense of the public to keep themselves out of the trap, and sign myself in plain English,

A Newport Man.

March 3, 1788.

1. The source of this quotation has not been found.
2. *Newport Mercury* 25 February 1788.
3. J. J. Rousseau, *Social Contract* III, ch. 15.
4. "Remarks on Italy" (Republic of Lucca), *Works of Joseph Addison* (New York 1837) III, p. 368. Addison concludes, however: "but in any exigence of state, like that they are now pressed with, it certainly asks a much longer time to conduct any design, for the good of the commonwealth, to its maturity and perfection."

Consider Arms, Malichi Maynard, and Samuel Field
Reasons for Dissent

HAMPSHIRE GAZETTE
9 and 16 April 1788

While stating that they are disposed to obey the Constitution if it is accepted, these three Anti-Federalist members of the Massachusetts ratifying convention, like many others, were led to publish their reasons for dissent. They object to the 3/5 clause, to the provision for Congress altering state regulations dealing with federal elections, and to the absence of sufficient checks in the proposed constitution against abuse of power. The interesting part of the statement has to do with the constitutional provision regarding the slave trade, which Consider Arms and his friends subject to fairly penetrating criticism as a falling away from the principles of liberty on which the country was based. The statement stimulated an exchange between Philanthrop and Phileleutheros between 23 April and 21 May in the *Hampshire Gazette* (see Phileleutheros 4.27).

9 April 1788

We the subscribers being of the number, who did not assent to the ratification of the federal constitution, under consideration in the late state convention, held at Boston, to which we were called by the suffrages of the corporations to which we respectively belong—beg leave, through the channel of your paper to lay before the public in general, and our constituents in particular, the reasons of our dissent, and the principles which governed us in our decision of this important question. 4.26.1

Fully convinced, ever since the late revolution, of the necessity of a firm, energetic government, we should have rejoiced in an opportunity to have given our assent to such a one; and should in the present case, most cordially have done it, could we at the same time been happy to have seen the liberties of the people and the rights of mankind properly guarded and 4.26.2

secured. We conceive that the very notion of government carries along with it the idea of justice and equity, and that the whole design of instituting government in the world, was to preserve men's properties from rapine, and their bodies from violence and bloodshed.

4.26.3 These propositions being established, we conceive must of necessity produce the following consequence: That every constitution or system, which does not quadrate with this original design, is not government, but in fact a subversion of it.

Having premised thus much, we proceed to mention some things in this constitution to which we object, and to enter into an inquiry, whether, and how far they coincide with those simple and original notions of government before mentioned.

4.26.4 In the first place, as direct taxes are to be apportioned according to the numbers in each state, and as Massachusetts has none in it but what are declared free men, so the whole, blacks as well as whites, must be numbered; this must therefore operate against us, as two-fifths of the slaves in the southern states are to be left out of the numeration. Consequently, three Massachusetts infants will increase the tax equal to five sturdy full-grown negroes of theirs, who work every day in the week for their masters, saving the Sabbath, upon which they are allowed to get something for their own support. We can see no justice in this way of apportioning taxes. Neither can we see any good reason why this was consented to on the part of our delegates.

4.26.5 We suppose it next to impossible that every individual in this vast continental union, should have his wish with regard to every single article composing a frame of government. And therefore, although we think it more agreeable to the principles of republicanism, that elections should be annual, yet as the elections in our own state government are so, we did not view it so dangerous to the liberties of the people, that we should have rejected the constitution merely on account of the biennial elections of the representatives—had we been sure that the people have any security even of this. But this we could not find. For although it is said, that "the House of Representatives shall be chosen every second year, by the people of the several states," etc., and that "the times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof," yet all this is wholely superseded by a subsequent provision, which empowers Congress at any time to enact a law, whereby such regulations may be altered, except as to the places of choosing senators. Here we conceive the people may be very materially injured, and in time reduced to a state of as abject vassalage as any people were under the control of the most mercenary despot that ever *tarnished* the pages of history. The depravity of human nature, illustrated by examples from history, will warrant us to say, it may be possible, if not probable, that

the congress may be composed of men who will wish to burden and oppress the people. In such case, will not their inventions be fruitful enough to devise occasions for postponing the elections? And if they can do this once, they can twice; if they can twice, they can thrice, so by degrees render themselves absolute and perpetual. Or, if they choose, they have another expedient. They can alter the place of holding elections. They can say, whatever the legislature of this state may order to the contrary, that all the elections of our representatives shall be made at Mechias, or at Williamstown. Consequently, nine-tenths of the people will never vote. And if this should be thought a measure favorable to their reelection, or the election of some tool for their mercenary purposes, we doubt not it will be thus ordered. But says the advocates for the constitution, "it is not likely this will ever happen; we are not to expect our rulers will ever proceed to a wanton exercise of the powers given them."[1] But what reason have we more than past ages, to expect that we shall be blessed with impeccable rulers? We think not any. Although it has been said that every generation grows wiser and wiser, yet we have no reason to think they grow better and better. And therefore the probability lies upon the dark side. Does not the experience of past ages teach, that men have generally exercised all the powers they had given them, and even have usurped upon them, in order to accomplish their own sinister and avaricious designs, whenever they thought they could do it with impunity? This we presume will not be denied. And it appeared to us that the arguments made use of by the favorers of the constitution, in the late convention at Boston, proceeded upon the plan of righteousness in those who are to rule over us, by virtue of this new form of government. But these arguments, we confess, could have no weight with us, while we judge them to be founded altogether upon a slippery *perhaps*.

We are sensible, that in order to the due administration of government, it 4.26.6
is necessary that certain powers should be delegated to the rulers from the people. At the same time, we think they ought carefully to guard against giving so much as will enable those rulers, by that means, at once, or even in process of time, to render themselves absolute and despotic. This we think is the case with the form of government lately submitted to our consideration. We could not, therefore, acting uprightly, consulting our own good and the good of our constituents, give our assents unto it. We could not then and we still cannot see, that because people are many times guilty of crimes and deserving of punishment, that it from thence follows the authority ought to have power to punish them when they are not guilty, or to punish the innocent with the guilty without discrimination, which amounts to the same thing. But this we think in fact to be the case as to this federal constitution. For the congress, whether they have provocation or not, can at any time order the elections in any or all the states to be conducted in such manner as wholey to defeat and render entirely nugatory the intention of those elec-

tions, and convert that which was considered and intended to be the palladium of the liberties of the people—the grand bulwark against any invasion upon them—into a formidable engine, by which to overthrow them all, and thus involve them in the depth of misery and distress. But it was pled by some of the ablest advocates of the constitution, that if congress should exercise such powers to the prejudice of the people (and they did not deny but they could if they should be disposed) they (the people) would not suffer it. They would have recourse to the *ultima ratio,* the *dernier resort* of the oppressed—*the sword.*[2]

4.26.7 But it appeared to us a piece of *superlative incongruity* indeed, that the people, whilst in the full and indefeasible possession of their liberties and privileges, should be so very profuse, so very liberal in the disposal of them, as consequently to place themselves in a predicament miserable to an extreme. So wretched indeed, that they may at once be reduced to the sad alternative of yielding themselves vassals into the hands of a venal and corrupt administration, whose only wish may be to aggrandize themselves and families—to wallow in luxury and every species of dissipation, and riot upon the spoils of the community; or take up the sword and involve their country in all the horrors of a civil war—the consequences of which, we think, we may venture to augur will more firmly rivet their shackles and end in the entailment of vassalage to their posterity. We think this by no means can fall within the description of government before mentioned. Neither can we think these suggestions merely chimerical, or that they proceed from an overheated enthusiasm in favor of republicanism; neither yet from an illplaced detestation of aristocracy; but from the apparent danger the people are in by establishing this constitution. When we take a forward view of the proposed congress—seated in the federal city, ten miles square, fortified and replenished with all kinds of military stores and every implement; with a navy at command on one side, and a land army on the other—we say, when we view them thus possessed of the sword in one hand and the purse strings of the people in the other, we can see no security left for them in the enjoyment of their liberties, but what may proceed from the bare possibility that this supreme authority of the nation may be possessed of virtue and integrity sufficient to influence them in the administration of equal justice and equity among those whom they shall govern. But why should we voluntarily choose to trust our all upon so precarious a tenure as this? We confess it gives us pain to anticipate the future scene: a scene presenting to view miseries so complicated and extreme, that it may be part of the charms of eloquence to extenuate, or the power of art to remove.

Consider Arms
Malichi Maynard
Samuel Field

16 April 1788

Conclusion of Mrssrs. Arms's, Maynard's and Field's Reasons for giving their Dissent to the Federal Constitution.

But we pass on to another thing, which (aside from every other consider- 4.26.8
ation) was, and still is an insuperable objection in the way of our assent. This we find in the 9th section under the head of restrictions upon Congress, viz. "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress, prior to the year one thousand eight hundred and eight," &c.[3] It was not controverted in the Convention, but owned that this provision was made purely that the southern states might not be deprived of their profits arising from that most *nefarious* trade of enslaving the Africans. The hon. Mr. King himself, who was an assistant in forming this constitution, in discoursing upon the slave trade, in the late Convention at Boston, was pleased to design it by this epithet, *nefarious*,[4] which carries with it the idea of something peculiarly wicked and abominable: and indeed we think it deserving of this and every odious epithet which our language affords, descriptive of the iniquity of it. This being the case, we were naturally led to enquire why we should establish a constitution, which gives licence to a measure of this sort—How is it possible we could do it consistent with our ideas of government consistent with the principles and documents we endeavour to inculcate upon others? It is a standing law in the kingdom of Heaven, "Do unto others as ye would have others do unto you." This is the royal law—this we often hear inculcated upon others. But had we given our affirmative voice in this case, could we have claimed to ourselves that consistent line of conduct, which marks the path of every honest man? Should we not rather have been guilty of a contumelious repugnancy, to what we profess to believe is equitable and just? Let us for once bring the matter home to ourselves, and summons up our own feelings upon the occasion, and hear the simple sober verdict of our own hearts, were we in the place of those unhappy Africans—this is the test, the proper *touch-stone* by which to try the matter before us. Where is the man, who under the influence of sober dispassionate reasoning, and not void of natural affection, can lay his hand upon his heart and say, I am willing my sons and my daughters should be torn from me and doomed to perpetual slavery? We presume that man is not to be found amongst us: And yet we think the consequence is fairly drawn, that this is what every man ought so be able to say, who voted for this constitution. But we dare say this will never be the case here, so long as the country has power to repel force by force. Notwithstanding this we will practice this upon those who are destitute of the power of repulsion: from

whence we conclude it is not the tincture of a skin, or any disparity of features that are necessarily connected with slavery, and possibly may therefore fall to the lot of some who voted it, to have the same measure measured unto them which they have measured unto others.[5] If we could once make it our own case, we should soon discover what distress & anxiety, what poignant feelings it would produce in our own breasts, to have our infants torn from the bosoms of their tender mothers—indeed our children of all ages, from infancy to manhood, arrested from us by a banditti of lawless ruffians, in defiance of all the laws of humanity, and carried to a country far distant, without any hopes of their return—attended likewise with the curring reflection, that they were likely to undergo all those indignities, those miseries, which are the usual concomitants of slavery. Indeed when we consider the depredations committed in Africa, the cruelties exercised towards the poor captivated inhabitants of that country on their passage to this—crowded by droves into the holds of ships, suffering what might naturally be expected would result from scanty provisions, and inelastic infectious air, and after their arrival, drove like brutes from market to market, *branded* on their naked *bodies* with *hot irons*, with the initial letters of their masters names—fed upon the entrails of beasts like swine in the slaughter-yard of a butcher; and many other barbarities, of which we have documents well authenticated: then put to the hardest of labour, and to perform the vilest of drudges—their master (or rather *usurpers*) by far less kind and benevolent to them, than to their horses and their hounds. We say, when we consider these things (the recollection of which gives us pain) conscience applauds the dicision we have made, and we feel that satisfaction which arises from acting agreeable to its dictates. When we hear those barbarities pled for—When we see them voted for, (as in the late Convention at Boston) when we see them practised by those who denominate themselves Christians, we are presented with something truely *heterogeneous*—something *monstrous* indeed! Can we suppose this line of conduct keeps pace with the rule of right? Do such practices coincide with the plain and simple ideas of government before-mentioned? By no means. We could wish it might be kept in mind, that the very notion of government is to protect men in the enjoyment of those privileges to which they have a natural, therefore an indefeasible right; and not to be made an engine of rapine, robbery and murder. This is but establishing inequity, by law founded on usurpation. Establishing this constitution is, in our opinion establishing the most ignominious kind of theft, man-stealing, and so heinous and agrivated was this crime considered, by ONE who cannot err, that under the Jewish theocracy it was punished with death.[6] Indeed what can shew men scarcely more hardened, than being guilty of this crime? For there is *nothing else* they will stick at in order to perpetrate this.

4.26.9 The question therefore—Why should we vote for the establishment of this system? recoils upon us armed with treple force—force which sets at de-

fiance, the whole power of sophistry, employed for the defence of those, who by a "cursed thirst for gold," are prompted on to actions, which cast an indelible stain upon the character of the human species—actions at which certain quadrupeds, were they possessed of Organs for the purpose, would discover a BLUSH.

But we were told by an honourable gentleman who was one of the framers 4.26.10
of this Constitution, that the two southermost states, absolutely refused to confederate at all, except they might be gratified in this article.[7] What then? Was this an argument sufficient to induce us to give energy to this article, thus fraught with iniquity? By no means. But we were informed by that gentleman, further that those two states pled, that they had lost much of their property during the late war. Their slaves being either taken from them by the British troops, or they themselves taking the liberty of absconding from them, and therefore they must import more, in order to make up their losses. To this we say they lost no property, because they never had any in them, however much money they might have paid for them. For we look upon it, every man is the sole proprietor of his own liberty, and no one but himself hath a right to convey it unless by some crime adequate to the punishment, it should be made forfeit, and so by that means becomes the property of government: But this is by no means the case in the present instance. And we cannot suppose a vendee, can acquire property in any thing, which at the time of purchase, he knew the vendor had no right to convey. This is an acknowledgment, we are constrained to make as a tribute due to justice and equity. But suppose they had lost real property; so have we; and indeed where is the man, but will tell us he has been a great looser by means of the war? And shall we from thence argue that we have a right to make inroads upon another nation, pilfer and rob them, in order to compensate ourselves for the losses we have sustained by means of a war, in which they had been utterly neutral? Truly upon this plan of reasoning it is lawful thus to do, and had we voted the constitution as it stands, we must have given countenance to conduct equally criminal, and more so, if possible. Such arguments as the above seem to be calculated and designed for idiotcy. We however acknowledge, we think them rather an affront, even upon that.

The Hon. Gentleman above named, was asked the question—What would 4.26.11
be the consequence, suppose one or two states, upon any principle, should refuse confederating? His answer was—"The consequence is plain and easy—they would be compelled to it; not by force of arms; but all commerce with them would be interdicted; their property would be seized in every port they should enter, and by law made forfeit: and this line of conduct would soon reduce them to order." This method of procedure perhaps no one would be disposed to reprehend; and if eleven, or even nine states were agreed, could they not, ought they not to take this method, rather than to make a compact with them, by which they give countenance, nay even bind themselves (as the case may be) to aid and assist them in spo[r]ting with the

liberties of others, and accumulating to themselves fortunes, by making thousands of their fellow creatures miserable. To animadvert upon the British manoevres at that time, would not fall within the compass of our present design. But that the Africans had a right to depart, we must assert, and are able to prove it from the highest authority perhaps that this Commonwealth does or ever did afford. In a printed pamphlet, published in Boston in the year 1772, said to be the report of a Committee, and unanimously voted by said town, and ordered to be sent to the several towns in the state for their consideration. In said pamphlet we find the following *axiom,* which we will quote verbatim,—page 2d—"All men have a right to remain in a state of nature as long as they please, and in case of intolerable oppression, civil or religious, to leave the society they belong to, and enter into another."[8] If it can by any kind of reasoning be made to appear, that this authority is not pertinently adduced in the case before us, then we think it can by the same reasoning be investigated, that black is white and white is black—that oppression and freedom are exactly similar, and benevolence and malignity synonymous terms.

4.26.12 The advocates for the constitution seemed to suppose, that this restriction being laid upon Congress only for a term of time, is the "fair dawning of liberty." That "it was a glorious acquisition towards the final abolition of slavery."[9] But how much more glorious would the acquisition have been, was such abolition to take place the first moment the constitution should be established. If we had said that after the expiration of a certain term the practice should cease, it would have appeared with a better grace; but this is not the case, for even after that, it is wholly optional with the Congress, whether they abolish it or not. And by that time we presume that enslaving the Africans will be accounted by far less an inconsiderable affair than it is at present; therefore conclude from good reasons, that the '*nefarious practice*' will be continued and increased as the inhabitants of the country shall be found to increase.[10]

4.26.13 This practice of enslaving mankind is in direct opposition to a fundamental maxim of truth, on which our state constitution is founded, viz. "All men are born free and equal."[11] This is our motto. We have said it—we cannot go back. Indeed no man can justify himself in enslaving another, unless he can produce a commission under the broad seal of Heaven, purporting a licence therefor from him who created all men, and can therefore dispose of them at his pleasure.

4.26.14 We would not be thought to detract from the character of any person, but to us it is somewhat nearly paradoxical, that some of our leading characters in the law department (especially in the western counties) after having (to their honour be it spoken) exerted themselves to promote, and finally to effect the emancipation of slaves, should now turn directly about, and exhibit to the world principles diametrically opposite thereto: that they should now appear such strenuous advocates for the establishment of that di-

abolical trade of importing the Africans. But said some, it is not we who do it—and compared it to entering into an alliance with another nation, for some particular purpose;[12] but we think this by no means a parallel. We are one nation, forming a constitution for the whole, and suppose the states are under obligation, whenever this constitution shall be established, reciprocally to aid each other in defence and support of every thing to which they are entitled thereby, right or wrong. Perhaps we may never be called upon to take up arms for the defence of the southern states, in prosecuting this abominable traffick.

It is true at present there is not much danger to be apprehended, and for 4.26.15
this plain reason are those innocent Africans (as to us) pitched upon to drag out their lives in misery and chains. Such is their local situation—their unpolished manner—their inexperience in the art of war, that those invaders of the rights of mankind knew they can, at present, perpetrate those enormities with impunity. But let us suppose for once, a thing which is by no means impossible, viz. that those Africans should rise superior to all their local and other disadvantages, and attempt to avenge themselves for the wrongs done them? Or suppose some potent nation should interfere in their behalf, as France in the cause of America, must we not rise and resist them? Would not the Congress immediately call forth the whole force of the country, if needed, to oppose them, and so attempt more closely to rivet their manacles upon them, and in that way perpetuate the miseries of those unhappy people? This we think the natural consequence which will flow from the establishment of this constitution, and that it is not a forced, but a very liberal construction of it. It was said that "the adoption of this Constitution, would be ominous of much good, and betoken the smiles of Heaven upon the country."[13] But we view the matter in a very different light; we think this latch for unjust gains, this lust for slavery, portentous of much evil in America, for the cry of innocent blood, which hath been shed in carrying on this execrable commerce, hath undoubtedly reached to the Heavens, to which that cry is always directed, and will draw down upon them vengeance adequate to the enormity of the crime. To what other cause, than a full conviction, of the moral evil in this practice, together with some fearful forebodings of punishment therefor arising in the minds of the Congress in the year 1774, can it be imputed, that drew from them at that time, (at least an implied) confession of guilt, and a solemn, explicit promise of reformation? This is a fact, but lest it should be disputed, we think it most safe for ourselves to lay before our readers, an extract from a certain pamphlet, entitled "Extracts from the votes and proceedings of the American Continental Congress, held at Philadelphia, on the 5th of September, 1774, &c."[14] In the 22d page of this same pamphlet, we find the following paragraph, viz. "Second. That we will neither import, nor purchase any slave imported, after the first day of December next; after which time we will wholly discontinue the slave-trade, and will neither be concerned in it our-

selves, nor will we hire our vessels nor sell our commodities or manufactures to those who are concerned in it." The inconsistency of opposing slavery, which they thought designed for themselves, and by clandestine means, procuring others to enslave at the same time—it is very natural to suppose would stare them in the face, and at all times guard them against breaking their resolution. Hence it appears to us unaccountably strange, that any person who signed the above resolve, should sign the federal constitution. For do they not hold up to view principles diametrically opposite? Can we suppose that what was morally evil in the year 1774, has become in the year 1788, morally good? Or shall we change evil into good and good into evil, as often as we find it will serve a turn? We cannot but say the conduct of those who associated in the year 1774 in the manner above, and now appear advocates for this new constitution, is highly inconsistent, although we find such conduct has the celebrated names of a *Washington* and an *Adams* to grace it. And this may serve as a reason why we could not be wrought upon by another argument, which was made use of in the Convention in favour of the constitution, viz. the *weight of names*—a solid argument with some people who belonged to the Convention, and would have induced them to comply with measures of almost any kind. It was urged that the gentlemen who composed the federal Convention, were men of the greatest abilities, integrity and erudition, and had been the greatest contenders for freedom. We suppose it to be true, and that they have exemplified it, by the manner in which they have earnestly dogmatized for liberty—But notwithstanding we could not view this argument, as advancing any where towards infallibility—because long before we entered upon the business of the Convention, we were by some means or other possessed with a notion (and we think from good authority) that "*great men are not always wise*". And to be sure the weight of the name adduced to give efficacy to a measure where liberty is in dispute, cannot be so likely to have its intended effect, when the person designed by that name, at the same time he is brandishing his sword, in the behalf of freedom for himself—is likewise tyranizing over two or three hundred miserable Africans, as free born as himself.

4.26.16 In fine we view this constitution as a curious piece of political mechanism, fabricated in such manner as may finally despoil the people of all their privileges; and we are fully satisfied, that had the same system been offered to the people in the time of the contest with Great-Britain, the person offering the same would not have met the approbation of those who now appear the most strenuous advocates for it. We cannot slip this opportunity of manifesting our disgust at the unfair methods which were taken in order to obtain a vote in this state, which perhaps was the means of producing the *small* majority of *nineteen*, out of nearly three hundred and sixty members. What those methods were is well known. It is past dispute that the opposers of the constitution were, in sundry instances, treated in a manner utterly

inconsistent with that respect which is due to every freeborn citizen of the commonwealth, especially when acting in the capacity of a representative.

Notwithstanding what has been said, we would not have it understood, that we mean to be disturbers of the peace, should the states receive the constitution; but on the contrary, declare it our intention, as we think it our duty, to be subject to "the powers that be," wherever our lot may be cast.

Consider Arms, } *Conway.*
Malichi Maynard, }
Samuel Field, *Deerfield.*

1. For Federalist arguments to this effect see Federal Farmer VIII, 2.8.110 n. 72.

2. This kind of argument was fairly often made by the Federalists, but it is not prominent in the published reports of the Massachusetts deliberations, where the emphasis was on the probable sufficiency of the constitutional checks. See Elliot II, 84–89, 94, 196; see references in Federal Farmer X, 2.8.127 n. 80.

3. In a rather superficial essay published in the *Hampshire Gazette* on 6 February 1788, another Anti-Federalist, Adelos, contended that freedom-loving Massachusettensians could not consistently support a constitution containing this clause. For other discussions of the clause, see Martin 2.4.65 n. 24.

4. The writers here rely on their own recollections rather than published reports of the debates.

5. Cf. Abraham Lincoln, Fragments on Slavery (1 July 1854), in Lincoln, *Collected Works* II, 222–23.

6. Exodus 21:16.

7. The published reports of the Massachusetts ratifying convention contain very brief and mainly summary accounts of the discussions of slavery; here and in their subsequent references the writers seem to be relying on their own recollections of the debates.

8. *Report of a Committee of the Inhabitants . . . on the Rights of the Colonists* (Boston 1772), Evans, *Early American Imprints* no. 12331.

9. This statement was not included in the published reports. But see the remark of Thomas Dawes, Elliot II, 41: "although slavery is not smitten by an apoplexy, yet it has received a mortal wound and will die of a consumption." See James Wilson, Elliot II, 452; McMaster and Stone 312. Philanthrop makes the dubious argument that without this provision Congress would have now power to eliminate the slave trade. *Hampshire Gazette* 23 April 1788. See Cincinnatus II, 6.1.12 n. 10.

10. Consider Arms and his friends were wrong in thinking that Congress would not exercise its power to prohibit the slave trade, which was in fact prohibited as of 1 January 1808; but they were right in the deeper thought that the sense of the evil of slavery would decline as the years passed. See Lincoln's 1857 speech on the Dred Scott decision, in Lincoln, *Collected Works II*, 398–410.

11. Massachusetts Constitution, 1780, Declaration of Rights, Art. I; Thorpe, *Federal and State Constitutions* III, 1889.

12. The reference may be to William Heath's statement: "Each state is sovereign and independent to a certain degree, and the states have a right, and they will regulate their own internal affairs as to themselves appears proper; and shall we refuse to eat, or to drink, or to be united with those who do not think, or act just as we do?" Elliot II, 115. Philanthrop contended that "The idea that by civil connections, we become partakers of each others sins, I believe is of late date." *Hampshire Gazette* 23 April 1788. Or, as Oliver Ellsworth put it, with Yankee narrowness, "Their consciences are their own, tho' their wealth and strength are blended with ours." Ford, *Essays* 164. The more general Federalist argument, however, conceded that the United States was a moral community as well as a community of interest and contended that the Constitution was in principle fundamentally anti-slavery and in practice a solid step in the direction of the abolition of slavery. See the good statement of Tench Coxe, Ford,

Pamphlets 146. See Jaffa, *Crisis of the House Divided* passim; Herbert J. Storing, "Slavery and the Moral Foundations of the American Republic," *The Moral Foundations of the American Republic*, ed. Robert Horwitz (Charlottesville 1977); Phileleutheros 4.27.

13. See above, n. 7.

14. Evans, *Early American Imprints* no. 13732.

Essay by Phileleutheros

HAMPSHIRE GAZETTE
21 May 1788

The objections of Consider Arms and his friends were answered by Philanthrop in the *Hampshire Gazette*, 23 April 1788, which in turn gave rise to an exchange with Phileleutheros, whose first essay follows. The author pursues the issue of the extent of the involvement of the free states in the sin of Southern slavery and its implications for American civil society.

Quid miseros toties in operta Pericula-Cives, projitus
Virgil.[1]

I have somewhat to say in regard to a piece under the signature of *Philanthrop*, inserted in the Hampshire Gazette of April 23, intended as an answer to the three gentlemen, who have lately published their reasons of dissent from the Federal Constitution[2]—Herein I shall study brevity. 4.27.1

It would seem Philanthrop had been for some time in hard labour, and for all that appears to the contrary, his travail is likely to continue; for it seems he has not yet brought forth; and from his complaints, there is no prospect of a speedy delivery; and therefore, according to the common course of things, his dissolution must soon ensue, unless some skilful operator should step in and facilitate the birth. But to drop the metaphor—Philanthrop seems to be perplexed, not being able to spy out the cause of the publication of those three gentlemen. And it would seem, he has been as hard put to it to obviate their objections, as to investigate their designs. It matters not, that I know of, to Philanthrop, what their intention was. It is evident (if we take his own words for it) that he is by no means assured they had a bad one; for says he, "I am at a loss to conjecture what motives occasioned their publications." Therefore one would think that candour, he recommends to the gentlemen, would have induced him to suppose they had nothing very atrocious in view. In considering this piece, I shall (setting aside sophistry) do pretty much as Philanthrop has done, in animadverting upon the objections. 4.27.2

I shall not confine myself to order—I think he did not—and if *it should so happen,* I find any thing I cannot censure[?]. I shall follow his example and say nothing about it.

4.27.3 He says, "he hopes if charity obliges them to bless the negroes, it will not lead them to curse the Convention"—this is evidently intended as a sarcasm upon the gentlemen, for vindicating the injured rights of the Africans. Why is it thus? Is it because their colour is not so fashionable in this country as in Africa? Or that their features are not supposed to be so beautifully arranged as those of the Americans, and therefore not to be treated with that humanity which it is generally thought belongs to white people? Or does Philanthrop suppose, with some scoffers at sacred history, that those Africans did not proceed from the loins of the same parent with himself, and so on that score to be treated like brutes? He seems to charge them with cursing the Convention, only because they said that body voted for those barbarities which are exercised towards the Africans. Does this amount to a curse? can rehersing a plain matter of fact, concerning any man or body of men, by good logic, be construed into a curse? Did not the Convention vote, that the Congress should not have it in their power to prohibit the slave-trade until the year eighteen hundred and eight? Were they not sensible, therefore, that this trade would be carried on, with all those barbarities annexed to it?[3] Did they not very generally confess that it was a most wicked piece of business? Where then is the great crime in saying such barbarities were voted for? If it is so, let Philanthrop point out the criminality of it, and no doubt he will obtain credence. If he make a charge he ought certainly to adduce some proof to support it. He must be possessed of some entirely new constructed spy-glass, else he never could have spied out curses where there were none. As little ground had he to dream, from any which dropped from the gentlemen, that they had a desire to return back to Great-Britain, as he had to tax them with cursing the Convention. Two constitutions were offered to the people of Massachusetts before one could obtain. Must we infer from thence, that those who opposed the first, did it with a view of becoming subject to Great-Britain? Let him answer, if he please.

4.27.4 I wish, seeing Philanthrop thought fit to take the matter up, that he had made use of less false reasoning—I will give an instance of it. He says, "While under Great-Britain, we heard nothing from the gentlemen, because that nation more than any under heaven, carried on that trade;" and "that whenever a neighbour had imported a slave, their duty was either to drive him out of the country or to quit it themselves." It would not, one would think, require a degree of discernment far beyond mediocrity, to discover the falacy of this argument. Will the gentleman pretend there is no difference between a man's being born under a government, in the framing of which, consequently he could have no hand, and in making one himself? If a man in a state of nature assists in forming a constitution, which gives countenance to iniquity and all kinds of cruelty, does he not by his own act

incur guilt to his conscience? But if he is born under such a government, where is the guilt? Neither hath he any right to take upon himself the office of an executioner, and so undertake to punish those who are guilty, as Philanthrop would suppose—all he can have any right to is to remonstrate and exhort. He indeed may share in the calamities which may fall upon the community in consequence thereof; but he has this consolation, that those calamities are not derived through his means, and therefore he cannot share in the guilt.

When a man is called to establish a frame of government, it ought to be such an one as his conscience will justify, or he must give his voice against it. I must say the whole Philanthrop has said on this subject is falacious, from the foundation to the top-stone. His first position seems calculated to deceive the people, whether designedly or not, I do not say—the purport of which is evidently this, that by civil connections people cannot become partakers of each others sins.[4] What is the import of "civil connections?" Let them import what they will, it is evident Philanthrop would have us think, that in establishing this constitution, we have no more connection in the wickedness which the southern states may commit, with our hearty and free consent and engagements to support them in, than we should be with any one nation under heaven in their inequities, provided we had connected with them for the sake of their trade, &c. But these are not parallel—I wish Philanthrop had ingenuity enough to confess it. It is idle for him to pretend, that establishing this constitution is no more than barely establishing certain civil connections with the southern states; was this the case I would agree with him. I am sensible America may enter into a treaty and connect with Spain for certain purposes, and still not become partakers in the iniquity of the inquisition. But if America and Spain were about to form themselves into one politic national body, and America should in that case pledge to Spain their lives and fortunes for the support of the inquisition, (*cousin german, to the slave-trade) I should certainly suppose, upon good grounds, they would become partakers of the sin, connected with the inquisition. But lest I should be too lengthy, I shall wave what I have to say further upon Philanthrop's piece, until another opportunity, only adding my wish, that if he writes again, his sentiments may better agree with his signature. 4.27.5

Phileleutheros.

*Rather twin brother.

1. Virgil, *Aeneid* XI, 360–61.
2. See Consider Arms et al. 4.26.
3. On the slave trade, see above Martin 2.4.65 n. 24.
4. See Consider Arms et al. 4.26.13 n. 11.

Observations On the New Constitution, And on the Federal and State Conventions. By A Columbian Patriot

Boston, 1788

This pamphlet was written some time after the ratification of the Constitution by Massachusetts (16 February 1788) and before the ratification of Maryland (26 April 1788). It is known to have been distributed in New York and probably elsewhere.[1] Although formerly attributed to Elbridge Gerry, the author has now been persuasively identified by Charles Warren as his ancestor, Mercy Otis Warren.[2] An active member of Massachusetts intellectual and political circles, Mrs. Warren, the sister of James Otis and wife of James Warren, was the author of several plays and poems, many on political themes. Her most ambitious work was an excellent three-volume account of the Revolution, *The History of the Rise, Progress and Termination of the American Revolution*. A comparison of A Columbian Patriot with the last chapters of this history tends to confirm her authorship of the former, for there are many close parallels of both substance and style.[3]

The essay opens with reflections on the changes that revolutions produce in the character of a people and the dangers to Americans of the present period. The body of the essay consists of a list of eighteen objections to the Constitution (4.28.4). In the first the author describes this complex government, this "heterogeneous phantom" or "favored bantling," so inconsistent with simple, responsible government (1, 9). Objections are made to the following: the absence of a provision for liberty of the press and rights of conscience (2); the extensive original and appellate judiciary powers and the "abolition" of trial by jury in civil cases (3, 5, 10); the blending of the executive and the legislative powers (5); the provisions for the army and militia (6); the absence of a capacity of self-defense by the states and the attempt to provide a single legislature for such a large territory (7, 15); the inadequate representation in the general government (11, 12, 13); the ab-

sence of a bill of rights (14); the unauthorized proposal of a new consolidated system (16); and the proposed mode of ratification (17–18).

The author concludes with a strong criticism of the proceedings in the Massachusetts convention and a call for a new convention. Warning against the effects of monarchy and aristocracy on the American character and public virtue (4.28.8), she speculates on the actions of the state conventions yet to meet, points to the need and the possibility of leaders "who have genius and capacity sufficient to form the manners and correct the morals of the people, and virtue enough to lead their country to freedom" (4.28.12).

While the bulk of the essay is a rather florid version of standard arguments—Robert Rutland refers to "the strident tones of Mercy Warren's scorching pamphlet"[4]—A Columbian Patriot is at the same time more philosophical than most of her fellows. She penetrates deeper than most into a favorite Anti-Federal theme, the relation of forms of government and the character of the people. And in the last two pages (4.28.12–13) the author touches, though she does not develop, a great theme of republican government, in her acknowledgment of the need for high statesmanship (at this and, by implication, other critical moments) but at the same time her denial that this proves the incapacity of the people to govern themselves. In a very rare note, the essay concludes with the reflection that if the issue over the Constitution is decided wrongly and freedom lost, the "sublimer characters, the philosophic lovers of freedom" must needs "retire to the calm shades of contemplation, [and] there they may look down with pity on the inconsistency of human nature, the revolutions of states, the rise of kingdoms, and the fall of empires."

1. Main, *The Antifederalists* 235.
2. Massachusetts Historical Society, *Proceedings* 64 (1932): 143–64.
3. A lengthy extract from the concluding chapters of Mercy Warren's *History* is printed below, 6.14.
4. *The Ordeal of the Constitution* 41.

Sic transit gloria Americana.

Mankind may amuse themselves with theoretick systems of liberty, and trace its social and moral effects on sciences, virtue, industry, and every improvement of which the human mind is capable; but we can only discern its true value by the practical and wretched effects of slavery; and thus dreadfully will they be realized, when the inhabitants of the Eastern States are dragging out a miserable existence, *only* on the gleanings of their fields; and the Southern, blessed with a softer and more fertile climate, are languishing in hopeless poverty; and when asked, what is become of the flower of their crop, and the rich produce of their farms—they may answer in the 4.28.1

hapless stile of the Man of *La Mancha*,—"The steward of my Lord has seized and sent it to *Madrid*."[1]—Or, in the more literal language of truth, The *exigencies* of government require that the collectors of the revenue should transmit it to the *Federal City*.

4.28.2 Animated with the firmest zeal for the interest of this country, the peace and union of the American States, and the freedom and happiness of a people who have made the most costly sacrifices in the cause of liberty,—who have braved the power of Britain, weathered the convulsions of war, and waded thro' the blood of friends and foes to establish their independence and to support the freedom of the human mind; I cannot silently witness this degradation without calling on them, before they are compelled to blush at their own servitude, and to turn back their languid eyes on their lost liberties—to consider, that the character of nations generally changes at the moment of revolution.—And when patriotism is discountenanced and publick virtue becomes the ridicule of the sycophant—when every man of liberality, firmness, and penetration, who cannot lick the hand stretched out to oppress, is deemed an enemy to the State—then is the gulph of despotism set open, and the grades to slavery, though rapid, are scarce perceptible—then genius drags heavily its iron chain—science is neglected, and real merit flies to the shades for security from reproach—the mind becomes enervated, and the national character sinks to a kind of apathy with only energy sufficient to curse the breast that gave it milk, and as an elegant writer observes, "To bewail every new birth as an encrease of misery, under a government where the mind is necessarily debased, and talents are seduced to become the panegyrists of usurpation and tyranny." He adds, "that even sedition is not the most indubitable enemy to the publick welfare; but that its most dreadful foe is despotism, which always changes the character of nations for the worse, and is productive of nothing but vice, that the tyrant no longer excites to the pursuits of glory or virtue; it is not talents, it is baseness and servility that he cherishes, and the weight of arbitrary power destroys the spring of emulation."* If such is the influence of government on the character and manners, and undoubtedly the observation is just, must we not subscribe to the opinion of the celebrated *Abbé Mablé?* "That there are disagreeable seasons in the unhappy situation of human affairs, when policy requires both the intention and the power of doing mischief to be punished; and that when the senate proscribed the memory of *Caesar* they ought to have put *Anthony* to death, and extinguished the hopes of *Octavius*."[3] Self defence is a primary law of nature, which no subsequent law of society can abolish; this primœval principle, the immediate gift of the Creator, obliges every one to remonstrate against the strides of ambition, and a wanton lust of domination, and to resist the first approaches of tyranny, which at this day threaten to sweep away the rights for which the

*Helvitius.[2]

brave sons of America have fought with an heroism scarcely paralleled even in ancient republicks. It may be repeated, they have purchased it with their blood, and have gloried in their independence with a dignity of spirit, which has made them the admiration of philosophy, the pride of America, and the wonder of Europe. It has been observed, with great propriety, that "the virtues and vices of a people when a revolution happens in their government, are the measure of the liberty or slavery they ought to expect—An heroic love for the publick good, a profound reverence for the laws, a contempt of riches, and a noble haughtiness of soul, are the only foundations of a free government."* Do not their dignified principles still exist among us? Or are they extinguished in the breasts of Americans, whose fields have been so recently crimsoned to repel the potent arm of a foreign Monarch, who had planted his engines of slavery in every city, with design to erase the vestiges of freedom in this his last asylum. It is yet to be hoped, for the honour of human nature, that no combinations either foreign or domestick have thus darkened this Western hemisphere.—On these shores freedom has planted her standard, diped in the purple tide that flowed from the veins of her martyred heroes; and here every uncorrupted American yet hopes to see it supported by the vigour, the justice, the wisdom and unanimity of the people, in spite of the deep-laid plots, the secret intrigues, or the bold effrontery of those interested and avaricious adventurers for place, who intoxicated with the ideas of distinction and preferment, have prostrated every worthy principle beneath the shrine of ambition. Yet these are the men who tell us republicanism is dwindled into theory—that we are incapable of enjoying our liberties—and that we must have a master.—Let us retrospect the days of our adversity, and recollect who were then our friends; do we find them among the sticklers for aristocratick authority? No, they were generally the same men who now wish to save us from the distractions of anarchy on the one hand, and the jaws of tyranny on the other; where then were the class who now come forth importunately urging that our political salvation depends on the adoption of a system at which freedom spurns?—Were not some of them hidden in the corners of obscurity, and others wrapping themselves in the bosom of our enemies for safety? Some of them were in the arms of infancy; and others speculating for fortune, by sporting with public money; while a few, a very few of them were magnanimously defending their country, and raising a character, which I pray heaven may never be sullied by aiding measures derogatory to their former exertions. But the revolutions in principle which time produces among mankind, frequently exhibits the most mortifying instances of human weakness; and this alone can account for the extraordinary appearance of a few names, once distinguished in the honourable walks of patriotism, but now found on the list of the Massachusetts assent to the ratification of a

*Abbé Mablé.[4]

Constitution, which, by the undefined meaning of some parts, and the ambiguities of expression in others, is dangerously adapted to the purposes of an immediate *aristocratic tyranny;* that from the difficulty, if not impracticability of its operation, must soon terminate in the most *uncontrouled despotism.*

4.28.3 All writers on government agree, and the feelings of the human mind witness the truth of these political axioms, that man is born free and possessed of certain unalienable rights—that government is instituted for the protection, safety, and happiness of the people, and not for the profit, honour, or private interest of any man, family, or class of men—That the origin of all power is in the people, and that they have an incontestible right to check the creatures of their own creation, vested with certain powers to guard the life, liberty and property of the community: And if certain selected bodies of men, deputed on these principles, determine contrary to the wishes and expectations of their constituents, the people have an undoubted right to reject their decisions, to call for a revision of their conduct, to depute others in their room, or if they think proper, to demand further time for deliberation on matters of the greatest moment: it therefore is an unwarrantable stretch of authority or influence, if any methods are taken to preclude this reasonable, and peaceful mode of enquiry and decision. And it is with inexpressible anxiety, that many of the best friends to the Union of the States—to the peaceable and equal participation of the rights of nature, and to the glory and dignity of this country, behold the insiduous arts, and the strenuous efforts of the partisans of arbitrary power, by their vague definitions of the best established truths, endeavoring to envelope the mind in darkness the concomitant of slavery, and to lock the strong chains of domestic despotism on a country, which by the most glorious and successful struggles is but newly emancipated from the sceptre of foreign dominion.—But there are certain seasons in the course of human affairs, when Genius, Virtue, and Patriotism, seems to nod over the vices of the times, and perhaps never more remarkably, than at the present period; or we should not see such a passive disposition prevail in some, who we must candidly suppose, have liberal and enlarged sentiments; while a supple multitude are paying a blind and idolatrous homage to the opinions of those who by the most precipitate steps are treading down their dear bought privileges; and who are endeavouring by all the arts of insinuation, and influence, to betray the people of the United States, into an acceptance of a most complicated system of government; marked on the one side with the *dark, secret* and *profound intrigues,* of the statesman, long practiced in the purlieus of despotism; and on the other, with the ideal projects of *young ambition,* with its wings just expanded to soar to a summit, which imagination has painted in such gawdy colours as to intoxicate the *inexperienced votary,* and send *him* rambling from State to State, to collect materials to construct the ladder of preferment.

But as a variety of objections to the *heterogeneous phantom*, have been repeatedly laid before the public, by men of the best abilities and intentions; I will not expatiate long on a Republican *form* of government, founded on the principles of monarchy—a democratick branch with the *features* of aristocracy—and the extravagance of nobility pervading the minds of many of the candidates for office, with the poverty of peasantry hanging heavily on them, and insurmountable, from their taste for expence, unless a generous provision should be made in the arrangement of the civil list, which may enable them with the champions of their cause to "*sail down the new pactolean channel.*" Some gentlemen with laboured zeal, have spent much time in urging the necessity of government, from the embarrassments of trade—the want of respectability abroad and confidence in the public engagements at home:—These are obvious truths which no one denies; and there are few who do not unite in the general wish for the restoration of public faith, the revival of commerce, arts, agriculture, and industry, under a lenient, peaceable and energetick government: But the most sagacious advocates for the party have not by fair discusion, and rational argumentation, evinced the necessity of adopting this many-headed monster; of such motley mixture, that its enemies cannot trace a feature of Democratick or Republican extract; nor have its friends the courage to denominate it a Monarchy, an Aristocracy, or an Oligarchy, and the favoured bantling must have passed through the short period of its existence without a name, had not Mr. *Wilson*, in the fertility of his genius, suggested the happy epithet of a *Federal Republic*[5]—But I leave the field of general censure on the secrecy of its birth, the rapidity of its growth, and the fatal consequences of suffering it to live to the age of maturity, and will particularize some of the most weighty objections to its passing through this continent in a gigantic size.—It will be allowed by every one that the fundamental principle of a free government, is the equal representation of a free people—And I will *first* observe with a justly celebrated writer, "That the principal aim of society is to protect individuals in the absolute rights which were vested in them by the immediate laws of nature, but which could not be preserved in peace, without the mutual intercourse which is gained by the institution of friendly and social communities."[6] And when society has thus deputed a certain number of their equals to take care of their personal rights, and the interest of the whole community, it must be considered that responsibility is the great security of integrity and honour; and that annual election is the basis of responsibility.—Man is not immediately corrupted, but power without limitation, or amenability, may endanger the brightest virtue—whereas a frequent return to the bar of their Constituents is the strongest check against the corruptions to which men are liable, either from the intrigues of others of more subtle genius, or the propensities of their own hearts,—and the gentlemen who have so warmly advocated in the late Convention of the Massachusetts, the change from annual to biennial elections;[7]

4.28.4

may have been in the same predicament, and perhaps with the same views that Mr. *Hutchinson* once acknowledged himself, when in a letter to *Lord Hillsborough*, he observed, "that the grand difficulty of making a change in government against the general bent of the people had caused him to turn his thoughts to a variety of plans, in order to find one that might be executed in spite of opposition," and the first he proposed was that, "instead of annual, the elections should be only once in three years:" but the Minister had not the hardiness to attempt such an innovation, even in the revision of colonial charters:[8] nor has any one ever defended Biennial, Triennial, or Septennial, Elections, either in the British House of Commons, or in the debates of Provincial assemblies, on general and free principles: but it is unnecessary to dwell long on this article, as the best political writers have supported the principles of annual elections with a precision, that cannot be confuted, though they may be darkned, by the sophistical arguments that have been thrown out with design, to undermine all the barriers of freedom.

2. There is no security in the profered system, either for the rights of conscience, or the liberty of the Press: Despotism usually while it is gaining ground, will suffer men to think, say, or write what they please; but when once established, if it is thought necessary to subserve the purposes of arbitrary power, the most unjust restrictions may take place in the first instance, and an *imprimator* on the Press in the next, may silence the complaints, and forbid the most decent remonstrances of an injured and oppressed people.

3. There are no well defined limits of the Judiciary Powers, they seem to be left as a boundless ocean, that has broken over the chart of the Supreme Lawgiver *"thus far shalt thou go and no further,"* and as they cannot be comprehended by the clearest capacity, or the most sagacious mind, it would be an Herculean labour to attempt to describe the dangers with which they are replete.

4. The Executive and the Legislative are so dangerously blended as to give just cause of alarm, and every thing relative thereto, is couched in such ambiguous terms—in such vague and indefinite expression, as is a sufficient ground without any other objection, for the reprobation of a system, that the authors dare not hazard to a clear investigation.

5. The abolition of trial by jury in civil causes.—This mode of trial the learned Judge Blackstone observes, "has been coeval with the first rudiments of civil government, that property, liberty and life, depend on maintaining in its legal force the constitutional trial by jury." He bids his readers pauze, and with Sir Matthew Hale observes, how admirably this mode is adapted to the investigation of truth beyond any other the world can produce.[9] Even the party who have been disposed to swallow, without examination, the proposals of the *secret conclave*, have started on a discovery that this essential right was curtailed; and shall a privilege, the origin of which may be traced to our Saxon ancestors—that has been a part of the law

of nations, even in the fewdatory systems of France, Germany and Italy—and from the earliest records has been held so sacred, both in ancient and modern Britain, that it could never be shaken by the introduction of Norman customs, or any other conquests or change of government—shall this inestimable privilege be relinquished in America—either thro' the fear of inquisition for unaccounted thousands of public monies in the hands of some who have been officious in the fabrication of the *consolidated system*, or from the apprehension that some future delinquent possessed of more power than integrity, may be called to a trial by his peers in the hour of investigation?

6. Though it has been said by Mr. *Wilson* and many others, that a Standing-Army is necessary for the dignity and safety of America,[10] yet freedom revolts at the idea, when the Divan, or the Despot, may draw out his dragoons to suppress the murmurs of a few, who may yet cherish those sublime principles which call forth the exertions, and lead to the best improvement of the human mind. It is hoped this country may yet be governed by milder methods than are usually displayed beneath the bannerets of military law.—Standing armies have been the nursery of vice and the bane of liberty from the Roman legions, to the establishment of the artful Ximenes, and from the ruin of the Cortes of Spain, to the planting the British cohorts in the capitals of America:—By the edicts of authority vested in the sovereign power by the proposed constitution, the militia of the country, the bulwark of defence, and the security of national liberty is no longer under the controul of civil authority; but at the rescript of the Monarch, or the aristocracy, they may either be employed to extort the enormous sums that will be necessary to support the civil list—to maintain the regalia of power—and the splendour of the most useless part of the community, or they may be sent into foreign countries for the fulfilment of treaties, stipulated by the President and two thirds of the Senate.

7. Notwithstanding the delusory promise to guarantee a Republican form of government to every State in the Union—If the most discerning eye could discover any meaning at all in the engagement, there are no resources left for the support of internal government, or the liquidation of the debts of the State. Every source of revenue is in the monopoly of Congress, and if the several legislatures in their enfebled state, should against their own feelings be necessitated to attempt a dry tax for the payment of their debts, and the support of internal police, even this may be required for the purposes of the general government.

8. As the new Congress are empowered to determine their own salaries, the requisitions for this purpose may not be very moderate, and the drain for public moneys will probably rise past all calculation: and it is to be feared when America has consolidated its despotism, the world will witness the truth of the assertion—"that the pomp of an eastern monarch may impose on the vulgar who may estimate the force of a nation by the magnificence of

its palaces; but the wise man, judges differently, it is by that very magnificence he estimates its weakness. He sees nothing more in the midst of this imposing pomp, where the tyrant sets enthroned, than a sumptuous and mournful decoration of the dead; the apparatus of a fastuous funeral, in the centre of which is a cold and lifeless lump of unanimated earth, a phantom of power ready to disappear before the enemy, by whom it is despised!"[11]

9. There is no provision for a rotation, nor any thing to prevent the perpetuity of office in the same hands for life; which by a little well timed bribery, will probably be done, to the exclusion of men of the best abilities from their share in the offices of government.—By this neglect we lose the advantages of that check to the overbearing insolence of office, which by rendering him ineligible at certain periods, keeps the mind of man in equilibrio, and teaches him the feelings of the governed, and better qualifies him to govern in his turn.

10. The inhabitants of the United States, are liable to be draged from the vicinity of their own county, or state, to answer to the litigious or unjust suit of an adversary, on the most distant borders of the Continent: in short the appelate jurisdiction of the Supreme Federal Court, includes an unwarrantable stretch of power over the liberty, life, and property of the subject, through the wide Continent of America.

11. One Representative to thirty thousand inhabitants is a very inadequate representation; and every man who is not lost to all sense of freedom to his country, must reprobate the idea of Congress altering by law, or on any pretence whatever, interfering with any regulations for the time, places, and manner of choosing our own Representatives.

12. If the sovereignty of America is designed to be elective, the circumscribing the votes to only ten electors in this State, and the same proportion in all the others, is nearly tantamount to the exclusion of the voice of the people in the choice of their first magistrate. It is vesting the choice solely in an aristocratic junto, who may easily combine in each State to place at the head of the Union the most convenient instrument for despotic sway.

13. A Senate chosen for six years will, in most instances, be an appointment for life, as the influence of such a body over the minds of the people will be coequal to the extensive powers with which they are vested, and they will not only forget, but be forgotten by their constituents—a branch of the Supreme Legislature thus set beyond all responsibility is totally repugnant to every principle of a free government.

14. There is no provision by a bill of rights to guard against the dangerous encroachments of power in too many instances to be named: but I cannot pass over in silence the insecurity in which we are left with regard to warrants unsupported by evidence—the daring experiment of granting *writs of*

assistance in a former arbitrary administration is not yet forgotten in the Massachusetts; nor can we be so ungrateful to the memory of the patriots who counteracted their operation, as so soon after their manly exertions to save us from such a detestable instrument of arbitrary power, to subject ourselves to the insolence of any petty revenue officer to enter our houses, search, insult, and seize at pleasure. We are told by a gentleman of too much virtue and real probity to suspect he has a design to deceive—"that the whole constitution is a declaration of rights"—but mankind must think for themselves, and to many very judicious and discerning characters, the whole constitution with very few exceptions appears to perversion of the rights of particular states, and of private citizens.—But the gentleman goes on to tell us, "that the primary object is the general government, and that the rights of individuals are only incidentally mentioned, and that there was a clear impropriety in being very particular about them."[12] But, asking pardon for dissenting from such respectable authority, who has been led into several mistakes, more from his prediliction in favour of certain modes of government, than from a want of understanding or veracity. The rights of individuals ought to be the primary object of all government, and cannot be too securely guarded by the most explicit declarations in their favor. This has been the opinion of the Hampdens, the Pyms, and many other illustrious names, that have stood forth in defence of English liberties; and even the Italian master in politicks, the subtle and renouned Machiavel acknowledges, that no republic ever yet stood on a stable foundation without satisfying the common people.[13]

15. The difficulty, if not impracticability, of exercising the equal and equitable powers of government by a single legislature over an extent of territory that reaches from the Missisippi to the Western lakes, and from them to the Atlantic ocean, is an insuperable objection to the adoption of the new system.—Mr. *Hutchinson*, the great champion for arbitrary power, in the multitude of his machinations to subvert the liberties of this country, was obliged to acknowledge in one of his letters, that, from the extent of country from north to south, the scheme of one government was impracticable." But if the authors of the present visionary project, can by the arts of deception, precipitation and address, obtain a majority of suffrages in the conventions of the states to try the hazardous experiment, they may then make the same inglorious boast with this insidious politician, who may perhaps be their model, that "the union of the colonies was pretty well broken, and that he hoped never to see it revewed."[14]

16. It is an indisputed fact, that not one legislature in the United States had the most distant idea when they first appointed members for a convention, entirely commercial, or when they afterwards authorised them to consider on some amendments of the Federal union, that they would without any warrant from their constituents, presume on so bold and daring a stride,

as ultimately to destroy the state governments, and offer a *consolidated system*, irreversible but on conditions that the smallest degree of penetration must discover to be impracticable.

17. The first appearance of the article which declares the ratification of nine states sufficient for the establishment of the new system, wears the face of dissention, is a subversion of the union of the Confederated States, and tends to the introduction of anarchy and civil convulsions, and may be a means of involving the whole country in blood.

18. The mode in which this constitution is recommended to the people to judge without either the advice of Congress, or the legislatures of the several states, is very reprehensible—it is an attempt to force it upon them before it could be thoroughly understood, and may leave us in that situation, that in the first moments of slavery the minds of the people agitated by the remembrance of their lost liberties, will be like the sea in a tempest, that sweeps down every mound of security.

4.28.5 But it is needless to enumerate other instances, in which the proposed constitution appears contradictory to the first principles which ought to govern mankind; and it is equally so to enquire into the motives that induced to so bold a step as the annihilation of the independence and sovereignty of the thirteen distinct states.—They are but too obvious through the whole progress of the business, from the first shutting up the doors of the federal convention and resolving that no member should correspond with gentlemen in the different states on the subject under discussion; till the trivial proposition of *recommending* a few amendments was artfully ushered into the convention of the Massachusetts. The questions that were then before that honorable assembly were profound and important, they were of such magnitude and extent, that the consequences may run parallel with the existence of the country; and to see them waved and hastily terminated by a measure too absurd to require a serious refutation, raises the honest indignation of every true lover of his country. Nor are they less grieved that the ill policy and arbitrary disposition of some of the sons of America has thus precipitated to the contemplation and discusion of questions that no one could rationally suppose would have been agitated among us, till time had blotted out the principles on which the late revolution was grounded; or till the last traits of the many political tracts, which defended the seperation from Britain, and the rights of men were consigned to everlasting oblivion. After the severe conflicts this country has suffered, it is presumed that they are disposed to make every reasonable sacrifice before the altar of peace,—But when we contemplate the nature of men and consider them originally on an equal footing, subject to the same feelings, stimulated by the same passions, and recollecting the struggles they have recently made, for the security of their civil rights; it cannot be expected that the inhabitants of the Massachusetts, can be easily lulled into a fatal security, by the declamatory effusions of gentlemen, who, contrary to the experience of all

ages would persuade them there is no danger to be apprehended, from vesting discretionary powers in the hands of man, which he may, or may not abuse. The very suggestion, that we ought to trust to the precarious hope of amendments and redress, after we have voluntarily fixed the shackles on our own necks should have awakened to a double degree of caution.—This people have not forgotten the artful insinuations of a former Governor, when pleading the unlimited authority of parliament before the legislature of the Massachusetts; nor that his arguments were very similar to some lately urged by gentlemen who boast of opposing his measures, "*with halters about their necks.*"[15]

We were then told by him, in all the soft language of insinuation, that no 4.28.6
form of government of human construction can be perfect—that we had nothing to fear—that we had no reason to complain—that we had only to acquiesce in their illegal claims, and to submit to the requisitions of parliament, and doubtless the lenient hand of government would redress all grievances, and remove the oppressions of the people:—[16]Yet we soon saw armies of mercenaries encamped on our plains—our commerce ruined—our harbours blockaded—and our cities burnt. It may be replied, that this was in consequence of an obstinate defence of our privileges; this may be true; and when the "*ultima ratio*" is called to aid, the weakest must fall. But let the best informed historian produce an instance when bodies of men were intrusted with power, and the proper checks relinquished, if they were ever found destitute of ingenuity sufficient to furnish pretences to abuse it. And the people at large are already sensible, that the liberties which America has claimed, which reason has justified, and which have been so gloriously defended by the sword of the brave; are not about to fall before the tyranny of foreign conquest: it is native usurpation that is shaking the foundations of peace, and spreading the sable curtain of despotism over the United States. The banners of freedom were erected in the wilds of America by our ancestors, while the wolf prowled for his prey on the one hand, and more savage man on the other; they have been since rescued from the invading hand of foreign power, by the valor and blood of their posterity; and there was reason to hope they would continue for ages to illumine a quarter of the globe, by nature kindly seperated from the proud monarchies of Europe, and the infernal darkness of Asiatic slavery.—And it is to be feared we shall soon see this country rushing into the extremes of confusion and violence, in consequence of the proceedings of a set of gentlemen, who disregarding the purposes of their appointment, have assumed powers unauthorised by any commission, have unnecessarily rejected the confederation of the United States, and annihilated the sovereignty and independence of the individual governments.—The causes which have inspired a few men assembled for very different purposes with such a degree of temerity as to break with a single stroke the union of America, and disseminate the seeds of discord through the land may be easily investigated, when we survey the

partizans of monarchy in the state conventions, urging the adoption of a mode of government that militates with the former professions and exertions of this country, and with all ideas of republicanism, and the equal rights of men.

4.28.7 Passion, prejudice, and error, are characteristics of human nature; and as it cannot be accounted for on any principles of philosophy, religion, or good policy; to these shades in the human character must be attributed the mad zeal of some, to precipitate to a blind adoption of the measures of the late federal convention, without giving opportunity for better information to those who are misled by influence or ignorance into erroneous opinions.—Litterary talents may be prostituted, and the powers of genius debased to subserve the purposes of ambition, or avarice; but the feelings of the heart will dictate the language of truth, and the simplicity of her accents will proclaim the infamy of those, who betray the rights of the people, under the specious, and popular pretence of *justice, consolidation,* and *dignity.*

4.28.8 It is presumed the great body of the people unite in sentiment with the writer of these observations, who most devoutly prays that public credit may rear her declining head, and remunerative justice pervade the land; nor is there a doubt if a free government is continued, that time and industry will enable both the public and private debtor to liquidate their arrearages in the most equitable manner. They wish to see the Confederated States bound together by the most indissoluble union, but without renouncing their seperate sovereignities and independence, and becoming tributaries to a consolidated fabrick of aristocratick tyranny.—They wish to see government established, and peaceably holding the reins with honour, energy, and dignity; but they wish for no *federal city* whose *"cloud cap't towers"* may screen the state culprit from the hand of justice; while its exclusive jurisdiction may protect the riot of armies encamped within its limits.—They deprecate discord and civil convulsions, but they are not yet generally prepared with the ungrateful Israelites to ask a King, nor are their spirits sufficiently broken to yield the best of their olive grounds to his servants, and to see their sons appointed to run before his chariots—It has been observed by a zealous advocate for the new system, that most governments are the result of fraud or violence,[17] and this with design to recommend its acceptance—but has not almost every step towards its fabrication been fraudulent in the extreme? Did not the prohibition strictly enjoined by the general Convention, that no member should make any communication to his Constituents, or to gentlemen of consideration and abilities in the other States, bear evident marks of fraudulent designs?—This circumstance is regretted in strong terms by Mr. Martin, a member from Maryland, who acknowledges "He had no idea that all the wisdom, integrity, and virtue of the States was contained in that Convention, and that he wished to have corresponded with gentlemen of eminent political characters abroad, and to give their sentiments due weight"—he adds, "so extremely solicitous were they, that their

proceedings should not transpire, that the members were prohibited from taking copies of their resolutions, or extracts from the Journals, without express permission, by vote."[18]—And the hurry with which it has been urged to the acceptance of the people, without giving time, by adjournments, for better information, and more unanimity has a deceptive appearance; and if finally driven to resistance, as the only alternative between that and servitude, till in the confusion of discord, the reins should be seized by the violence of some enterprizing genius, that may sweep down the last barrier of liberty, it must be added to the score of criminality with which the fraudulent usurpation at Philadelphia, may be chargeable.—Heaven avert such a tremendous scene! and let us still hope a more happy termination of the present ferment:—may the people be calm, and wait a legal redress; may the mad transport of some of our infatuated capitals subside; and every influential character through the States, make the most prudent exertions for a new general Convention, who may vest adequate powers in Congress, for all national purposes, without annihilating the individual governments, and drawing blood from every pore by taxes, impositions and illegal restrictions.—This step might again re-establish the Union, restore tranquility to the ruffled mind of the inhabitants, and save America from distresses, dreadful even in contemplation.—"The great art of governing is to lay aside all prejudices and attachments to particular opinions, classes or individual characters; to consult the spirit of the people; to give way to it; and in so doing, to give it a turn capable of inspiring those sentiments, which may induce them to relish a change, which an alteration of circumstances may hereafter make necessary."[19]—The education of the advocates for monarchy should have taught them, and their memory should have suggested that "monarchy is a species of government fit only for a people too much corrupted by luxury, avarice, and a passion for pleasure, to have any love for their country, and whose vices the fear of punishment alone is able to restrain; but by no means calculated for a nation that is poor, and at the same time tenacious of their liberty—animated with a disgust to tyranny—and inspired with the generous feelings of patriotism and liberty, and at the same time, like the ancient Spartans have been hardened by temperance and manly exertions, and equally despising the fatigues of the field, and the fear of enemies,"[20]—and while they change their ground they should recollect, that Aristocracy is still a more formidable foe to public virtue, and the prosperity of a nation—that under such a government her patriots become mercenaries—her soldiers, cowards, and the people slaves.—Though several State Conventions have assented to, and ratified, yet the voice of the people appears at present strong against the adoption of the Constitution.—By the chicanery, intrigue, and false colouring of those who plume themselves, more on their education and abilities, than their political, patriotic, or private virtues—by the imbecility of some, and the duplicity of others, a majority of the Convention of Massachusetts have

been flattered with the ideas of amendments, when it will be too late to complain—While several very worthy characters, too timid for their situation, magnified the hopeless alternative, between the dissolution of the bands of all government, and receiving the proffered system *in toto*, after long endeavouring to reconcile it to their consciences, swallowed the indigestible penacea, and in a kind of sudden desperation lent their signature to the dereliction of the honorable station they held in the Union, and have broken over the solemn compact, by which they were bound to support their own excellent constitution till the period of revision.—Yet Virginia, equally large and respectable, and who have done honour to themselves, by their vigorous exertions from the first dawn of independence, have not yet acted upon the question; they have wisely taken time to consider before they introduce innovations of a most dangerous nature:—her inhabitants are brave, her burgesses are free, and they have a Governor who dares to think for himself, and to speak his opinion (without first pouring libations on the altar of popularity) though it should militate with some of the most accomplished and illustrious characters.

4.28.9 Maryland, who has no local interest to lead her to adopt, will doubtless reject the system—I hope the same characters still live, and that the same spirit which dictated to them a wise and cautious care, against sudden revolutions in government, and made them the last State that acceded to the independence of America, will lead them to support what they so deliberately claimed.—Georgia apprehensive of a war with the Savages, has acceded in order to insure protection.—Pennsylvania has struggled through much in the same manner, as the Massachusetts, against the manly feelings, and the masterly reasonings of a very respectable part of the Convention: They have adopted the system, and seen some of its authors burnt in effigy—their towns thrown into riot and confusion, and the minds of the people agitated by apprehension and discord.

4.28.10 New-Jersey and Delaware have united in the measure, from the locality of their situation, and the selfish motives which too generally govern mankind; the Federal City, and the seat of government, will naturally attract the intercourse of strangers—the youth of enterprize, and the wealth of the nation to the central States.

4.28.11 Connecticut has pushed it through with the precipitation of her neighbour, with few dissentient voices;—but more from irritation and resentment to a sister State, perhaps partiality to herself in her commercial regulations, than from a comprehensive view of the system, as a regard to the welfare of all.—But New-York has motives, that will undoubtedly lead her to a rejection, without being afraid to appeal to the understanding of mankind, to justify the grounds of their refusal to adopt a Constitution, that even the framers dare not risque to the hazard of revision, amendment, or reconsideration, least the whole superstructure should be demolished by more skilful and discreet architects.—I know not what part the Carolinas will

take; but I hope their determinations will comport with the dignity and freedom of this country—their decisions will have great weight in the scale.—But equally important are the small States of New-Hampshire and Rhode-Island:—New-York, the Carolinas, Virginia, Maryland, and these two lesser States may yet support the liberties of the Continent; if they refuse a ratification, or postpone their proceedings till the spirits of the community have time to cool, there is little doubt but the wise measure of another federal convention will be adopted, when the members would have the advantage of viewing, at large, through the medium of truth, the objections that have been made from various quarters; such a measure might be attended with the most salutary effects, and prevent the dread consequences of civil feuds.—But even if some of those large states should hastily accede, yet we have frequently seen in the story of revolution, relief spring from a quarter least expected.

Though the virtues of a Cato could not save Rome, nor the abilities of a Padilla defend the citizens of Castile from falling under the yoke of Charles; yet a *Tell* once suddenly rose from a little obscure city, and boldly rescued the liberties of his country.—Every age has its Bruti and its Decii, as well as its Caesars and Sejani:—The happiness of mankind depends much on the modes of government, and the virtues of the governors; and America may yet produce characters who have genius and capacity sufficient to form the manners and correct the morals of the people, and virtue enough to lead their country to freedom.[21] Since her dismemberment from the British empire, America has, in many instances, resembled the conduct of a restless, vigorous, luxurious youth, prematurely emancipated from the authority of a parent, but without the experience necessary to direct him to act with dignity or discretion. Thus we have seen her break the shackles of foreign dominion, and all the blessings of peace restored on the most honourable terms: She acquired the liberty of framing her own laws, choosing her own magistrates, and adopting manners and modes of government the most favourable to the freedom and happiness of society. But how little have we availed ourselves of these superior advantages: The glorious fabric of liberty successfully reared with so much labour and assiduity totters to the foundation, and may be blown away as the bubble of fancy by the rude breath of military combinations, and politicians of yesterday. 4.28.12

It is true this country lately armed in opposition to regal despotism—impoverished by the expences of a long war, and unable immediately to fulfil their public or private engagements, have appeared in some instances, with a boldness of spirit that seemed to set at defiance all authority, government, or order, on the one hand; while on the other, there has been, not only a secret with, but an open avowal of the necessity of drawing the reins of government much too taught, not only for republicanism, but for a wise and limited monarchy.—But the character of this people is not averse to a degree of subordination: the truth of this appears from the easy restoration 4.28.13

of tranquility, after a dangerous insurrection in one of the states; this also evinces the little necessity of a complete revolution of government throughout the union. But it is a republican principle that the majority should rule; and if a spirit of moderation could be cultivated on both sides, till the voice of the people at large could be fairly heard it should be held sacred—And if, on such a scrutiny, the proposed constitution should appear repugnant to their character and wishes; if they, in the language of a late elegant pen, should acknowledge that "no confusion in my mind, is more terrible to them than the stern disciplined regularity and vaunted police of arbitrary governments, where every heart is depraved by fear, where mankind dare not assume their natural characters, where the free spirit must crouch to the slave in office, where genius must repress her effusions, or like the Egyptian worshippers, offer them in sacrifice to the calves in power, and where the human mind, always in shackles, shrinks from every generous effort."[22] Who would then have the effrontory to say, it ought not to be thrown out with indignation, however some respectable names have appeared to support it.—But if after all, on a dispassionate and fair discussion, the people generally give their voice for a voluntary dereliction of their privileges, let every individual who chooses the active scenes of life, strive to support the peace and unanimity of his country, though every other blessing may expire—And while the statesman is plodding for power, and the courtier practising the arts of dissimulation without check—while the rapacious are growing rich by oppression, and fortune throwing her gifts into the lap of fools, let the sublimer characters, the philosophic lovers of freedom who have wept over her exit, retire to the calm shades of contemplation, there they may look down with pity on the inconsistency of human nature, the revolutions of states, the rise of kingdoms, and the fall of empires.

1. The source of this quotation has not been found.
2. The "elegant writer" has not been identified. On the relation between the laws and the character of the people, see the references in Federal Farmer III, 2.8.24 n. 19.
3. Gabriel Bonnot Mably, *Observations sur les Romains*.
4. Ibid.
5. See McMaster and Stone 221; cf. Martin 2.4.44 n. 12.
6. Blackstone, *Commentaries* I, 124.
7. Elliot II, 4–21.
8. I do not find this letter, but see *Diary and Letters of Thomas Hutchinson* (Boston 1884), letter of July 1775, p. 501.
9. *Commentaries* III, 349, 355.
10. See James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 145–46. See Brutus VIII, 2.9.97 n. 67.
11. The source of this quotation has not been found.
12. Ex-Governor James Bowdoin, Massachusetts ratifying convention, Elliot II, 87. On the Constitution as a bill of rights, see [Maryland] Farmer II, 5.1.18 n. 12; for other arguments against the need of a bill of rights, see Mason 2.2.1 n. 1.
13. This reference has not been located.
14. The "insidious politician" has not been identified.
15. See Judge Dana, Elliot II, 43.

16. Governor Hutchinson's answer to a report of a committee of the Assembly, 14 July 1772, Hutchinson, *History of the Colony and Province of Massachusetts* III, 546–51.

17. Probably James Wilson in his speech before the Pennsylvania ratifying convention of 24 November: "Government, indeed, taken as a science, yet may be considered in its infancy; and with all its various modifications, it has hitherto been the result of force, fraud, or accident. For, after the lapse of six thousand years since the creation of the world, America now presents the first instance of a people assembled to weigh deliberately and calmly and to decide leisurely and peaceably, upon the form of government by which they will bind themselves and their posterity." McMaster and Stone 221–22. See also A Citizen of America, "An Examination," Ford, Pamphlets 29; and *The Federalist* no. 1, 3 and no. 38, 241.

18. See Martin 2.4.13.

19. The source of this quotation has not been found.

20. The source of this quotation has not been found.

21. On the issue of the perpetuation of republics, see Impartial Examiner 5.14.22 n. 15.

22. The "late elegant pen" has not been identified.

The Complete Anti-Federalist

The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 5

Maryland
and
Virginia and the South

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Contents

VOLUME FIVE

Contents of Other Volumes vii
A Note on Cross References x
Works Frequently Cited xi

PART I

Maryland

Introduction 3
5.1 Essays by A Farmer (Baltimore *Maryland Gazette* February–April 1788) 5
5.2 Essay by A Farmer and Planter (*Maryland Journal* April 1788) 74
5.3 Samuel Chase, Notes of Speeches Delivered to the Maryland Ratifying Convention (April 1788) 79
5.4 Address of a Minority of the Maryland Ratifying Convention (Baltimore *Maryland Gazette* May 1788) 92
5.5 Address by John Francis Mercer (April or May 1788) 101

PART 2

Virginia and the South

Introduction 109
5.6 Letter of Richard Henry Lee to Governor Edmund Randolph (16 October 1787) 111
5.7 Address by Cato Uticensis (*Virginia Independent Chronicle* 17 October 1787) 119
5.8 A Proposal for Reviving Christian Conviction (*Virginia Independent Chronicle* October 1787) 125
5.9 Essay by A Georgian (*Gazette of the State of Georgia* 15 November 1787) 129

5.10 Essays by Cato (*State Gazette of South Carolina* November–December 1787) 137
5.11 Essay by Tamony (*Virginia Independent Chronicle* 9 January 1788) 145
5.12 Speeches of Rawlins Lowndes in the South Carolina Legislature (January 1788) 148
5.13 Essays by Republicus (Lexington *Kentucky Gazette* February and March 1788) 160
5.14 Essays by The Impartial Examiner (*Virginia Independent Chronicle* February–June 1788) 172
5.15 Reply to Cassius by Brutus (*Virginia Independent Chronicle* 14 May 1788) 201
5.16 Speeches of Patrick Henry in the Virginia State Ratifying Convention (June 1788) 207
5.17 Speech of George Mason in the Virginia Ratifying Convention (4 June 1788) 255
5.18 Address by Denatus (*Virginia Independent Chronicle* 11 June 1788) 260
5.19 Letter from A Delegate Who Has Catched Cold (*Virginia Independent Chronicle* June 1788) 268
5.20 Sentiments of Many (*Virginia Independent Chronicle* 18 June 1788) 275
5.21 James Monroe, Some Observations on the Constitution (1788) 278

Contents of Other Volumes

VOLUME ONE

Foreword by Joseph Cropsey
Preface by Murray Dry
Prefatory Notes by Herbert J. Storing

What the Anti-Federalists Were *For*

1 Introduction
2 Conservatives
3 The Small Republic
4 Union
5 The Federalist Reply
6 The Aristocratic Tendency of the Constitution
7 Complex Government
8 Bill of Rights
9 Conclusion
The Articles of Conferation, Keyed to the Principal Anti-Federalist Discussions
The Constitution of the United States. Keyed to the Principal Anti-Federalist Discussions

VOLUME TWO

PART I
Objections of Non-Signers of the Constitution

2.1 Elbridge Gerry (3 November 1787)
2.2 George Mason (1787)
2.3 Robert Yates and John Lansing (14 January 1788)
2.4 Luther Martin (1788)
2.5 Edmund Randolph (10 October 1787)

PART 2

Major Series of Essays at the Outset

2.6 Cato (September 1787–January 1788)
2.7 Centinel (October 1787–April 1788)
2.8 The Federal Farmer (1787 and 1788)
2.9 Brutus (October 1787–April 1788)

VOLUME THREE

Pennsylvania

3.1 William Findley (28 September 1787)
3.2 Minority of the Pennsylvania House of Representatives (4 October 1787)
3.3 An Old Whig (October 1787–February 1788)
3.4 Montezuma (17 October 1787)
3.5 A Democratic Federalist (17 October 1787)
3.6 A Federal Republican (1787)
3.7 John Humble (29 October 1787)
3.8 An Officer of the Late Continental Army (6 November 1787)
3.9 Philadelphiensis (November 1787–April 1788)
3.10 Alfred (13 December 1787)
3.11 Minority of the Convention of Pennsylvania (18 December 1787)
3.12 William Penn (January 1788)
3.13 Deliberator (20 February 1788)
3.14 A Farmer (April 1788)
3.15 None of the Well-Born Conspirators (23 April 1788)
3.16 Aristocrotis (1788)

VOLUME FOUR

Massachusetts and New England

4.1 Anon., "A confederation" (9 October 1787)
4.2 A Gentleman in a Neighbouring State (October 1787)
4.3 John DeWitt (October–December 1787)
4.4 Vox Populi (October–November 1787)
4.5 William Symmes (15 November 1787)
4.6 Agrippa (November 1787–February 1788)
4.7 A Federalist (26 November 1787)
4.8 One of the Common People (3 December 1787)
4.9 Candidus (December 1787–January 1788)
4.10 Cornelius (December 1787)
4.11 Poplicola (24 December 1787)
4.12 Helvidius Priscus (December 1787–February 1788)

4.13 A Republican Federalist (December 1787–February 1788)
4.14 Samuel (10 January 1788)
4.15 Hampden (January–February 1788)
4.16 A Customer (March 1788)
4.17 A Farmer (January–June 1788)
4.18 Charles Turner (17 January and 6 February 1788)
4.19 The Yeomanry of Massachusetts (25 January 1788)
4.20 An American (28 January 1788)
4.21 A Bostonian (4 February 1788)
4.22 A Watchman (February 1788)
4.23 A Friend to the Rights of the People, A Friend to the Republic (February 1788)
4.24 David (7 March 1788)
4.25 A Newport Man (March 1788)
4.26 Consider Arms, Malichi Maynard, and Samuel Field (April 1788)
4.27 Phileleutheros (May 1788)
4.28 A Columbian Patriot (1788)

VOLUME SIX

PART 1
New York

6.1 Cincinnatus (November–December 1787)
6.2 A Son of Liberty (8 November 1787)
6.3 Brutus, Jr. (8 November 1787)
6.4 An Observor (19 November 1787)
6.5 A Citizen (24 November 1787)
6.6 A Countryman from Dutchess County (November 1787–February 1788)
6.7 A Countryman (December 1787–January 1788)
6.8 Sidney (February–March 1788)
6.9 Sydney (June 1788)
6.10 Albany Antifederal Committee (26 April 1788)
6.11 A Plebeian (1788)
6.12 Melancton Smith (June 1788)
6.13 George Clinton (June–July 1788)

PART 2
Conclusion

6.14 Mercy Warren (1805)

VOLUME SEVEN

Index

A Note on Cross References

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.16.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 above. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

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PART 1

Maryland

Introduction

By the spring of 1788 six states had ratified the Constitution, and the center of activity shifted to the South, where only Georgia had ratified. The great danger to the Constitution here lay in the possibility of concerted southern action under the leadership of Patrick Henry of Virginia. The Maryland and South Carolina conventions were to meet before Virginia's, and the strategy of their Anti-Federalists was to work for a postponement if they could not secure rejection and thus to invite Virginia, with its strong Anti-Federalist group, to take the lead in rejecting or drastically modifying the Constitution.

Maryland was one of the most aristocratic of the American states, being governed by a group of planters and merchants linked by interest, background, and marriage under a constitution that required fairly high property qualifications for political participation, especially for holding senatorial and executive office. Despite a relatively low level of political participation, however, there was an active opposition group, led by Samuel Chase, and there had been considerable controversy over paper money.[1] When the legislature took up the proposed new Constitution in 1787 the Federalists agreed to delay the convention until April 1788, and to eliminate the normal property qualifications for delegates. The Senate also accepted a proposal for a "convention of the people for their full and free investigation and decision" in the place of its own words, "for their assent and ratification."[2] But the Federalists compromised out of strength and a desire to get on with the business. The convention elected was overwhelmingly Federalist. For unknown reasons the Anti-Federalist leaders did not appear in the convention for the first few days. By the time Chase, Luther Martin, and William Paca arrived, three days after the convention opened, the Constitution had gone through two readings and the question to adopt was before the House. Chase gave a lengthy speech opposing ratification. Knowing they had a safe majority and favorable rules, the Federalists listened in silence, offering no rebuttal. After an unsuccessful attempt by Paca to introduce amendments, the vote was taken, and on 26 April the Constitution was adopted 63–11.[3] The Federalists refused to accept even recommendatory amendments, which, after several days of attempted compromise in committee, were

rejected by a vote of 47–26. Maryland was the only state to ratify after Massachusetts that did not submit recommendatory amendments.

1. See Philip A. Crowl, *Maryland during and after the Revolution: A Political and Economic Study* (Baltimore 1943); Forrest McDonald, *We the People* 148–62.

2. Bernard Steiner, "Maryland's Adoption of the Federal Constitution," *American Historical Review* October 1899 and January 1900.

3. Paca voted with the majority. For accounts of the proceedings, see A. C. Hanson, "To the People of Maryland," *Documentary History of the Constitution* IV, 650–63, and the accounts of the Maryland Convention Minority 5.4 and John Francis Mercer 5.5.

Essays by A Farmer

(BALTIMORE) MARYLAND GAZETTE
February–April 1788

Among the more penetrating and comprehensive Anti-Federalist essays are these written by A [Maryland] Farmer, printed in the *Maryland Gazette* during February, March, and April of 1788, and here reprinted for the first time. On the issues of a bill of rights, political parties, and especially representation and simple versus complex government, the argument of this Maryland writer is indispensable to the student of Anti-Federalist thought.

While no direct evidence of authorship has been found, it seems likely that A [Maryland] Farmer was John Francis Mercer, a non-signing member of the Constitutional Convention and an active Maryland Anti-Federalist.[1] Born in Virginia, Mercer was educated at William and Mary, studied law under Thomas Jefferson, performed extensive military service during the Revolutionary War, and represented Virginia in Congress. On his marriage in 1785, he removed to Maryland, from which state he was chosen to serve in the Federal Convention in 1787, which he left before its work was finished. He played an active part in the Maryland opposition to the Constitution. On the establishment of the new government, Mercer aligned himself with the Republicans and devoted himself largely to politics. He served as a member of the Maryland House of Delegates, briefly as a member of the federal House of Representatives, and as Governor of Maryland.[2] The attribution is inconclusive since it depends almost entirely on a similarity in argument between those of A Farmer and those known to have been made by Mercer. Yet the similarity is striking and goes well beyond ordinary parallels among Anti-Federalists. The chief source of Mercer's views is Madison's report of his speech in the Convention on 14 August. We have in addition a useful letter to Jefferson, written in 1804, and the "Address to the Members of the Conventions of New York and Virginia," which is printed below.[3]

Both Mercer and A Farmer find their central argument in the contention that the Constitution falls between the two stools of genuine simple government and genuine mixed or complex government. Like many Anti-Federalists, they are much concerned with representation, but their

analyses of representation—as a system tending to lead to aristocratic domination and then to tyranny unless held in check by permanent and fixed orders—are very similar to one another and quite distinct from the more usual discussions by, for example, Samuel Chase of Maryland and Richard Henry Lee of Virginia.[4] Both Mercer and A Farmer are favorably impressed with England as an example of mixed government, and both argue for a strong executive in any stable complex government.[5] Their concern for the preservation of the states is less distinctive, but here too Mercer and A Farmer are unusual in their particular discussion of the federal system as a system of balance of power[6] and in their concern with party.[7]

References are provided to the main points of similarity, so that the reader can judge for himself the accuracy of the editor's opinion that Mercer was in all probability the author of this interesting and important series of essays.

A Farmer took up his pen to reply to a Federalist pamphlet by Aristides, the pseudonym of Alexander Contee Hanson, a Maryland legislator and judge.[8] First he replies to what Aristides had described as his attack on "the whole body of anti-federalists in their stronghold," the absence of a bill of rights. While making the usual arguments here, A Farmer also turns a common Federalist view on its head by contending that, whereas in a monarchy numbers are typically on the side of the individual, in a popular government the danger to the individual lies in the interests or heated passions of the majority and that, therefore, the freer or more democratic the government, the greater the need for clear expressions of individual rights. A Farmer concludes this essay with the question whether a national government is to be preferred for the United States to a league or a confederation.

In his second essay A Farmer postpones a promised discussion of consolidation and takes up the subject of representation. This is one of the four or five major Anti-Federalist discussions of this critical issue. Here and throughout there is a tension in the author's thought between a defense of simple government in principle and an objection to a *premature* adoption of a complex government for which America does not provide the materials. He begins with sharp sarcasm about the brash confidence of his opponents in their new knowledge and an unusually strong statement (even for the conservative Anti-Federalists) that "there is nothing solid or useful that is new" (II, 5.1.22). Far from being unknown in former times, government by representation is coeval with mankind but, being the government most liable to corruption, has always been of short duration. Broadly speaking, the argument in this important if somewhat loose essay is that representative government is aristocracy, which is corrupt and tyrannical and which leads the desperate people to hand themselves over to a single man. Normally, then, representative government leads to tyranny supported by a standing army; but A Farmer holds out a possibility of tempering the aristocracy with a strong and independent executive (unlike the union of Senate and Execu-

tive under the Constitution). The usual course of degeneration will be speeded and exaggerated in the United States, however, when thirteen complicated forms of government are bound in a single further complicated government to the complete destruction of "all responsibility (the only test of good government)" (II, 5.1.34). The question of standing armies, their effects on liberty, and guards against them, occupy the latter half of the essay (II, 5.1.35–53).

In the third essay, A Farmer takes up the question of whether a national or a federal government is to be preferred. While a national government will add to the dignity and splendor of the United States, true happiness lies in simple quiet government. However, A Farmer sees little in the present corrupted manners of his fellow citizens to suggest that they are now capable of sustaining self-government. So far as relations among the states and defense against foreign intrigue or corruption are concerned, a confederation of small popular governments is best. In the latter part of the essay, A Farmer provides a very interesting sketch of the three main classes in the United States, and their probable future (III, 5.1.56–60). He ends with the observation that "on the preservation of parties, public liberty depends," and that the aim of a free and wise people should be to balance parties so that from the weakness of all they may be governed by the moderation of the combined judgments of the whole (III, 5.1.60).

In the fourth essay A Farmer criticizes the absence of provision for trial by jury in civil cases and discusses the value of the jury as the democratic part of the judiciary—the people's check on government and their school in public affairs.

In his very important and complex fifth essay, A Farmer returns to his major theme of representation. The discussion begins with "governments of simplicity and equal right," which have not been dealt with faithfully in theory and practice (V, 5.1.69). For whatever reasons, we seem to be tending toward mixed government with permanent and fixed orders. If this is to be our direction, let us proceed slowly and carefully. Government by representation "sets all system at defiance" by inducing constant change (V, 5.1.71). A representative system can only succeed if based on fixed and permanent orders, but the only such order in America is the yeomanry, which is powerless. The Constitution tries to erect a republic on the ruins of a corrupt monarchy. A government for the United States founded on representation requires at least an executive for life and a senate also for life appointed by the executive. The problem is to prevent the executive from becoming hereditary, for which reason the vice presidency is important (V, 5.1.72–74).

Having considered the dangers of representation and the requirements of a representative system—if that is what the United States must have—A Farmer returns in the conclusion of this essay to the advantages of simple government (V, 5.1.75–82). The English system, although good of its kind,

is undeservedly praised. It is a rational system; but it required the introduction of a ministerial system and corruption to support it, and it does not prevent poverty in the lower orders and disorder. England may be compared with Switzerland, whose government is simple and in the hands of the people personally, where every citizen is legislator and soldier and where liberty, peace, and prosperity reign. Government should be in the hands of the people, that is, those who hold the property of the soil. With government in the hands of the freeholders, with reasonable sumptuary laws, and with the institution of seminaries of useful learning, the people would cease abusing their governments and would "wade up to their knees in blood" to defend them (V, 5.1.82).

In his sixth essay A Farmer replies to Aristides on various minor points, chiefly the question of concurrent jurisdiction of federal and state courts.

A Farmer concludes with a long essay, extending over several numbers of the *Maryland Gazette,* in which he replies to some further criticisms of Aristides and summarizes his own argument. He traces the decline of government from its initial devotion to equal rights to its unavoidably (or so A Farmer seems to think) unequal operation. Oppressed by the few, the people call on one man to rule them (VII, 5.1.94–100). This monarchy, in turn, suffers its inevitable corruption, which in turn corrupts the whole society (VII, 5.1.101–3). At length, the people look to heaven for that solace and equality they are denied on earth, but religious tyranny and corruption support and are supported by civil tyranny and corruption (VII, 5.1.104–7). Despite the loss of civil and political liberty, Europe has at least preserved a degree of social happiness impossible in great empires, due to the moderating influence of a system of balance among national powers (VII, 5.1.108–11). A Farmer concludes with reflections on the American state governments, the imperfections of which have led to the present agitations. Yet the future seems likely to be worse than the past (VII, 5.1.112–13). "[T]he truth is that we aimed at, and still aim at premature public splendor and private luxury, forgetting that bodies politic, like natural bodies, have their duration of manly vigor and the decline of age. . . . We wanted to be every thing at once—that is what we now wish, and in the event we shall be nothing or worse than nothing, we strived to patch up the ruined fabric of the British constitution for our use, and . . . we never reflected, that we had none of the distinctions of ranks which preserve that government—that the state of our society was altogether different—and that we had only the wishes, but none of the means" (VII, 5.1.113).

(Indecipherable words or passages in the original are indicated here by brackets and space.)

1. If it is assumed that the author was a fairly prominent Maryland Anti-Federalist, a reasonable assumption especially given the somewhat aristocratic structure of Maryland politics, Mercer becomes one of a handful of possibilities, and some of these had expressed themselves publicly in other forms. Mercer probably was "re-

tired in the country," as A Farmer says he was in his sixth essay (VI, 5.1.84), on his estate in Anne Arundel County. The last of A Farmer's pieces was published on 22 April 1788, the day after the opening of the Maryland Convention (where Mercer was present), and it may be that the promised continuation was cut off by the necessity to attend the convention. None of this proves more, of course, than that Mercer might have been the author. For an address of John Francis Mercer, see 5.5.

2. James Mercer Garnett, "John Francis Mercer," *Maryland Historical Magazine* September 1907, pp. 209–12; Mary W. Williams, "John Francis Mercer," *Dictionary of American Biography* XII, 543–44.

3. Mercer 5.5; *Farrand* II, 284–85 (14 August); *Maryland Historical Magazine* September 1907, pp. 209–12.

4. See II, 5.1.22–29; V, 5.1.72; VII, 5.1.113; Farrand II, 284; Mercer 5.5.5. Cf. Federal Farmer, II, 2.8.15 and n. 11. Despite the distinctiveness of the argument presented by Mercer and A Farmer, I have nevertheless contended that it is characteristic, in the sense of explicitly stating and examining a persistent but usually obscured Anti-Federalist theme or problem.

5. See II, 5.1.31; V, 5.1.74–75; Farrand II, 284–85; Mercer 5.5.11.

6. See III, 5.1.52; VI, 5.1.109; *Maryland Historical Magazine* September 1907, p. 210.

7. See III, 5.1.60; *Maryland Historical Magazine* September 1907.

8. See Ford, *Pamphlets* 217–57.

I
15 February 1788

When men, to whom the guardianship of public liberty has been committed, 5.1.1
discover a neglect if not contempt for a bill of rights—when they answer reasons by alledging a fact,—which fact too, is no fact at all—it becomes a duty to bear testimony against such conduct, for silence and acquiescence in political language are synonimous terms.[1]

If men were as anxious about reality as appearance, we should have fewer professions of disinterested patriotism—true patriotism like true piety, is incompatible with an ostentatious personal display.

In a world more cautious than correct, the intrusion of private names in a 5.1.2
public cause, is generally considered as a sacrifice of prudence to vanity, and not unfrequently censured as impertinent—in either view it is unreasonable to require it—It is more, it is inadmissible—it would be betraying one of those inestimable rights of an individual, over which society should have no controul—the freedom of the press—and the only recompence for the treason, would be a boundless increase of private malice.[2]

That men who profess an attachment to the liberty of the press, should 5.1.3
also require names, is one of those instances of human weakness and inconsistency, that deserves rather pity than resentment. Political as well as religious freedom has ever been and forever will be destroyed by that invariable tendency of enthusiasts and bigots to mark out as objects of public resentment and persecution, those who presume to dispute their opinions or

question their infallibility—and whilst there are men, enthusiasm and bigotry will prevail—it is the natural predominance of the passions over reason—The citizens of America are not yet so agitated by the phrenzy of innovation as to forget—that the object of public inquiry is, or ought to be, *truth*—that to convert *truth* into *falsehood, right* into *wrong,* is equally beyond the reach of the *good,* the *bad,* the *great* and the *humble*—A great name may indeed *impose falsehood* for *truth—wrong* for *right*—and whenever such voluntarily offer themselves, there may be ground for suspicion—But the people may listen with safety to those, who assert no other claim to their attention, than the *reason* and *merit* of their remarks.

5.1.4 To assert that bills of rights have always originated from, or been considered as grants of the King or Prince, and that the liberties which they secure are the gracious concessions of the sovereign, betrays an equal ignorance of history and of law, or what in effect amounts to the same thing a violent and precipitate zeal.[3]

5.1.5 I believe no writer in the most venal age, has ever openly asserted this doctrine, but the prostituted, rotten Sir Robert Filmer,[4] and Aristides—And the man who at this day would contend in England that their bill of rights is the grant of the King, would find the general contempt his only security—In saying this, I sincerely regret that the name of Aristides should be joined with that of Sir Robert Filmer, and I freely acknowledge that no contemptible degree of talents, and integrity render him who uses it, much more worthy of the very respectable association he has selected for himself—But the errors of such men alone are dangerous—the man who has too much activity of mind, or restlessness to be quiet, qualities to engage public and private esteem, talents to form and support an opinion, fortitude to avow it, and too much pride to be convinced, will at all times have weight in a free country, (especially where indolence is the general characteristic) though that weight he will always find impaired in proportion as he indulges levity, caprice and passion.

5.1.6 I will confine my inquiry to the English constitution—Example *there,* is in a great measure law *here*—and the authority of an American judge on a point of English law, should be digested with coolness and promulgated with caution, because it is frequently conclusory.

The celebrated and only bill of rights of Great-Britain, which is considered as the supreme law of the land, and not to be questioned or impeached in their courts, was the work of that convention of lords and commons in 1688, which declared that *King James 2d. had abdicated the crown, and that the throne had thereby become vacant,* and who after they had compleated and asserted this glorious declaration of the unalienable rights of their fellow citizens, pursuing the peculiar duty of a convention, conferred the crown of the three kingdoms on an alien and foreigner, William the 3d.

5.1.7 Can any man imagine that this convention could at that time, have considered these rights as the grant of a King, whom they previously declared

to have abdicated the throne, or the gracious concessions of a Prince whom they were about to deprive forever of the crown? Or could they have considered this bill of rights as the concession of Prince William, at that time a foreigner and alien, not entitled to hold a foot of land, or any of the common rights of citizenship, and who could afterwards only derive his title to the crown from the same source, which gave authority and sanction to this fundamental and most inestimable law? or, could the British nation at that time, or ever since, have viewed this declaration, as the grant and concession of a King or Prince, when no King or Prince was at that time in existence?—But should there remain any minds yet unsatisfied, I refer such to the debates of that convention, which are preserved in Grey's debates in parliament,[5] and there will be found in them, the principles of equal liberty, the inherent and unalienable rights of men, as amply and ably discussed, and as fully recognized by the authors of that blessing, the artists of that British palladium, as ever they have since been by the animated patriots of America, or the present age.—I also refer them to an inestimable little treatise composed on this occasion by that accomplished lawyer and patriot, afterwards the Lord Somers—High Chancellor of Great-Britain—then a member of the convention, and chiefly instrumental in their great work—a pamphlet that should find a place in the library of every American judge at least[6]—Whoever peruses these, will discover undeniable evidence, that the British convention, considered this their declaration, as the concession of no Prince, but the Prince of Heaven—whom alone they acknowledged as the author of their liberties—they will there find that a bill of rights, is an enumeration of those conditions on which the individuals of the empire agreed to confirm the social compact; and consequently that no power, which they thus conditionally delegated to the majority (in whatever form organized) should be so exercised as to infringe and impair these their natural rights—not vested in SOCIETY, but reserved to each member thereof.

This was not the doctrine of that period alone—It was the common law and constitution of England, so asserted and maintained by the ablest lawyers of every age of the empire.—The petition of right, which came forward in the reign of Charles 1st, said to have been originally penned by the celebrated Lord Coke—although in its title a contradiction in terms, is yet in substance equally strong and clear—asserting the rights of the people to be coeval with the government—We find this principle strenuously and ably maintained through all the works of this great man, and to this doctrine he finally, with the devotion of a freeman, and the fortitude of an Englishman, sacrificed his vanity, his ambition and his avarice—This last act of an aged and venerable judge, has obliterated the errors of a youthful courtier—it has made his peace with posterity, who with gratitude and indulgence has forgiven the conduct of a court lawyer, which she might have punished with detestation, although she could not correct. 5.1.8

Here I cannot but observe what strenuous bill of rights men, all the great 5.1.9

luminaries of the English law have been: to Lord Coke and Lord Somers, I will add that [ ] of human nature, Sir Matthew Hale, in whom were united true Christian piety, Roman fortitude, and an understanding more than human.

This perfect man although firmly opposed to the violences of the mad fanatics of the age, stood up almost alone in that parliament which restored the regal government, in favor of a bill of rights—but the tide of popular rage, hastening to place the worthless Charles on the throne of his more worthless ancestors, was too strong, and the voice of that man could not be heard, who was the delight of his own and the admiration of succeeding ages.

5.1.10 It is true, that something like the doctrine of Aristides was frequently the language of courtiers and sycophants in the feeble reigns of the arbitrary Stuarts—times of impotent and impudent usurpation—and they grounded their assertions on the form of the statute of magna charta, a statute much estemed for the many valuable rights it ascertains—the enacting words of which imply it to be an act of the King—But Aristides must know that this was the frequent form of the ancient statutes, sometime it is the King alone enacts, sometime the King with advice and consent of the great men and Barons, and sometimes the three estates—Even at this day, the King uses these words in passing laws that bear the same implication; and we see even in America acts of authority issue under the name and signature of the Governor alone, who has not a voice unless the council are divided—But as to the legal and acknowledged authority of the King at the time of enacting magna charta, there can remain but little doubt. Henry Bracton a contemporary lawyer and judge, who has left us a compleat and able treatise on the laws of England, is thus clear and express—*Omnes quidem sub rege, ipse autem sub lege,* all are subject to the King, but the King is subject to the law[7]—It will hardly then be imagined, that the supreme law and constitution were the grants and concessions of a Prince, who was thus in theory and practice, subject himself to ordinary acts of legislation—But all these things are so amply discussed and the authorities so accurately collected in the publication of my Lord Somers, that a reference must be much more satisfactory than a repetition.

5.1.11 If I understand Aristides, he says that it would have been considered as an arrogant usurpation of sovereign rights in the members of convention, to have affixed a bill of rights—Can he reconcile this position with another opinion in his remarks, where he maintains that in offering this constitution, they could only act as private individuals, any of whom have a right to propose a constitution to the Americans to adopt at their discretion—In this view they could only have proposed—it is certain they could not have enacted a bill of rights—Nor would there have been any usurpation in WE *the people, of the States of New Hampshire, Massachusetts, &c. securing to ourselves and our posterity the following unalienable rights, &c.* which is

the stile of the new constitution—The convention have actually engrafted some of these natural rights, yet no one calls it an usurpation—nor can I believe that any of my fellow-citizens of the United States, would have discovered the least indignation, had they engrafted them all—The universal complaint has been that they have enumerated so few—But says Aristides, it would have been a work of great difficulty, if not impossible to have ascertained them—Are the fundamental rights of mankind at this day unknown? Are they so soon forgot? If they are not imprinted on our hearts, they are in several of the constitutions—Although various in form, they are certainly not contradictory in substance—It did not require the wisdom of a national convention to have reduced them into order, and such as would not have gained the suffrage of a majority, would never have been regretted by America—or, I will venture to assert, what I shall never believe, that the majority were very unworthy of the trust reposed in them—Nor yet can I believe, that the late convention were incompetent to a task that has never been undertaken in the separate States without success.

5.1.12 This constitution is to be the act of the individual members of the American empire—the highest source of terrestrial power with us—As it is a subsequent act, it not only repeals all prior acts of the same authority where it interferes with them—But being a government of the people of all the States, I do not know what right the citizens of Maryland for instance, have to expect that the citizens of Connecticut or New-Jersey, will be governed by the laws or constitution of Maryland—or what benefit a citizen of Maryland could derive from his bill of rights in a court of the United States, which can only be governed by the constitution and laws of the United States—Nor will it help the question to say, what will certainly be denied, that the future Congress may provide by law for this,—that an ordinary law of the United States can make, is an admission that it can unmake, and to submit the bills of rights of the separate States to the power of every annual national parliament, is a very uncertain tenure indeed.

5.1.13 If a citizen of Maryland can have no benefit of his own bill of rights in the confederal courts, and there is no bill of rights of the United States—how could he take advantage of a natural right founded in reason, could he plead it and produce Locke, Sydney, or Montesquieu as authority? How could he take advantage of any of the common law rights, which have heretofore been considered as the birthright of Englishmen and their descendants, could he plead them and produce the authority of the English judges in his support? Unquestionably not, for the authority of the common law arises from the express adoption by the several States in their respective constitutions, and that in various degrees and under different modifications—If admitted at all, I do not see to what extent, and if admitted, it must be admitted as unalterable by ordinary acts of legislation, which would be impossible—and it could never be of use to an individual, but in combating some national law infringing natural right.—To render this more intel-

ligible—suppose for instance, that an officer of the United States should force the house, the asylum of a citizen, by virtue of a general warrant, I would ask, are general warrants illegal by the constitution of the United States?[8] Would a court, or even a jury, but juries are no longer to exist, punish a man who acted by express authority, upon the bare recollection of what once was law and right? I fear not, especially in those cases which may strongly interest the passions of government, and in such only have general warrants been used—Suppose a case that must and will frequently happen, for such happen almost daily in England—That an officer of the customs should break open the dwelling, and violate the sanctuary of a freeman, in search for smuggled goods—impost and revenue laws are and from necessity must be in their nature oppressive—in their execution they may and will become intolerable to a free people, no remedy has been yet found equal to the task of detering and curbing the insolence of office, but a jury—It has become an invariable maxim of English juries, to give ruinous damages whenever an officer has deviated from the rigid letter of the law, or been guilty of any unnecessary act of insolence or oppression—It is true these damages to the individual, are frequently paid by government, upon a certificate of the judge that there was probable cause of suspicion—But the same reasons that would induce an English judge to give this certificate, would probably lead an American judge, who will be judge and jury too, to spare the public purse, if not favour a brother officer.

5.1.14 I could proceed with an enumeration of familiar [similar?] instances that must and will happen, that would be as alarming as prolix; but it is not my intention to ring an alarm bell—If I know myself I would rather conciliate than divide—But says Aristides the government may establish [ ] for such cases, though not commanded; what they will do I will not presume to say; but I can readily and will hereafter prove if they do, they will violate the constitution; and even admitting their power, it would be but a slender thread to [ ] so great a stake upon.[9]

5.1.15 Here I must meet a position that has been ingeniously advanced—That all powers and rights not expressly given, [ ] consequently reserved—If this is not downright political nonsense, it is at least, untrue in theory and impossible in practice—until man is gifted with one of the most important attributes of the Deity—that of fore knowledge and [ ] it will be impossible to limit *affirmatively* legislative [ ]. When a people part with the legislative power to government they can no more say, you shall make such and such [ ] than they can say, such and such events shall happen—[ ] must be regulated by events—All the precaution that [ ] to human wisdom, is the exertion of a *negative* [ ] speaking thus in the language of a bill of rights, no [ ] shall authorize, no plea of necessity shall justify the legislature in making a law to abolish or infringe the freedom of the press, or the liberty of conscience, &c.—And even [ ] these bounds are expressly and clearly affirmed, we [ ] la-

ment that they do not always prove an effectual safeguard against the power of government; but they are [ ] guard, and why shall we leave our citizens totally [ ]. A gentleman in the Pennsylvania convention, of [ ] reputation, said, that the form of the constitution—the organization of power, if a bill of rights—he had then a defensible, but unformed idea floating in his imagination [ ] however, expressed it inaccurately, and unfortunately [ ] on the wrong side of his own question.[10] A proper organization of power would most probably prevent a violation [ ] bill of rights and prove the best security of political [ ]. Such an organization is nothing more than a good [ ] a mint or die, that will make money in its proper form, [ ] the quantity of alloy must be regulated by law, or the people may be cheated by a debased currency—The truth is, that the rights of individuals are frequently opposed to the apparent interests of the majority—For this reason the greater the portion of political freedom in a form of government the greater the necessity of a bill of rights—often the natural rights of an individual are opposed to the presumed interests or heated passions of a large majority of [ ] democratic government; if these rights are not clearly and expressly ascertained, the individual must be lost; and for the truth of this I appeal to every man who has borne a part in the legislative councils of America. In such government the tyranny of the legislative is most to be dreaded.[11]—In monarchical governments, the feelings of the majority [ ] most frequently on the side of the individual from the [ ] jealousy inseperably attendant on those forms of government, where the tyranny of the executive prevails tyranny whether exercised in the garb of a despot, or [ ] plain coat of a quaker, is equally detestable, and should be guarded against.

If a bill of rights was that essential requisite to a [ ] constitution, 5.1.16
why was it omitted by a convention of the ablest men in America, a large majority of whom were unquestionably well disposed? This has been a natural inequity, and perhaps the true reason yet remains to be disclosed. I have been informed that the proposed constitution was carried through its several stages, in a very inoffensive form to the last, and that it did not assume its decided features until days before the convention rose—the changes then effected produced much difference of opinion—created some [ ] and their patience was too much exhausted to make the necessary correspondent alterations and additions. These [ ] may, I believe, be depended on, but the inference is [ ] offered as conjecture—if true, we may attribute the omission of a bill of rights, and many other imperfections to [ ] rather than design.

From the foregoing observations, many will conclude [ ] I am the 5.1.17
determined foe to the new constitution—I am [ ] its concealed or open enemy—Sorry I am to say [ ] cannot in its present state be its advocate or friend—]] it is as far preferable to the present existing confederation (considered as a national government) as substance is preferable

to form, is a truth I have as little doubt of, as [ ] very numerous defects.—The true and only question is, whether any national government whatever, ought to be [ ] to a league or confederacy administered by a diet, or [ ] congress of diplomatic deputies—And this is a question that [ ] continue to divide the ablest and best men in America [ ] misfortune it, that experience alone will decide a [ ] which perhaps no theory is competent to solve—But that [ ] proposed confederal constitution, cannot be considered [ ] such a diplomatic assembly must appear to all men—It is a national government, and a league between independent States compounded—One of those mixtures of heterogeneous qualities that will forever produce a neutral—a caput mortuum—consequently the present Congress is already found to be, but the *carcase* of a government, and a rotten [ ] too.—The momentous subject has led me farther than I [ ] intended.—My remarks will discover the hurry in which they were written—Had I leisure I would censure freely [ ] in the proposed system, that must be amended, [ ] have strong doubts whether it can be administered in its present form—In doing this I should, I am persuaded, [ ] the public that Aristides has generally erred and frequently mistated in his remarks—that he has done so intentionally [ ] neither believe myself or would wish the public to believe [ ] to err is the common portion of humanity—and to be misinformed the frequent misfortune of ARISTIDES and

A Farmer

II

29 February 1788

5.1.18 A Bill of rights is an useless, if not a dangerous thing; and a standing army, a bugbear, an hobgoblin to freighten children.—This seems to me the doctrine of *Aristides,*[12] and the common language abroad.—What amazing progress in political knowledge have the Americans made in the last ten years! Should they go on improving by such laudable and rapid discoveries, what may we not expect in the course of a few years to come? Nothing less, surely, than a demonstration, that liberty is a visionary phantom, fleeting forever from our embrace—never intended for the possession of mankind, and never existing but in the enthusiastic imaginations of some illustrious madmen.

5.1.19 We talk now with the utmost confidence of our own experience, and an appeal to the history of mankind, is considered as an insult on the sagacity and understanding, of THE CHOICE AND MASTER SPIRITS OF THIS AGE.—[13]

That we are the wisest people under the sun, seems to be no longer disputed, and those whose youthful vanity has been flattered, by a transient public applause, think that because they have come later into the world, they have therefore all the wisdom and experience, of those who have gone before them—This is the opinion of the Americans now.—Machiavelli informs us, that it was the firm persuasion of the Florentines, his countrymen, in his day, and Peter Kolben relates the same thing of the Hottentots when he was amongst them[14]—perhaps the greatest share of confidence is inseperably united with the greatest share of ignorance.

Notwithstanding all this, human nature has always been, and always will 5.1.20
continue the same, and so long will it be impossible to put *old* heads upon *young* shoulders.—It is as unnatural to be guided by the experience of others, as for one man to see with another's eyes. This fatal and unalterable law of nature, is founded not less on our presumption and confidence, than on a persuasion, which the young and unexperienced always feel, that there is some peculiar circumstance, that distinguishes their own particular case, from that which a father describes to a son, or an historian to posterity.—Where our vanity is not strong enough to despise, inclination will invent an excuse to avoid the lessons of experience; and where the passions do not entirely command, they are sure to blind the understanding.

Is there one branch of science, literary knowledge, or even art, pleasing 5.1.21
or useful to an individual, or society, that has received any improvement from the earliest records of time?—Homer, Theocritus, Pindar and Sophocles are yet unrivalled in poetry.—Thucydides, Polybius and Livy surpass all who have followed them in history.—Demosthenes and Cicero in eloquence.—Socrates, Plato and Plutarch in those moral lessons which form the human heart to virtue.—We penetrate into Grecian forests, and dive into the Tyber to rescue the relics of ancient architecture, painting, sculpture and statuary; and preserve them as the most precious and perfect models of art.—Although, perhaps, gunpowder was unknown, yet they contrived to slaughter men enough without it, and the invention has only put the cowardice of a dastardly slave in uniform, more on a level with the manly exertions of an undisciplined freeman.—The invention of printing, the most important of all modern discoveries, has rather multiplied books than increased knowledge; nor has the discovery of an eighth planet brought with it any remedy for the inclemencies of a cold winter.—Our acquaintance with the skies is as useless as balloons. There is nothing solid or useful that is new—And I will venture to assert, that if every *political institution* is not fully explained by Aristotle, and other ancient writers, yet that, there is no *new* discovery in this the most important of all sciences, for ten centuries back.[15]

Our politicians of an hour, of an empire of a day, boast of government *by* 5.1.22
representation, as a most important improvement; and whilst they discant

on its excellencies they do not scruple to assert, that it was unknown to the ancients.*—Some, indeed, have confined it to the British and their descendants.

Government, by representatives, freely chosen by the body of the people, is as old as the history of mankind, and once formed the basis of every European government now existing;[17] but as it is the most liable to corruption, it has always proved of the shortest duration; it has first degenerated into aristocracy, or the government of a few wealthy individuals, and has terminated regularly by a monarchy and standing army.—The reasoning on this progress is not essential at this moment, but as to the antiquity of government by representation, example must be produced to expose an error as general as it is surprizing.

5.1.23 The first legal government of Athens, the most ancient we have any authentic history of, was by Archons elected by the body of the people, first for one and then for five years. Solon divided the legislative from the executive, as we have done, although not exactly in the same form.—This government lasted a very few years, and was destroyed by Pisistratus, assisted by a small standing force.—The examples drawn from several modern governments of Europe will be presently adduced.—

5.1.24 But before this, it is essential that we examine what is meant by *monarchy* and *aristocracy:*—Unhappily for mankind frequent and ridiculous dispute is the least inconvenience arising from the imperfection of language.—Ambiguity and uncertainty of expression admit the imposition of dangerous doctrine, and produce more misfortune than error—Because in the government, from which we separated, the monarchy and aristocracy were attended with certain hereditary names and titles, we are to be compelled to view the *substance* of those powers as inseperable from those *forms* and *titles*.

5.1.25 Formerly the public authority exercised by one person, whether dignified with the title of Emporer, King, Stadtholder, Doge, &c. was elective, and generally revocable—as for instance, the ancient Emperors of Rome; the Emperors of Germany; the Emperor of Russia; the Kings of Denmark and Sweden; the Stadtholder of Holland; Doge of Genoa, &c.—They were seldom entrusted with any *legislative* power.—These various offices and titles, have all become hereditary, and have generally swallowed up the legislative power; except the Doge, who is only the pageant of the day, decorated with the tinsel trappings of authority, but not entrusted with the most trifling portion of its substance. Three great families have established an *hereditary*

*Is it not strange to hear the Governor of Connecticut, gravely asserting in their Convention, the novelty of government by representation, and pinning all his hopes of our future happiness, and exemption from evil on this new discovery! And yet the Governor of Connecticut is not only one of the worthiest of our citizens, but rather of uncommon information in a country, where very few are so independent in their fortunes as to afford much time to study.[16]

despotism over three-fourths of the habitable globe.—The house of HOLSTEIN, who now govern Sweden, Denmark, Norway, Russia, great part of Poland, Germany, and the greatest part of Asia, within two centuries has sprung from a gentleman of less fortune than many Americans now possess.—The house of AUSTRIA, who have usurped the imperial office of Germany, as a patrimony, and govern a great proportion of Europe, are derived, within a few centuries back, from a poor Count of Hapsburg without fortune or honor—And the mighty race of BOURBON, who possess France, Spain, the two Sicilies, two-thirds of America, and extensive dominions in Asia and Africa, sprung not long since from Hugh Capel, who, if he was not the son of a butcher (as is generally believed) was certainly of very low extraction.—There is not a kingdom in Europe, that does not contain many better families than these,—that is families, that have been longer people of property, and produced more illustrious men; but they are all involved in one common fate, reduced to a despicable slavery by these individuals, whose usurpations have been as successful as rapid, and who hold them in trembling subjection by numerous standing armies.—This is the history of MONARCHY divested of its glitter and pomp.

Where *wealth* is hereditary, *power* is hereditary, for *wealth* is *power*— 5.1.26
Titles are of very little, or no consequence—The *rich* are *nobility*, and the *poor plebeans* in all countries—And on this distinction alone, the true definition of aristocracy depends.—An *aristocracy* is that influence of power, which property may have in government; a *democracy* is the power or influence of the people or numbers, as contradistinguished from property. Machiavelli exposes the futility of an attempt to establish an aristocracy, upon any other principles than the solid distinction of property.[18]—In examining the principles of those aristocracies that now exist, we shall find hereditary wealth the only universally pervading principle and characteristic.

In *England* the aristocracy have hereditary titles, and share in the 5.1.27
legislature.—It is preserved by the power of the King to add the most wealthy and able of the commons to this order;—and if that principle, by which George Neville, Duke of Bedford, was degraded from his nobility on account of his poverty, still continued, it would be the most perfect and confirmed aristocracy in the world.—Although this aristocracy is extremely powerful, yet from the happy temperature of the government, by three well constituted estates, it has not proved oppressive; on the contrary, a firm rock, that has preserved this system from every shock of innovation.—Were the other two estates even as perfect as the aristocracy, the government might last forever.

In *Scotland*, the aristocracy have hereditary titles, but they are almost entirely deprived of any share in the legislature, and their power is much broken by the axe and confiscation.

In *Holland*, the aristocracy is composed of the wealthiest.—They hold 5.1.28

their power for life most commonly, though in some instances for a limited time;—and elections are generally, though by no means universally abolished. Their estates are hereditary, but they have no titles.—Such is the aristocracy of America, yet in its infancy, and that of the aristocratic Cantons of Switzerland,—and they are all the most odious, oppressive and abominable aristocratics in the world;—for as their power is exclusively derived from wealth, which is more frequently the reward of iniquity and oppression than merit,—iniquity and oppression will be therefore openly and without shame practised to secure that wealth, which attended by power, defends its possessor from punishment.

5.1.29 In *France* and *Spain*, the aristocracies are decorated with titles, but have no share in the legislature, yet still they are almost as powerful as the former, from their wealth;—but not so oppressive.—This wealth they hold by those fundamental laws which secure the descent of property from ancestors to heirs, on the preservation of which the King's safety, in a great measure, depends.—In fine, in all governments by *representation* or *delegation of power*, where property is secured by fixed and permanent laws, from the rage of the populace on one side, and the tyranny of a despot on the other, the aristocracy will and must rule; that is a number of the wealthiest individuals, and the heads of great families:—The perfection of all political wisdom is so to temper this aristocracy as to prevent oppression.[19]

5.1.30 Between these *two* powers, the aristocracy and democracy, that is the *rich* and *poor*, there is a constant warfare.—Sir William Temple observes, that all the disputes, factions and revolutions in government spring from this source,—that the rich want to keep what they have got, and the poor to take it from them;[20]—this is the favourable side of aristocracy, and is true where numbers unqualified by property have too great a weight in government.—Hence in such States, agrarian laws, and an abolition of debts, are always agitated; but this is only the infancy of government.—So long as the rich, only mean honestly to secure what they have lawfully gained, by their own or the industry of their ancestors, the contest is of short duration, and government, at an early period is so far strengthened as to secure property; but it is then, that the corruption of human nature discovers itself—the more we have, the more we want, and the possession of one object, becomes only the means of attaining another.—The aristocracy who move by system and design, and always under the colourable pretext of securing property, act as has been frequently said like the screw in mechanics, always gaining, holding fast what it gains, and never loosing; and in the event has ever proved an overmatch for the multitude, who never act but from their feelings, and are never permitted to feel *until it is too late;* and whose ineffectual violence, being generally attended by the outrages of despair, involves their cause in odium and horror.[21] Hence it is that unsuccessful popular insurrections have always been succeeded by a general disposition favourable to tyranny.

A great and good man has said, that an aristocracy in their progress to power is the most correct of all governments—after they have attained it, the most corrupt and abominable on earth.[22]—The honest emoluments of office, are too few to gratify the many, who must be interested in administration in order to render it effectual,—they first connive at each other,—bad laws are made,—the good are perverted and avoided,—in fine, oppression becomes general, and the multitude in a paroxism of despair generally conclude, that it is better to suffer the tyranny of one man, than one hundred.[23]

The only remedy the ingenuity of man has discovered for this evil is—a 5.1.31
properly constituted and independent executive,—a vindex injuriarum—an avenger of public wrongs; who with the assistance of a third estate, may enforce the rigor of equal law on those who are otherwise above the fear of punishment; and who may expose to public view and inquiry, those who screen their peculations under the sanction of office:[24]—How well the new proposed federal or national government, for it is a government of individuals, not of States, has provided for this great end of all government, by uniting the executive with the aristocracy, or senate, tempting the aristocracy with every executive power that can rouse or stimulate their ambition,—and how the executive will be enabled to discharge its duty against those, without whose consent it cannot act, I leave to the sensible and discerning part of my fellow-citizens. A senate should not only be composed of men of ripe age, where the violent passions have quitted the mental field, overcome by the vigor of judgment, but its chief perfection consists in such organization, that content with more than independence and a very respectable situation, they should be cut off from the active exercise of those powers which gratify personal ambition and tend to self aggrandizement or that of their friends, relatives and dependants:—That this feature of the constitution—that this union of the senate and executive will prove fatal to the liberty and happiness of America, unless corrected, I cannot doubt;—as I shall adduce examples of the same form of government, only not quite so bad as ours, terminating in despotism and a standing army, almost as soon as established.—For once let mankind listen to the counsel of experience:—This form of government is not new, it is the same form as that established in Denmark and Sweden, previous to the late revolutions, and exactly such a form as a number of wealthy and well disposed individuals, deliberately set to work, have made, and forever will make, in every age and every clime.—These examples will shew that ruin comes from a quarter entirely unexpected—they will, I hope, entirely disperse the delusion which now misleads our judgments, when we hug ourselves in the security, that we cannot be betrayed by representatives chosen every two years;—let every man, of any property, who has been active in the late revolution, and who is tolerably apprized of the sentiments of the people at large, scrutinize his

own judgment; and let him ask himself whether in even the present disposition of the lower orders of our citizens, who bear with great impatience and reluctance their present inconveniences and incumberances, and those trifling distinctions and pre-eminences, which our present disinterested forms of government afford so trifling, that offices almost go a begging,—if in the event of the proposed plan the burthens of government should be encreased, greater distinctions among citizens arise, and emoluments of office be augmented—Will not the multitude croud with joy to the standard erected by any man in whom they have the least confidence, who will promise them vengeance on those whom they will consider as the authors of all their misfortunes, and to rid them at once of the evils of complicated government and numerous officers, whom they always think they pay, only to plunder them?

5.1.32 To attempt to form a government composed simply of aristocracy and democracy—where rich and poor are jointly to govern—is long of yore represented in the fable of the league between the wolves and sheep—The sheep were soon compelled to recall the shepherd and his dogs.—

5.1.33 But let us here for a moment return to *Aristides*.—He asks, what European power is without a standing army? and which has lost its liberties by them?[25] Many of his remarks betray a misrecollection of the A, B, C, of politics, and some of the historical questions discover a total absence of memory.—It may be answered, that both political and civil liberty have long since ceased to exist in almost all the countries that now employ standing troops, and that their slavery has in every instance been effected and maintained by the instrumentality and invariable obedience of these living machines to their chief.—I grant that the discontent of the people under the oppressions of a complicated aristocratical government has always paved the way to the despotism of one man;—the progress is natural, troops must be raised in such circumstances to compel an unwilling obedience to the laws—these troops must not be part of the discontented—they cannot be trusted—they must not feel like them, and must therefore have separate interests—they must be paid and well paid—they must be admitted to a preference and pre-eminence over those whom they subdue—Here are new taxes and new oppressions, which cause insurrections.—A foreign enemy is expected to take advantage of the confusion; the people are not to be trusted—Your liberties (as they will then be called) must be committed to the guardianship of the standing army—a day which, as I am informed, a member in the late convention declared he wished to see[26]—The people look anxiously for the punishment of their oppressors, and they look up to that man who will gratify their revenge on the aristocracy.—All senates have been, and always will be for raising standing troops, notwithstanding they have invariably found to their destruction, that no oaths can prevent them, from following the fortunes of a favourite leader, whose orders their rigid discipline has accustomed them to obey.—

That this is not the painting of a warm imagination, the history of those governments that were far less complicated and onerous than ours must prove, will evidence—Thirteen complicated forms all under one form of government, still more complicated, seem to bid defiance to all *responsibility*, (the only test of good government) as it can never be discovered where the fault lies—the blame will be shifted from the States to Congress—from Congress to the States—from one State to another, and so from one shoulder to another, until investigation is tired—the burthen of double government complete throughout, when we can scarce support its expence single.—This double officering from front to rear, will prove so extremely burthensome, and above all, this double set of laws will afford so plentiful an harvest of oppression and confusion, that I do not see what right we have to expect a more fortunate fate, than those nations who had happier and fairer prospects. 5.1.34

Let us now view the catastrophes of these governments.—First of *Sweden*—previous to the year 1772—the States or legislature was composed of four orders—I. *Nobility*, who were only as we are informed the heads of the wealthiest families represented in a senate by selection—the old nobility having been almost to a man extirpated by that Nero of the North, Christian IId, who made a general massacre of the order assisted by the populace, who hunted them like bloodhounds—II. The *clergy*—III. The *citizens* chosen by the magistrates and common council of each corporation, their number about 150—IV. The *farmers*, chosen in each district by a majority of voices out of the landholders, their number 180.—It would seem as if theory could hardly invent a more perfect *legislature*.—The *executive* was committed to one man, dignified indeed by the title of King, a word to which we attach ideas unauthorized by its meaning—but this King however (who was elected for life) was in fact, hardly more than a president of the senate, without whose concurrence he could exercise none of the important powers belonging to the executive branch:—Although the King and every officer, civil and military, were sworn to support this constitution, yet there was but one military officer found who regarded this oath, when solicited by Gustavus to take a contrary oath to support its usurpation.—This singular man had the courage to declare, that the Prince ought to have no confidence in him, if he should by one oath violate another.—A few grenadiers with bayonets fixed, ordered to the senate-room, and a very few regiments previously prepared, effected the most sudden and unexpected revolution that ever mankind were the melancholy witnesses of.—A few days after the King published that form of government, which it was his *will and pleasure the Swedes* and *their posterity* should be governed by—The Americans ought to read it—they will find it in William's history of Northern Governments.—In the preface is this remarkable passage: "We, whose names are hereunto subscribed, Senators, States, Counts, Barons, Bishops, Knights, and Nobles, Military Officers, Citizens, and Commons, who are 5.1.35

actually here assembled, make known for us and our *absent* citizens and commons, that many of our citizens under the name of liberty had assumed a power and domination that was insupportable, &c. &c. &c."[27]

5.1.36 In *Denmark,* the revolution in 1666, presents exactly the same story over again.—The constitution was the same as in Sweden precisely, senate, representatives of the people, and an executive elected for life, clogged in the same manner by the senate.—The representatives of the people became at last so tired of the senate, that they made a formal offer of their liberties to Frederick IIId, and actually compelled the senate to give their assent.—This man whose moderation and real disinterested virtue had captivated the affections of all ranks, with the assistance of 24,000 troops, selected chiefly from foreign vagabonds, established the most despotic government, that ever mankind groaned under *for them* and *their posterity;*[28]—and no doubt with the best intentions, as from his declaration we find he believed what Mr. Pope has wrote, and what many good, but mistaken men, both in Europe and America, have thought and now think—

For forms of government let fools contest
That which is best administered, is best.—[29]

and as for the *good* administration he thought he could very well trust that to *himself* and *his posterity.*

5.1.37 It was thus that the hardy descendants of the Goths and Vandals lost their liberties, and from the boldest and most enterprizing they have degenerated into the most miserable and depressed of mankind, the country depopulated, commerce destroyed, dirty minions, and court-favourites plundering every thing and nothing flourishing but the standing army.—For the truth of this picture I refer to William's history.

5.1.38 In *Holland,* at this moment, the standing troops adhering to the Stadtholder (who from the best accounts proved a traitor to his country last war) in conjunction with those bred under that grand Prince of despots, the late King of Prussia, have disarmed the Burghers, the national militia, and are now changing the form of government, under the pretext of throwing power into the hands of the States-General, but actually paving the way for the *hereditary despotism* of William of Nassau.

5.1.39 It is so long since the other States of Europe have lost all semblance of liberty, that it may be difficult to trace their revolutions.—In *France* the oppressions of the aristocracy enabled first the politic Lewis IId, and afterwards Lewis XIIIth, and Cardinal Richlieu, by the assistance of the mob and standing army, since become the standing law of France, to destroy every vestige of freedom.

5.1.40 In *Spain* the immense estates, which by the six fortunate marriages of the house of Austria (as they are called) became concentered in the person of Charles Vth.—The mines of the two Indies then lately discovered which became the property of his family, *and above all* the obstinacy of that hardy, disinterested and frugal priest, Ximenes, finished at a blow the power of the Cortes, who were chiefly composed of representatives elected by the people

in the several States of Old and New Castile, Arragon, Catalonia, &c.—For *Spain* was at that time divided into as many States almost as we are, and perhaps more independent of each other, having separate legislatives and executives, and *the general power not entrusted with the right of taxation.*—However, a standing army has from that time destroyed all hopes of a revolution in favour of the rights of mankind.

It will be asked how has *England* preserved her liberties, with at least an apparent standing army?—I answer, she did loose them; but as there was no standing army until lately, she regained them again:—She lost them under the Tudors, who broke the then oppressive power of the aristocracy, but the unparalleled avarice of Henry VIIth, the boundless extravagance of Henry VIIIth, the short reign of Edward VIth, (which was but the sickly blaze of a dying candle) the bigotry of that weak woman Mary, who had no other object than religious persecution, and lastly the parsimony of Elizabeth, who had no children of her own to provide for, and who hated her legal successor and his family—all conspired to prevent their establishing a military standing force, sufficient to secure their usurpations; and the nation recovered from their paroxism under the Stuarts, who were too weak and too wicked to command even respect, notwithstanding their dignity.—On the revolution in 1688, the patriots of that day formed some glorious bulwarks, which seem as yet to have secured them from the evils and danger of their present standing army, though still in my opinion, they hold their remaining liberties by a very precarious tenure indeed, as the first enterprizing and popular Prince will most probably convince them. 5.1.41

Let us now examine these defences and compare them with those of the proposed constitution. 5.1.42

In *England,*[30] by their bill of rights, a standing army is declared to be contrary to their constitution, and a militia the only natural and safe defence of a free people—This keeps the jealousy of the nation constantly awake, and has proved the foundation of all the other checks.

In the American constitution, there is no such declaration, or check at all.

In *England,* the military are declared by their constitution to be in *all* cases subordinate to the civil power; and consequently the civil officers have always been active in supporting this pre-eminence.

In the American constitution, there is no such declaration.

In *England,* the mutiny bill can only be passed from year to year, or on its expiration every soldier is as free, and the equal by law of the first general officer of the land. 5.1.43

In *America,* the articles of war (which is the same thing) has been already considered as *perpetual* (as I am well informed) under even the present Congress, although the constitutions of all the States positively forbid any standing troops at all, much less laws for them.

In *England,* the appropriation of money for the support of their army must be from year to year; in America it may be for double the period.

How favorable is this contrast to Britain—that Britain which we lavished

our blood and treasure to separate ourselves from, as a country of slavery—But we then held different sentiments from those now become so fashionable; for this I appeal to the constitutions of the several States.

5.1.44 In the declaration of rights of *Massachusetts*, sect. 17.—The people have a right to keep and to bear arms for the common defence. And as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature, and the military power shall always be held in exact subordination to the civil authority, and be governed by it.

Sect. 27. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

Declaration of rights of *Pennsylvania*, sect. 13.—That the people have a right to bear arms for the defence of themselves and the State; and as standing armies in the time of peace, are dangerous to liberty, they ought not to be kept up: And that the military should be kept under strict subordination to, and governed by the civil power.

Declaration of rights of *Maryland*, sect. 25.—That a well regulated militia is the proper and natural defence of a free government.

Sect. 26. That standing armies are dangerous to liberty, and ought not to be raised or kept without consent of the legislature.

Sect. 27. That in all cases and at all times the military ought to be under strict subordination to, and controul of the civil power.

Sect. 28. That no soldier ought to be quartered in any house in time of peace, without the consent of the owner; and in time of war, in such manner only as the legislature shall direct.

Declaration of rights of *Delaware*, in the same words as *Maryland*.

Declaration of rights of *North-Carolina*, sect. 17.—That the people have a right to bear arms for the defence of the State; and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by the civil power.

Constitution of *South-Carolina*, sect. 42.—That the military be subordinate to the civil power of the State.

5.1.45 But we are told by *Aristides*, that our poverty is our best security against many standing troops.[31]—Are *we then, and our posterity*, always to be poor? This security would certainly cease with our poverty; but the truth is, our poverty instead of preventing will be the first cause of the increase of a standing army.—Our poverty will render the people less able to pay the few troops it is admitted we must keep.—This expence added to the immense public and private debts, which an efficient government seems to be requisite to enforce payment of, together with the onerous and complicated civil governments, both Continental and State, will be productive of future un-

easiness and discontent.—The most sanguine among us must expect some turbulence and commotion; let the smallest appearance of commotion peep out again in any part of the Continent, and there is not a rich man in the United States, who will think himself or his property safe, until *both* are surrounded with standing troops. This is the only public purpose for which *these* men ever did, or ever will willingly contribute their money. But then, according to their laudable custom, they must have interest for their advances;—this increases the public burthens—Commotion is followed by commotion, until the spirit of the people is broken and sunk by the halter, the scaffold, and a regular standing army.—

Yet notwithstanding this I am as sensible as *Aristides*, that a few troops 5.1.46
will be necessary for the United States, for those very services which he says it would be oppressive to a free people constantly to execute.—The western territory, some guards, arsenals and posts whenever our finances will admit our attention to that safe and honorable defence, a navy—will require a few men in constant pay. But it is this necessity that alone causes all my apprehension. There is no public *abuse* that does not spring from the necessary *use* of power,—it is that insensible progress from the *use* to the *abuse*, that has led mankind through scenes of calamity and woe, that make us now shrink back with horror, from the history of our species. Do we not see at this moment, that even the present Congress have been compelled by *necessity* to embody and maintain troops *in time of peace* for these purposes; and yet the raising or maintaining one man is as complete a violation of the bill of rights of the several States, as the raising 100,000.—This necessary infraction of the only check that existed, has already caught all America to view the approach of a standing army, with composure and indifference, nay when a limitation of the evil is proposed, *Aristides* asks without hesitation—how shall we distinguish between *peace* and a *threatened war?* Shall we not be surprized, unprepared?

I must confess that from the vigor and resolution with which we began the 5.1.47
erection of these our fabrics of freedom, I was persuaded that the grave would have closed on my bones, before this question would be publicly proposed in America.—Are we then to look up to a standing army for the defence of this soil from foreign invasion? Have we forgot that a few freemen of Sparta defended their country against a million of Persian slaves? Have not an handful of free Swiss farmers, defended their country against the numerous veteran armies, which Burgandy, Austria and Bourbon have led against them? They beat them among their rocks, and then descended into the plains and beat them, and they will beat them forever on any ground, to all eternity, whilst they remain free and are defending that freedom.—Did it not cost the Spaniards more time and blood to subdue a few republican unarmed Indians, on the little island of Gran Canaria, than they expended in the destruction of the mighty empires of Mexico and Peru,

defended by numerous standing armies? Did their arms meet with any resistance on this Continent, until they penetrated to the free republics of Chili?—I had rather trust the defence of a country to the savage valour of a few Shawnesse and Delawares, who live in freedom and value the blessing, than to the numerous hosts of civilized slaves that surround the thrones of Delhi, Pekin and Ispahan—But a few years have elapsed since that feather of a King, Lewis XIVth, overrun all Holland in a few days, and became master, almost without resistance, of that country which the veteran infantry of Spain, led by the most celebrated Captains, an age of chivalry produced, Alva, Alexander Farneza, and the Marquis Spinola, were forced to gain inch by inch, from a few desperate Burghers. When the French troops came, the people were universally discontented with the oppressions of the rich, as soon as they had reeked a brutal vengeance on the aristocracy, the latent courage of the nation revived, and Lewis was obliged to scamper off as fast as he came.—Let the body of the people be interested in the defence of a *good* government, and my countrymen need not fear being surprized by all the slaves and brutes that the despots of the old and new world can arm against them.—There will then need no distinction of a threatened war, and our establishment may at all times be limited to the purposes just mentioned.—

5.1.48 But perhaps standing troops may be wanted to suppress *domestic* insurrections? The people cannot be trusted to [ ] the people, is becoming a cant expression; but I fervently hope by no means a general sentiment. I am free to declare, that I never wish to see any measure of government enforced by arms, which the yeomanry of the United States will not turn out to support.

5.1.49 My countrymen! never forget this truth, which the sad experience of your fellow-mortals has witnessed with their blood!—Remember it yourselves!—Engrave it on the tender minds of your children, as the first article of their political creed—that, *There is no form of government safe with a standing army, and there is none that is not safe without.*—A people may frequently be so unfortunate as to loose their liberties. They may be so foolish as to give them away, as in Denmark, where not only the senators and representatives of the people, but also every man in the whole empire of the smallest note, or consequence, signed a formal surrender of their liberties on an instrument now kept in the archives of that kingdom—an everlasting monument of—*how catching a thing this signing of names is;* or of what is now called—*a modest deference for the opinion of others.* But whether they loose them, or give them away, they will soon regain them, or resume them, unless they are prevented by a *standing army*—And also recollect, my fellow-citizens, *That what is doctrine to day, may be treason to-morrow.*

A Farmer.

III
7 March 1788

There are but two modes by which men are connected in society, the one 5.1.50
which operates on individuals, this always has been, and ought still to be called, *national government;* the other which binds States and governments together (not corporations, for there is no considerable nation on earth, despotic, monarchical, or republican, that does not contain many subordinate corporations with various constitutions) this last has heretofore been denominated a *league or confederacy*.—The term *fœderalists* is therefore improperly applied to themselves, by the friends and supporters of the proposed constitution.—This abuse of language does not help the cause,—every degree of imposition serves only to irritate, but can never convince.—They are *national men,* and their opponents, or at least a great majority of them, are *fœderal,* in the only true and strict sense of the word.—[32]

Whether any form of *national* government is preferable for the Ameri- 5.1.51
cans, to a league or confederacy, is a previous question we must first make up our minds upon.—There will then remain still another—Whether, if any, is the one proposed the best, in our circumstances safe, and such a one as we should *unconditionally* receive? and if ever duty required deliberation before decision, it calls for it now, and in terms too strong to be resisted or evaded.—Let the light come in *free* from every quarter. If reason cannot satisfy, experiment will determine. But even then, is it not the duty of those to whom the happiness of so great a proportion of the human species is entrusted, to conduct that experiment with the utmost coolness and fairness, with all those precautions which the wisdom of antiquity affords, and finally qualified with those securities to our liberty, that, should it prove oppressive or impracticable, ourselves, or at least our posterity, may not be prevented, by the power or influence of a civil or *military oligarchy,* from adopting the alternative?

The advantages or disadvantages of *national government,* open too wide 5.1.52
a field of discussion for my leisure or talents.—Some few remarks I shall cursorily offer. That a *national government* will add to the dignity and encrease the splendour of the United States abroad, can admit of no doubt: It is essentially requisite for both. That it will render government, and officers of government, more dignified at home is equally certain. That these objects are more suited to the manners, if not genius and disposition of our people is, I fear, also true. That it is requisite in order to keep us at peace among ourselves, is doubtful. That it is necessary, to prevent foreigners from dividing us, or interfering in our government, I deny positively; and after all, I have strong doubts whether all its advantages are not more *specious* than *solid.*—We are vain, like other nations,—we wish to make a

noise in the world; and feel hurt that Europeans are not so attentive to America in *peace*, as they were to America in *war*. We are also, no doubt, desirous of cutting a figure in history.—Should we not reflect, that quiet is happiness?—That content and pomp are incompatible?—I have either read or heard this truth, which Americans should never forget,—*That the silence of historians is the surest record of the happiness of a people*.—[33]The Swiss have been four hundred years the envy of mankind, and there is yet scarcely an history of their nation. What is history, but a disgusting and painful detail of the butcheries of conquerors, and the woeful calamities of the conquered? Many of us are proud, and are frequently disappointed that office confers neither respect or difference. No man of merit can ever be disgraced by office. A rogue in office may be feared in *some* governments—he will be respected in *none*.—After all, what we call respect and difference only arise from contrast of situation, as most of our ideas come by comparison and relation. Where the people are free there can be no great contrast, or distinction among *honest* citizens *in* or *out* of office.—In proportion as the people loose their freedom, every gradation of distinction, between the *Governors* and *governed* obtains, until the former become *masters*, and the latter become *slaves*. In all governments virtue will command reverence.—The divine Cato knew every Roman citizen by name, and never assumed any pre-eminence; yet Cato found, and his memory will find, respect and reverence in the bosoms of mankind, until this world returns into that nothing, from whence Omnipotence called it.—That the people are not at present disposed for, and are actually incapable of, governments of simplicity and equal rights, I can no longer doubt—But whose fault is it? We make them bad, by bad governments, and then abuse and despise them for being so. Our people are capable of being made any thing, that human nature was or is capable of, if we would only have a little patience and give them good and wholesome institutions; but I see none such and very little prospect of such.—Alas! I see nothing in my fellow-citizens, that will permit my still fostering the delusion, that they are now capable of sustaining the weight of SELF-GOVERNMENT:[34] A burthen to which Greek and Roman shoulders proved unequal.—The honor of supporting the dignity of the human character, seems reserved to the hardy Helvetians alone.—If the body of the people will not govern themselves, and govern themselves *well too*, the consequence is unavoidable.—A FEW will, and must govern *them*.—Then it is that government becomes truly a government by *force* only,—where men *relinquish part* of their natural rights to secure the *rest*, instead of an union of will and force, to protect *all* their natural rights, which ought to be the foundation of every rightful social compact.—Whether *national* government will be productive of internal peace, is too uncertain to admit of decided opinion.—I only hazard a conjecture when I say, that our state disputes, *in a confederacy*, would be disputes of levity and passion, which would subside before injury.—The people being free, government

having no right to them, but they to government, they would separate and divide as interest or inclination prompted—as they do at this day, and always have done, in Switzerland—In a *national* government, unless cautiously and fortunately administered, and disputes will be the deep-rooted differences of interest, where part of the empire must be injured by the operation of general law; and then should the sword of government be once drawn (which Heaven avert) I fear it will not be sheathed, until we have waded through that series of desolation, which France, Spain, and the other great kingdoms of the world have suffered, in order to bring so many separate States into uniformity, of government and law; in which event the legislative power can only be entrusted to one man (as it is with them) who can have no *local attachments, partial interests,* or *private views* to gratify.[35]

That a *national* government will prevent the influence or danger of foreign intrigue, or secure us from invasion, is in my judgment directly the reverse of the truth:—The only *foreign,* or at *least evil foreign influence,* must be obtained through corruption.—Where the government is lodged in the body of the people, as in Switzerland, they can never be corrupted; for no prince, or people, can have resources enough to corrupt, the *majority of a nation;*—and if they could, the play is not worth the candle.—The facility of corruption is encreased in proportion as power tends by representation or delegation, to a concentration in the *hands of a few*.—The French have kept a minister in Switzerland for 300 years back to persuade them to place power in their general Assembly or Diet.—The Swiss have always proved faithful allies and friends to France,—but have laughed at her political advice—as the assembly of Foxes treated with derision the curtailed Reynard—who advised them to part with their cumbersome quantity of brush.—As to any nation attacking a number of confederated independent republics, who are always as populous as brave, it is not to be expected, more especially as the wealth of the empire is there universally diffused, and will not be collected into any one overgrown, luxurious and effeminate capital to become a lure to the enterprizing ambitious.—That extensive empire is a misfortune to be deprecated, will not now be disputed.—The balance of power has long engaged the attention of all the European world, in order to avoid the horrid evils of a general government.[36]—The same government pervading a vast extent of territory, terrifies the minds of individuals into meanness and submission.—All human authority, however organized, must have confined limits,—or insolence and oppression will prove the offspring of its grandeur,—and the difficulty or rather impossibility of escape prevents resistance.—Gibbon relates that some Roman Knights who had offended government in Rome were taken up in Asia, in a very few days after.—It was the extensive territory of the Roman republic that produced a Sylla, a Marius, a Caligula, a Nero, and an Eliagabalus.—In small independent States continguous to each other, the people run away and leave

5.1.53

despotism, to reek its vengeance on itself; and thus it is that moderation becomes with them, the law of self-preservation.[37]—These and such reasons founded on the eternal and immutable nature of things have long caused and will continue to cause much difference of sentiment throughout our wide extensive territories—From our divided and dispersed situation, and from the natural moderation of the American character, it has hitherto proved a warfare of argument and reason.

A Farmer.

(To be continued.)

18 March 1788

(Continued from No. 357.)

5.1.54 Thus it was that the opposite qualities of the first confederation were rather caused by than the cause of two parties, which from its first existence began and have continued their operations, I believe, unknown to their country and almost unknown to themselves—as really but few men have the capacity or resolution, to develope the secret causes, which influence their daily conduct.—The old Congress was a national government and an union of States, both brought into one political body[;] as these opposite powers, I do not mean parties, were so exactly blended and very nearly balanced, like every artificial, operative machine where action is equal to re-action—it stood perfectly still—it would not move at all—Those who were merely confoederal in their views, were for dividing the public debt—those who were for national government, were for encreasing of it—Those who thought any national government would be destructive to the liberties of America, as I imagine, assisted those who thought it our only safety, to put every thing as wrong as possible.—Requisitions were made, which every body knew it was impossible to comply with—either in 82 or 83, ten millions of hard dollars, if not thirteen, were called into the continental treasury, when there could not be half that sum in the whole tract of territory between Nova-Scotia and Florida—The States neglected them in despair—The public honor was tarnished, and our governments abused by their servants and best friends—In fine, it became a cant word—things are not yet bad enough to mend—However, as great part of the important objects of society were entrusted to this mongrel species of general government, the sentiment of pushing it forward became general throughout America, and the late Convention met at Philadelphia under the uniform impression, that such was the desire of their constituents—But even then the advantages and disadvantages of national government operated so strongly, although silently,

on each individual, that the conflict was nearly equal—A third or middle opinion, which always arises in such cases, broke off and took the lead—the national party assisted, pursued steadily their object—the foederal party dropt off, one by one, and finally, when the middle party came to view the offspring which they had given birth to, and in a great measure reared, several of them immediately disowned the child—Such has been hitherto the progress of party, or rather of the human mind dispassionately contemplating our separate and relative situation, and aiming at that perfect completion of social happiness and grandeur, which perhaps can be combined only in idea—Every description of men entertain the same wishes (excepting perhaps a few very bad men of each)—they forever will differ about the mode of accomplishment—and some must be permitted to doubt the practibility.

As our citizens are now apprized of the progress of parties or political opinions on the continent, it is fit they should also be informed of the present state, force and designs of each, in order that they may form their decisions with safety to the public and themselves—this shall be given with all the precision and impartiality the author is capable of. 5.1.55

America is at present divided into three classes or descriptions of men, and in a few years there will be but two. 5.1.56

The first class comprehends all those men of fortune and reputation who stepped forward in the late revolution, from opposition to the administration, rather than the government of Great-Britain—All those aristocrats whose pride disdains equal law—Many men of very large fortune, who entertain real or imaginary fears for the security of property—Those young men, who have sacrificed their time and their talents to public service, without any prospect of an adequate pecuniary or honorary reward—All you people of fashion and pleasure who are corrupted by the dissipation of the French, English and American armies; and a love of European manners and luxury—The public creditors of the continent, whose interest has been heretofore sacrificed by their friends, in order to retain their services on this occasion—A large majority of the mercantile people, which is at present a very unformed and consequently dangerous interest—Our old native merchants have been almost universally ruined by the receipt of their debts in paper during the war, and the payment in hard money of what they owed their British correspondents since peace—Those who are not bankrupts, have generally retired and given place to a set of young men, who conducting themselves as rashly as ignorantly, have embarrassed their affairs and lay the blame on the government, and who are really unacquainted with the true mercantile interest of the country—which is perplexed from circumstances rather temporary than permanent—The foreign merchants are generally not to be trusted with influence in our government—they are most of them birds of passage—some perhaps British emissaries encreasing and rejoicing in our political mistakes, and even those who have settled among

us with an intention to fix themselves and their posterity in our soil, have brought with them more foreign prejudices, than wealth—time must elapse before the mercantile interest will be so organized as to govern themselves, much less others, with propriety: And lastly, to this class I suppose we may ultimately add the *tory interest* with the exception of very many respectable characters, who reflect with a gratification mixed with disdain, that those principles are now become fashionable for which they have been persecuted and hunted down—which, although by no means so formidable as is generally imagined, is still considerable—They are at present wavering—they are generally, though with very many exceptions, openly for the proposed, but secretly against any American government—*A burnt child dreads the fire*—but should they see any fair prospect of confusion arise, these gentry will be off at any moment for these five and twenty years to come—Ultimately should the administration promise stability to the new government, they may be counted on as the Janizaries of power, ready to efface all suspicion by the violence of their zeal—In general, all these various people would prefer a government, as nearly copied after that of Great-Britain, as our circumstances will permit—some would strain these circumstances—others still retain a deep rooted jealousy of the executive branch and strong republican prejudices as they are called—finally, this class contains more aggregate wisdom and moral virtue than both the other two together—it commands nearly two-thirds of the property and almost one half the numbers of America, and has at present, become almost irresistible from the name of the truly great and amiable man who it has been said, is disposed to patronize it, and from the influence which it has over the second class—This class is nearly at the height of their power, they must decline or moderate, or another revolution will ensue, for the opinion of America is becoming daily more unfavorable to those radical changes which high-toned government requires:—A conflict would terminate in the destruction of this class, or the liberties of their country—May the Guardian Angel of America prevent both!

5.1.57 The second class is composed of those descriptions of men who are certainly more numerous with us than in any other part of the globe—*First, those men* who are so wise as to discover that their ancestors and indeed all the rest of mankind were and are fools. We have a vast over proportion of these great men, who, when you tell them that from the earliest period at which mankind devoted their attention to social happiness, it has been their uniform judgment, that a government over governments cannot exist—*that is two governments* operating on the same individual—assume the smile of confidence and tell you of two people travelling the same road—of a perfect and precise division of the duties of the individual: Still however, the political apothegm is as old as the proverb—*That no man can serve two masters,* and whoever will run their noddles against old proverbs will be sure to break them, however hard they may be, and if they broke only their own, all

would be right; but it is very horrible to reflect that all our numskulls must be cracked in concert.—*Second*—The *trimmers* who from sympathetic indecision are always united with, and when not regularly employed, always fight under the banners of these great men. These people are forever at market and when parties are nearly equally divided, they get very well paid for their services. *Thirdly*—The *indolent*, that is almost every second man of independent fortune you meet with in America—*these are quite easy, and can live under any government.* If men can be said to live, who scarcely breathe, and if breathing was attended with any bodily exertion, would give up their small portion of life in despair. These men do not swim with the stream as the trimmers do, but are dragged like mud at the bottom. As they have no other weight than their fat flesh, they are hardly worth mentioning when we speak of the sentiments and opinions of America. As this second class never can include any of the yeomanry of the union, who never affect superior wisdom, and can have no interest but the public good, it can be only said to exist at the birth of government, and as soon as the first and third classes become more decided in their views, this will divide with each and dissipate like a mist, or sink down into what are called moderate men, and become the tools and instruments of others. These people are prevented by a cloud from having *any* view; and if they are not virtuous, they at least preserve the appearance which in this world amounts to the same thing.

At the head of the third class appear the old rigid republicans, who 5.1.58
although few in number, are still formidable—Reverence will follow these men in spite of detraction, as long as wisdom and virtue are esteemed among mankind—they are joined by the true *democrats*, who are in general fanatics and enthusiasts, and some few sensible, charming madmen—a decided majority of the *yeomanry* of America will, for a length of years, be ready to support these two descriptions of men; but as this last class is forced to act as a residuary legatee, and receive all the trash and filth—it is in some measure disgraced and its influence weakened, by 3dly, the free-booters[38] and plunderers, who infest all countries and ours perhaps as little as any other whatever—these men have that natural antipathy to any kind or sort of government, that a rogue has to a halter. In number they are few indeed—such characters are the offspring of dissipation and want, and there is not that country in the world where so much real property is shared so equally among so few citizens, or where property is as easily acquired by fair means, very few indeed will resort to foul. Lastly, by the poor mob, infoelix pecus! the property of whoever will feed them and take care of them—let them be spared—let the burthen of taxation sit lightly on their shoulders, but alas! this is not their fate—it is here that government forever falls with all its weight—it is here that the proposed government will press where it should scarcely be felt.—

Oves bis mulget in hora, et succus pecori et lac subducitur agnis.[39]

If ever a direct tax is laid by the general government, it must, if not from 5.1.59

necessity, at least from propriety, be laid on polls—it is the only one I believe to be practicable—there ought then to be some security that they avoid direct taxation where not absolutely indispensible, and some better security than the opinion of *Aristides*.

5.1.60 In this class may be counted men of the greatest mental powers and of as sublime virtue as any in America—they at present command nearly one-third of the property and above half the numbers of the United States, and in either event [, adoption of the Constitution or not,] they must continue to encrease in influence by great desertions from both the other classes[:]—If the government is adopted, [they will increase] by the numerous, discontented and disappointed, and from that natural jealousy, which Englishmen and their descendants always will retain, of their government and Governors. If the government is not adopted theirs will be the prevalent opinion. The object of this class either is or will be purely fœderal—an union of independent States, not a government of individuals: And should the proposed fœderal plan fail, from the obstinancy of those who will listen to no *conditional* amendments, although such as they cannot disapprove; or should it ultimately in its execution upon a fair trial, disappoint the wishes and expectations of our country: An union purely fœderal is what the reasonable and dispationate patriots of America must bend their views to. My countrymen, preserve your jealousy—reject suspicion, it is the fiend that destroys public and private happiness. I know some weak, but very few if any wicked men in public confidence; and *learn* this most difficult and necessary lesson:—That on the preservation of parties, public liberty depends. Whenever men are unanimous on great public questions, whenever there is but one party, freedom ceases and despotism commences. The object of a free and wise people should be so to balance parties, that *from the weakness of all you may be governed by the moderation of the combined judgments of the whole, not tyranized ever by the blind passions of a few individuals.*[40]

A Farmer.

IV
21 March 1788

5.1.61 I have said that the boasted birthright of Englishmen and their posterity—*the trial by jury in civil cases,* is destroyed under the proposed fœderal constitution; that the hope of its re-establishment by the future Congress is at best doubtful; that its tenure, depending on the fluctuating breath of annual or biennial sessions, is uncertain; and finally, I denied the power of reviving it by a *Congressional law* at all, as it would be a violation of the

constitution:[41]—It may be expected that in a cause like this, assertion and proof should go, hand in hand.

5.1.62 It has ever been contended, at least on one side, that the proposed Congress are to exercise *no power not expressly vested in them by the fœderal plan*. This is the position of *Aristides*, and of all the friends of the system.—It is now asked, is the power of establishing juries in *civil* cases by Congress, given in that constitution? It must be answered NO, not at least in express words.—Is it then given by *implication?* If so great an authority can be taken from the judges, the judiciary, an independent branch of government, by the legislature, and vested in a distinct branch, a jury, I do not see in what *judiciary independence* consists.—Can these judical powers, vested in the judges, by the constitution, which gives *them* the cognizance of certain causes, be divested by an *implied* legislative power? If we imply this power, may we not imply any other? And does not the doctrine of *implication* totally defeat the fundamental position of *Aristides*, and the friends of the *new* government? But moreover does not *Aristides*, and every lawyer, know that in the interpretation of all political as well as civil laws, this fundamental maxim must be observed, *That where there are two objects in contemplation of any legislature, the express adoption of one, is the total exclusion of the other;* and that the adoption of juries in *criminal* cases, in every legal interpretation, amounts to an absolute rejection in *civil* cases:—If the right of establishing juries, by a *Congressional* law is admitted at all, it must be admitted, as an *inherent legislative right*, paramount to the constitution, as it is not derived from it, and then the power that can make, can by law unmake; so that referring this power to a source of authority *superior* to the act of government, would leave us without any juries at all (even in *criminal* cases) if Congress should so please; which position can never be the object of either friends or enemies to the system at present.—If it is defective, it is still bad policy to make it worse; but still in every view, we must reflect, that the establishment of trials by jury, belongs to *political*, not to *civil* legislation. It includes the right of organizing government, not of regulating the conduct of individuals, as the following enquiry will prove; we must never give an assembly the power of giving itself power.

5.1.63 As the worth and excellence of this mode of trial, preserved and handed down from generation to generation for near two thousand years, has drawn down the enthusiastic encomiums of the most enlightened lawyers and statesmen of every age; as it has taken deep root in the breast of every freeman, encompassed by the defences of affection and veneration, a repetition of its praises would be as tedious as useless: Some remarks however, still remain to be made, which will place this subject in a more important and conspicuous view.

5.1.64 The trial by jury, is the only remaining power which the Commons of England have retained in their own hands, of all that plentitude of authority and freedom, which rendered their northern progenitors irresistible in war,

and flourishing in peace.—The usurpations of *the few*, gradually effected by artifice and force, have robbed *the many*, of that power which once formed the basis of those governments, so celebrated by mankind.—The government of Sparta, the form of which, it is said, has continued from the days of Lycurgus to our age, preserving its model amidst those overwhelming tides of revolution and shipwrecks of governments, which Greece has sustained for near three thousand years; the same form of government among the Saxons and other Germans, consisting of King, Lords and Commons, applauded by Tacitus and Machiavelli, were thus distinguished from the present government of England—The power of the Commons resided with them, not in representatives but in the body of the people.—*De minoribus rebus, principes consultant; de majoribus omnes*, are either the words of Tacitus or Caesar.[42] The administration of *ordinary* affairs was committed to the select men; but all important subjects were deliberated on by the whole body of the people.—Such was the constitution of Sparta, and of England, when Machiavelli gives them as a model, for there can be no doubt but that the *folk-motes* of the Saxons were not formed by representation—The venerable remembrance of which assemblies, hung long about the affections of Englishmen, and it was to restore them that they offered such frequent libations of their noblest blood; but the usurpations of *the few* have been unwearied and irresistible, and the trial by jury is all that now remains to *the many*.

5.1.65 *The trial by jury is—the democratic branch of the judiciary power*—more necessary than representatives in the legislature; for those usurpations, which silently undermine the spirit of liberty, under the sanction of law, are more dangerous than direct and open legislative attacks; in the one case the treason is never discovered until liberty, and with it the power of defence is lost; the other is an open summons to arms, and then if the people will not defend their rights, they do not deserve to enjoy them.

5.1.66 The *judiciary* power, has generally been considered as a *branch* of the *executive*, because these two powers, have been so frequently united;—but where united, there is no liberty.—In every *free* State, the judiciary is kept separate, independent, and considered as an intermediate power;—and it certainly partakes more of a *legislative*, than an *executive* nature—The sound definition which Delolme applied to one branch may be justly extended to the whole judiciary,—*That it is a subordinate legislation in most instances, supplying by analogy, and precedent in each particular case, the defects of general legislative acts,*[43]—[W]ithout then the check of the *democratic* branch—*the jury*, to ascertain those facts, to which the judge is to apply the law, and even in many cases to determine the cause by a *general* verdict—the latitude of judicial power, combined with the various and uncertain nature of evidence, will render it impossible to convict a judge of corruption, and ascertain his guilt.—Remove the fear of punishment, give hopes of impunity, and vice and tyranny come scowling from their dark

abodes in the human heart.—Destroy juries and every thing is prostrated to judges, who may easily disguise law, by suppressing and varying fact:—Whenever therefore the trial by juries has been abolished, the liberties of the people were soon lost—The judiciary power is immediately absorbed, or placed under the direction of the executive, as example teaches in most of the States of Europe.—So formidable an engine of power, defended only by the gown and the robe, is soon seized and engrossed by the power that weilds the sword.—Thus we find the judiciary and executive branches united, or the *former* totally dependent on the *latter* in most of the governments in the world.—It is true, where the judges will put on the sword and weild it with success, they will subject both princes and legislature to their despotism, as was the case in the memorable usurpation of the Justizia of Arragon, where the judiciary erected themselves into a frightful tyranny.

Why then shall we risque this important check to judiciary usurpation, 5.1.67
provided by the wisdom of antiquity? Why shall we rob the Commons of the only remaining power they have been able to preserve, for their personal exercise? Have they ever abused it?—I know it has and will be said—they have—that they are too ignorant—that they cannot distinguish between right and wrong—that decisions on property are submitted to chance; and that the last word, commonly determines the cause:—There is some truth in these allegations—but whence comes it—The Commons are much degraded in the powers of the mind:—They were deprived of the use of understanding, when they were robbed of the power of employing it.—Men no longer cultivate, what is no longer useful,—should every opportunity be taken away, of exercising their reason, you will reduce them to that state of mental baseness, in which they appear in nine-tenths of this globe—distinguished from brutes, only by form and the articulation of sound—*Give them power and they will find understanding to use it*—But taking juries with all their real and attributed defects, is it not better to submit a cause to an impartial tribunal, who would at least, as soon do you right as wrong—than for every man to become subservient to government and those in power?—Would any man oppose government, where his property would be wholly at the mercy and decision of those that govern?—We know the influence that property has over the minds of men—they will risque their lives rather than their property; and a government, where there is no trial by jury, has an unlimited command over every man who has any thing to loose.—It is by the attacks on private property through the judiciary, that despotism becomes as irresistible as terrible. I could relate numerous examples of the greatest and best men in all countries, who have been driven to despair, by vexatious lawsuits, commenced at the instigation of the court, of favorites and of minions, and all *from the loss of juries*.—France was reduced to the brink of destruction in one instance.—The Queen mother Louise of Savoy, piqued at the constable of Bourbon, a young and amiable man, who refused to marry her, commenced a suit against him for all his estate—The judges were ready at

the beck of the court, and without a shadow of justice deprived him by law of every shilling he was worth; and drove from this country an unfortunate hero, whose mad revenge carried desolation into her bosom.—In Denmark a despicable minion, who came in rags to the court, after the establishment of their new government, which they solicited Frederick the IIId to make for them, acquired an immense fortune by plunder, sheltered by the favour of the Sovereign. At last he fixed his eyes on a most delightful estate, and offered to buy it—The owner did not want money, and could not think of selling the patrimony of an ancient family; this wretch then spirited up law-suits against him, and after the most cruel vexations obliged him to sell the estate for much less than he at first offered him. This unfortunate gentleman was driven from the country which gave him birth, and a once happy society of relations and friends.—Such would have been the fate of England, from those courts without juries, which took cognizance of causes arising in the revenues and imports in Charles the first's time, the court fortunately for the liberties of England, seized the bull by the horns, when they attacked that wonderful man John Hampden. He spent 20,000 *l.* rather than pay an illegal tax of twenty shillings, brought the cause before the Parliament, roused the spirit of the nation, and finally overturned courts, King, and even the constitution for many years. These dreadful examples may teach us the importance of juries in *civil* cases—they may recal to my countrymen a maxim which their ancestors, as wise, and more virtuous than their posterity, held ever in view—*That if the people creep like tortoises, they will still find themselves too fast in giving away power.*

A Farmer

V
25 March 1788

5.1.68 I have been long since firmly persuaded, that there are no hidden sources of moral agency beyond the reach of investigation.—The all-wise and all-bountiful Author of Nature, could never have created *human reason* unequal to the happy regulation of *human conduct.*—The errors and misfortunes of mankind spring from obvious sources. Religious and political prejudices, formed by education, strengthened by habit, maintained by interest, and consecrated by fear, are forever arming the passions against the judgment.—The celebrated Blaise Pascal (the powers of whose understanding were rather miraculous than surprizing) closed his painful researches after religious truth, with this dogma, as pernicious as untrue,—*"That a religion purely spiritual, was never intended for mankind."*[44] There could be no judgment more unbiassed, for there was no mind so strong, no

heart more pure; but bred in the bosom of the church, even her idolatry impressed him with veneration and awe. Notwithstanding his conclusion, the doctrines of Calvin maintain their ground in their primitive simplicity, divested of the aid of ceremony and form. The thunders of the Vatican, which for ages deluged Europe with blood, have dissipated their force, and reason has resumed her spiritual empire. Would to God, that the history of temporal despotism had terminated as favourably for the happiness of mankind!—In the political world, the chains of civil power, upheld by the numerous links of private interest, have proved more equal and permanent in their effects; they have, and I fear forever must, shackle the human understanding; and it is much to be questioned whether the full and free political opinion of any one great luminary of science, has been fairly disclosed to the world—Even when the great and amiable Montesquieu had hazarded a panegyric on the English constitution, he shrinks back with terror into this degrading apostrophe—"*Think not that* I *mean to undervalue other governments*—I *who think an excess of liberty*[,] *an excess of all things, even of reason itself, a misfortune, and that the happiness of mankind is only to be found in a medium between two extremes.*"[45]—The author of the Persian letters, at that moment recollected the afflicting presure he had felt from the hand of Gallic government, and his pen trembled as he wrote.

Is it then possible that governments of simplicity and equal right, can have 5.1.69
been fairly dealt by in theory or practice? The votaries of tyranny and usurpation stand not alone—in bitter opposition; every man of enterprize, of superior talents and fortune, is interested to debase them; their banners have ever been deserted because they never can pay their troops.—The most amiable and sensible of mankind seem to have made a stand in favour of a mixed government founded on the permanent orders and objects of men.—Thither I suspect the American government is now tending. If it must be so—Let it go gently then—with slow and equal steps.—Let each gradation and experiment have a full and fair trial—Let there be no effect without a good, apparent and well considered cause—Let us live all the days of our lives, and as happily as circumstances will permit.—Finally, let moderation be our guide and the influence of manners will conduct us (I hope without injury) to some permanent, fixed establishment, where we may repose a while, unagitated by alteration or revolution—For in sudden and violent changes, how many of the most worthy of our fellow-citizens must get their bones crushed?

I cannot think that any *able and virtuous citizen,* would in his cool and 5.1.70
dispationate moments, wish to blend or risque the fundamental rights of men, with any organization of society that the Americans can or will make for fifty years to come.—Let us keep these rights of individuals—these unalienable blessings[—]reserved and separated from every constitution and form—If they are unmingled, the attentive eyes of every citizen will be

kept fixed upon them. We shall watch them as a sacred deposit, and we may carry them uninjured and unimpaired through every vicissitude and change, from the government we have left, into some other that may be established on the fixed and solid principles of reason.— Nor can there be, I imagine, any *prudent man,* who would trust the whimsical inventions of the day, with that dangerous weapon *a standing army,* in our present unsettled circumstances—striving to substantiate inefficient and unnatural forms—it would wield us into despotism in a moment, and we have surely had throat-cutting enough in our day.

5.1.71 Throughout the world government by representation, seems only to have been established to disgrace itself and be abolished—its very principle is change, and it sets all system at defiance—it perishes by speedy corruption.—The few representatives can always corrupt themselves by legislative speculations, from the pockets of their numerous constituents—quick rotation, like a succession of terms tenants on a farm, only encreases the evil by rendering them more rapacious. If the executive is changeable, he can never oppose large decided majorities of influential individuals—or enforce on those powerful men, who may render his next election [ ] the rigor of *equal law, which is the grand and only object of human society.*—If the executive is to be rendered ineligible for a certain period, he will either *not do his duty,* or he will retire into the unprotected situation of a private individual, with all the sworn animosities of a powerful majority—aristocracy—junto—the cry of the populace, or perhaps the whole combined to pursue him to the grave, or a public execution.[46] The considerate and good, who adorn private life, and such only can be safely trusted in high public station, will never commit themselves to a situation where a consciencious discharge of duty may embitter the evening of life, if not draw down ruin and infamy on themselves and families.—There never was but one man who stepped from the top to the bottom, without breaking his neck, and that was Sylla; and although it is true that whilst he was up, he broke the hearts of the Romans, yet his dying undisturbed in private life, is one of those miracles that must remain forever unexplained. If the aristocracy, or representation of wealth, (the principle of wh[i]ch order is to keep all things as they are, for by confusion they may lose more than they can gain) is also changeable, there then is nothing fixed and permanent in government.—Legislative tyranny commences, and exhibits a perpetual scene of plunder and confusion, fearlessly practised under the sanction of authority and law. It is true that the influence of manners may and will resist for a time; yet that must give way to a general and prevalent corruption—Those who are respectable at home and have permanent [ ] in life, and such only can give stability to government, will not suffer themselves to be mounted up on the wheel of fortune, to be let down again as it turns, the mockery of children and fools.—Where representation has been admitted as a component part of government, it has always proved defective, if not

destructive. What then must be the consequence where the whole government is founded on representation? Every American can now answer, it will be at best but—*representation of government*—with us the influence of manners has been great—it is indeed declining fast; but aided by the solidity of the judiciary establishments, and the wisest code of civil laws, that ever mankind were blessed with, it has hitherto supported the forms of society: But the people are now weary of their representatives and their governments.—We may trace the progress.—One candidate, to recommend his pretensions, discloses and descants on the errors of the preceding administration—The people believe him and are deceived—they change men; but measures are still the same, or injured by the sudden and violent alteration of system[47]—At least the next candidate asserts it is so—is again believed, and his constituents again deceived; a general disgust and sullen silence ensue; elections are deserted; government is first despised, and then cordially hated.

There can be no fixed and permanent government that does not rest *on the fixed and permanent orders and objects of mankind.*[48]—Government on *paper* may amuse, but we pay dear for the amusement, the only fixed and permanent *order* with us at present are the YEOMANRY, and they have no power whatever,—unless the right of changing masters at a certain period, and devolving on their changeable representatives their whole political existence—may be called power—The order of GENTRY, with us, is not a fixed and permanent order at all, and if they attempt to erect themselves into one at present, it is usurpation, and they will be pulled down; and yet, in my opinion, such an order is essential to a perfect government, founded on representation.—Every other mode of introducing wealth into power, has proved vicious and abominable.—With us delegates become by selection, themselves a species of subaltern aristocracy—they intrigue with the senates, who by a refined mode of election are a misbegotten, side blow, representation of wealth, and they both form an imperfect aristocracy, on the worst principles on which that order can be admitted into government—and the democratic influence which is thus amalgomated and not divided, but unformed becomes vicious from its impotence. 5.1.72

These defects spring from our attempting to erect republican fabrics on the ruined and imperfect pillars of an old corrupt monarchy—not less absurd, than to expect the limbs to perform the functions of life, after cutting off the head.—The opposition which brought Charles the first to the block, was composed of some of the ablest and most virtuous characters that ever adorned any age or clime—Hampden, Pym, Selden, Sir Harry Vane, Sydney, Marvell and many others.—They pursued their old model—attempted to form a government by representation which was at first steadied and restrained by the best senate in the world, (the English House of Lords)—the two houses soon disagreed, and there being no third power to interpose, the representatives, voted the House of Lords useless—new modelled the 5.1.73

government into a single branch, and then began to plunder most unmercifully—At last Cromwell kicked them all out of doors, and after his tyrannical usurpation and death, the nation were very happy to take shelter again under the regal government, and even restored an unworthy family (which they had irritated beyond forgiveness) to the throne.

A Farmer.

(*To be continued.*)

28 March 1788

(*Continued from our last.*)

5.1.74 After every consideration I can give this subject, I am satisfied, that *government founded on representation,* indispensibly requires, at least an executive for life, whose person must be sacred from impeachment, and only his ostensible ministers responsible—A senate for life, the vacancies to be filled up and the number occasionally encreased but under a limitation, by the executive—the hand that holds the balance must have the power of adding weight and influence to the lightest scale, and of frequently removing turbulent men into an higher and inoffensive situation:—I am inclined to think that an important portion of American opinion leans that way at this moment—My fear is, that our general government may ultimate in an hereditary authority—if not despotism—to avoid the former, great attention should be paid to the important office of Vice-President—at present but little understood:—A Vice-President to succeed on a vacancy prevents those evils which have ruined Poland and all the northern kingdoms—thus we see the King of the Romans has secured Germany from every evil of elective monarchy, and had the golden bull prevented one of the family or kindred of the reigning Emperor from filling the office of the King of the Romans, this part of the Germanic constitution would have been perfect, and the house of Austria would never have been enabled to usurp the imperial crown as a patrimony and desolate Europe with her ambitious views; she would have continued in that beggarly condition from which Rodolph of Hapsburg raised it—The American constitution is much better guarded but not by any means completely so.

5.1.75 If this is the best we can hope for—if this is the best reward we can expect for the sons of America slain, and the distresses we shall long continue to feel—is it not incumbent on us to examine minutely all its consequences?—Let us view government by representation in its favorite form—The constitution of England—its uncommon success and length of duration there, has drawn on it very unmerited encomiums from the enlightened Genevan[,] Delolme—the only great political writer who does not

seem to hold representation in contempt,[49]—indeed the viewing it through this favorable medium has always animated our hopes, and led many sensible Americans to imagine, this old and universal experiment, to be peculiar to that isle—In pursuing my inquiry into the principles and effects of the British government, I shall first grant that it is a rational system, founded on solid, safe principles—and one of the best governments for the higher ranks of mankind in the world—but then I must insist that it was hardly a government at all, until it became simplified by the introduction and regular formation of the effective administration of responsible ministers, on its present system—which we cannot date higher up, than the appointment of Lord Strafford and others by Charles 1st.*—Moreover I do not know how far the system of bribery introduced by Sir Robert Walpole, and the influence of the numerous body of public creditors, are not now absolutely necessary to its present stability—and after all, I am not satisfied how such a simplification as would produce a responsibility, can be effected in a government, complicated by so many subordinate and powerful corporations as the American States will be—and yet responsibility must be attained and an easy and certain mode adopted, of changing measures and men without commotion, or liberty will be lost in the attempt—I am confused and bewildered when I arrive at this point of reflection, and despotism meets me at every turn.—There are but *two* modes of governing mankind, by just and equal law, enforced impartially on all ranks of society, or by the sword:—If such laws cannot be obtained, or the attainment is attended with too much difficulty, the sword will supply their place; *et inter arma leges silent. When arms command the laws are disobeyed.* Shall we have patience, with the disorders of our complicated machine? As Alexander dissolved the gordian knot with the sword—so I fear a standing army will simplify the governments of America—I have said that the government of England afforded firm protection of property—it certainly does so, comparatively speaking—yet the history of its frequent revolutions, will discover that even property is insecure there. During the civil wars, in which the Stuarts involved this nation, two-thirds of the property of the kingdom changed masters; and in those between Lancaster and York, and before the firm establishment of the line of Tuder, almost all the old families perished and their property became dissipated:—And yet its protection of property is its favorable side; turn your eyes to the lower order of citizens, and they are pressed into the earth by taxation and imposition—very rarely will industry enable the husbandman to rear a family—where the sons of agriculture are so poorly rewarded, government must be ulcerated to the heart—the miserable poor who pursue the dictates of nature and religion, in that connection which is destined to sweeten the bitter draught of life, are commonly handed

*Before that period they were minions and favorites, who by plundering and oppressing the people excited constant commotion, and were seldom changed but with their masters, and by the axe or halter.

from constable to constable, until their unfortunate birth compels some parish to own them.—The people of England have always and forever will emigrate—The people of England never repair to arms to repel foreign invasion—and they never will unless compelled—to conquer England, it would only seem necessary from past example, to escape their floating defences and land on the island; passing by former invasions and conquests. As late as the year 1745, Prince Charles Edward, at the head of an undisciplined rabble, belonging to some Highland clans attached to his family, marched undisturbed, through the most populous counties into the heart of the kingdom, and the capital containing 200,000 fighting men trembled for its safety at the approach of an unexperienced boy, followed by 4 or 5000 half armed peasants—scarcely a man in the kingdom shouldered a musquet until the danger disappeared, and government owed its safety to the protection of foreign mercenaries, or rather the weakness and irresolution of the assailant—The fact is, the people will never fight (if they can help it) for representatives, taxes and rags.

5.1.76 Let us now contrast this scene with one, where the people *personally* exercise the powers of government[50]—The three small democratic Cantons of Uri, Schuitz and Underwald, broke the chains of their former servitude, and laid the foundation of the Swiss confederacy—they effected the revolution, and in conjunction with the other democratic Cantons and their democratic allies the Grisons, have supported the grand fabric of Helvetic liberty to this day. Every Swiss farmer is by birth a legislator, and he becomes a voluntary soldier to defend his power and his property; their fathers have been so before them for near 500 years, without revolution, and almost without commotion—they have been the secure spectators of the constant and universal destruction of the human species, which the usurpations of the *few* have ever created, and must I fear forever perpetuate:—Whilst all Europe were butchering each other for the love of God, and defending the usurpations of the clergy, under the masque of religion, the malignant evil crept into this sacred asylum of liberty; (but where the government resides in the body of the people, they can never be corrupted by the artifice or the wealth of the *few*) they soon banished the daemon of discord, and Protestant and Papist sat down under the peaceful shade of the same tree, whilst in every surrounding State and kingdom, the son was dragging the father, and brothers, their brothers, to the scaffold, under the sanction of those distinctions:—Thus these happy Helvetians have in peace and security beheld all the rest of Europe become a common slaughterhouse.—A free Swiss acquires from his infancy, a knowledge of the fundamental laws of his country, and the leading principles of their national policy are handed down by tradition from father to son—the first of these is never to trust power to representatives, or a national government. A free Swiss pays no taxes, on the contrary he receives taxes; every male of 16 years, shares near ten shillings sterling annually, which the rich and powerful

surrounding monarchies pay for the friendship of these manly farmers. Whenever their societies become too large, as government belongs to the citizens and the citizens are the property of no government, they divide amicably, and each separate part pursues the simple form, recommended by their ancestors and become venerable, by the glorious and happy experience of ages of prosperity—Their frugal establishments are chiefly supported by the pay which the officers of government receive for the services they render individuals. With a country the most unfriendly to industry in the world, they have become in a series of years, passed in uninterrupted but moderate labor, frugality, peace and happiness, the richest nation under the sun. I have seen a computation, by which it appeared, that the interest of the money they have before hand, and that which is due them from the rich nations of Europe, would support themselves and their posterity forever, without farther exertion; and this whilst every other government is actually as much or more in debt than it is worth.

An intelligent author has remarked, that passing from a democratic to an aristocratic Canton of Swisserland, you quit the society of men to contemplate the regular labor of brutes;[51] they are compelled indeed in the aristocratic Cantons to be extremely moderate in their government, and to lay few or no taxes, or they would drive their subjects into the neighboring free States—as it is, they are well cloathed, well fed and taken good care of—The same author remarks, that the line which separates all Swisserland, from the countries around (where men like cattle are the property of their proud Lords and kept chained to the soil) is the line of division between light and darkness—between happiness and horror. 5.1.77

The love of the Switzers for their country is altogether romantic and surpasses the bounds of credibility—those memorable relations authenticated by the common consent of all historians, of their beating on all occasions the flower of the Austrian and French troops (who have invaded them) with numbers so unequal and trifling as scarce to exceed their enemies out-guards; the instances of hundreds of citizens devoting their lives for the safety of their country; of their frequently disdaining life and refusing quarter when overpowered by numbers, have astonished and terrified the neighbouring powers, and seem incomprehensible to a people dispirited by taxes, overloaded with debts and disgusted with government. I cannot omit a striking characteristic, authenticated by Coxe and others, whose authority will not be questioned; they relate that there is a rustic tune familiar in the mountains of Swisserland—it is called the *Rantz des vacques*—it consists of a few simple notes of native wild melody. The French and Dutch governments have been compelled to forbid under very severe penalties, the playing this woodland music, to those Swiss troops, which they hire for a limited time; the well-known notes revive instantly all the fond images, which were impressed on their youthful bosoms, their friends, their parents, their relations and their beloved country, rush into their imaginations in a full tide 5.1.78

of affection—no persuasion can detain them, they desert home in regiments, or if retained by force, they pine away in the deepest melancholy—no instance has yet occurred of Swiss troops serving in any part of Europe, who have not returned, with the diligence and anxiety of affectionate children, on the first appearance of danger to their parent country:[52]—The same amor-patriae, the same divine love of their country, universally pervades the bosom of every citizen, who in right of his birth, legislates for himself:—Grosley relates that he saw in Rome a poor fellow (who had travelled through great part of Europe and Asia afoot) declaiming to a crowd with the most passionate zeal, in praise of his own country, boasting of her happiness and prefering San Marino to all the world besides[53]—This democratic republic, is a little bee-hive of free citizens, who have made a delicious garden of the top of a bleak barren mountain, situated in the midst of the finest and most fruitful plains of Italy, which tyranny has depopulated around them.—Look into the human breast—We love that power, which we exercise ourselves, but we detest that which others exercise over us, be they Representatives, Lords, or Kings; and to this source we may trace the abuse, which the Americans bestow on their country and their governments.

5.1.79 But we are told that Swisserland, *should be no example for us*—I am very sorry for it—they are the only, the only part of the human species that sustain the dignity of character, belonging to the divine resemblance we bear,—*they are few in number it is said*—This is not true—they are more numerous than we are—*They cover a small spot of territory*—this is also not true—they possess a large tract of country in the very heart of Europe—but this is not all—The Helvetic confederacy, including the three leagues of the Grisons comprehends one hundred perhaps two hundred, independent governments and States—nor is there any reason from their history or present state to doubt, that the same plan of confederation might not be extended with as lasting and happy effects to one thousand independent governments—But it is also said *they are a poor, frugal* people—As to their poverty that is likewise untrue—they have great sums of money before hand and owe not a six-pence—they indeed are a wise and consequently a frugal people—though they still have great estates and even luxury among them too—But should we despise their poverty or their frugality? We who are so many millions worse than nothing? *But still we are told we must not take example from them—we must take example from Holland and Germany*—They had better at once tell us, that we must desert the worship of God and follow that of the devil.

5.1.80 From the first dawn of light, that broke in upon my reason, I became devoted to governments of simplicity and equal right—The names of heroes, whose blood has bedewed the altars of freedom, vibrate like the shock of electricity, on my frame; and when I read the story of Brutus and of Cassius, the most noble and the last of the Romans, tears of admiration gush from my

eyes.—Under these impressions which only the grave can erase, I feel unspeakable horror at every step, which removes power and rights, at a greater distance from the body of the people, to whom they belong, and confines them to the hands of *the few*. I have proposed to myself this question: If representatives cannot govern the people—If they abuse the power entrusted to them, shall they devolve this power on a still smaller number, who must be more liable to corruption from the encrease of temptation? Or should they restore it into the hands of the people, from whom they received it? who alone are incorruptible, because the wealth of the few can never bribe the many, against the duty they owe to themselves. If I am told that the people are incapable of governing themselves—I shall answer that they have never been tried in America, except among the native Indians, who are free and happy, and who prove that self-government is the growth of our soil—And I also answer that they are more fit for self-government, than they are at present for any of the safe and solid governments, founded on representation.—When I see all these principles established by the example of the Swiss, who have remained under the simplest of all forms of government for near five hundred years, in uninterrupted tranquility and happiness—whilst every other invention of genius, devise of art, or imposition of force, has been torn up by the roots, with every aggravated circumstance of horror—I can no longer doubt—All the mists of theory and speculation vanish before an experiment like this.

The greatest human discernment, ever concentrated in the mind of one man, was the portion of the celebrated Nicholas Machiavelli—a name loaded with abuse by tyrants, flatterers and the mushrooms of science, because he told the truth; because he was a republican and the friend of mankind in times of usurpation; or because, they have never read or do not understand his works. After every inquiry which the most unbounded information and reflection, with a long experience in high public office afforded, Machiavelli, delivers his deliberate opinion in favour of the body of the people, as the only safe depository of liberty and power—He prefers it to the aristocracy and the Prince; but he does not disgrace the inquiry by mentioning representation.[54] If this was the opinion of Machiavelli, a citizen of Florence, where a numerous populace confined and crowded within the walls of a city, formed the most turbulent republic, that ever disgraced the cause of freedom by cruelty and anarchy—How much more favourably must his decision apply to the yeomanry of America—Landholders and consequently the most independent of mankind, mild by nature, moderate by manners, and persevering in every honest pursuit:—Surely if ever men were worthy of being entrusted with their own rights, the freeholders of America are—*Make them then and their posterity legislators by birth*—I mean not the lowest populace—I mean that class of citizens to whom this country belongs:—Numbers unqualified by property, should have their influence—they should be protected—they might preserve the right of 5.1.81

election—But they who hold the property of the soil, are alone entitled to govern it:—To effect this there would need but little change in the present forms—They might all stand—But the laws which pass the legislature before they become binding, should be referred to the different counties and cities—printed reasons drawn by committees, might if necessary, accompany each, together with an annual estimate of public wants and a detail of the expenditures of the former sums granted. Let these laws then be submitted to the free deliberation of the *freeholders* of the counties and cities—the numbers of the yeas and nays be taken on each by the presiding magistrate, and transmitted to the executive, who may then upon comparing the returns from the several counties and corporations, declare what laws are the will of the people. On the appearance of any sudden danger the two houses or indeed a majority of one house, might invest the Executive with that authority, exigency might require for the safety of the republic, until remedy should be provided by law.

5.1.82 The number of representatives might be decreased and an expence saved—this would at one blow destroy all legislative speculations—the influence of demagogues, or oligarchic juntos must then cease—The assemblage of the freeholders, separate in different counties would prevent disturbance—As no new law could be made in them, little confusion could ensue—After some years, or even immediately if confined to future cases—the celebrated law of Geneva might be introduced, and no freeholder admitted to the assembly until he had paid his father's debts. Sumptuary laws, permitting the use, but prohibiting the abuse of wealth, might be interposed to guard the public manners.—The Governor and two members of the senate might constitute a council of censors, to punish offenders against the sumptuary laws and the laws of morality, by a removal from office, and even disfranchisement, if necessary, with an appeal to the people of the county where the offender resided, in the latter case, and to the people of the State in the former.—Seminaries of useful learning, with professorships of political and domestic œconomy might be established in every county, discarding the philosophy of the moon and skies, we might descend to teach our citizens what is useful in this world—the principles of free government, illustrated by the history of mankind—the sciences of morality, agriculture, commerce, the management of farms and household affairs—The light would then penetrate, where mental darkness now reigns.—Do these things and in a very few years, the people instead of abusing, would wade up to their knees in blood, to defend their governments.

5.1.83 For some years past this has been the darling object of my life—to which all my views have tended—And I now think that nothing intermediate would be lasting or worthy the pursuit—Whenever I fairly lose sight of this—As soon as I turn my back forever on these dear illusions, which will be as soon as the proposed fœderal government is adopted—I shall turn all my wishes

to that social state, whither that government will lead us, and I both hope and expect that with those amendments and guards, which it seems to be the general disposition to provide—it will gradually maturate in a safe and reasonable government.—Until that adoption I speak to my fellow citizens in the words of the proverb—*Do not that by others, which you can do yourselves.*

A Farmer.

VI
1 April 1788

Retired in the country the publication by *Aristides* did not reach the *Farmer* until this moment.[55] The object of the remarks by the *Farmer* was to draw the attention of the public to a question of the greatest magnitude to them and their posterity; and the *cause* in which he has ventured to publish his sentiments is a *cause* of the United States.—The great and manifest defects in the *national* government proposed for America,—the omission of a declaration to ascertain the *rights* of the several *States,* and the *rights* of *individuals,* the primary object of every good and free government, particularly the trial by jury on suit against a *federal* officer for abuse of authority;—the want of proper checks to prevent the abuse, or annihilation of those rights;—the manifest danger to public liberty from a standing army, without limitation of number, in time of peace;—and the pernicious doctrines of *Aristides;* alone induced the *Farmer* to lay his reflections before the tribunal of public opinion. 5.1.84

It would give the *Farmer* real pain to stain a *public* cause with *private* altercation, and he flatters himself that his candid and impartial readers will admit, that his *first* address, which has given so great offence to *Aristides,* and which he calls abuse, slander, calumny, and a wanton and unprovoked attack on *his good name,* was temperate, moderate, and decent, and even respectful to that writer. The *Farmer* took the liberty to condemn and to expose the doctrines and errors of *Aristides;* but with charity he imputed his opinions to defect of judgment, or want of information. A good and virtuous citizen may, from want of understanding, maintain principles incompatible with the public welfare. If his integrity is not accused he should bear admonition or reproof with temper and moderation. If his opinions are censured he should justify or explain them with candor and decency, and should treat his adversary with respect. If his motives of action are questioned, he should defend himself with dignity and manly firmness, without petulance or asperity, or as *Aristides* recommends, "*he should behave like a gentleman.*" *Personalities* are always odious and can only be *excused* by 5.1.85

the imputation of political opinions to improper, unworthy or base motives. The *Farmer* could not possibly entertain any *personal* resentment against *Aristides*. A knowledge by sight and a very few occasional conversations comprehend all the acquaintance between them. The *Farmer* was disposed to think well of *Aristides* from the report of some few of his acquaintance, and not from his own declaration, however solemn, of his immaculate purity, and love of country; for in this degenerate age the integrity and the patriotism of men must be measured by their actions, and not their professions.

5.1.86 The *Farmer* disdains intentionally to *misrepresent Aristides*, he may have been so unfortunate as to have *misunderstood* him.[56] It seems that what the *Farmer* considered as the *opinions* of *Aristides* were only *objections* to a bill of rights by *some eriel forms*, which he has pleased to usher into his drama to close the catastrophe, when from the former character he had assumed, he could not so well appear with the *sword* himself. Why did *Aristides* put *groundless* objections in the mouths of any persons, which no persons had ever used? What sense is there in making objections of no weight (and which he himself despised) to a bill of rights, under the covert of persons of his own creating?—If the *Farmer* misunderstood *Aristides*, it might have arose from his combining with his *general* doctrine a report of a declaration by him of the respect and regard he would pay to the Maryland bill of rights in his judicial capacity.—The *Farmer* then firmly believed, and he still believes that *Aristides* thought that bills of rights were considered in Europe as grants of Kings. The *Farmer* knew that this had been the language and argument of a Judge of another State.[57] All the arguments of the *Farmer* went to prove that they were not so considered in Europe, attended with the observation that he never knew the doctrine advanced in print, but by *Filmer* and *Aristides*.

5.1.87 *Aristides* insinuates that the remarks of the *Farmer* on his opinions proceeded from his desire *to pay* COURT to a gentleman who lately held the highest office in the State.[58] This insinuation is as false as it is mean and illiberal. The *Farmer* can respect and esteem the *public* and *private* virtues of a citizen without degrading himself to the lowest servility of the lowest sycophant. The *Farmer* has never dealt in the fulsome language of modern dedications, and if inclined, he could not direct his flatteries to obtain any office civil or military, under the *new* government. The *Farmer* has no wish to conceal himself from the apprehension of censure from an impartial public; and from the resentment of *Aristides* it is impossible he can have any thing to fear. A fancied superiority, and insolence of office gave birth to this unwarrantable suggestion.

5.1.88 There may be other reasons why *Aristides* has thought proper to make known his real name to the public than those he has suggested. If his vanity prompted him to believe, that his character would carry respect and authority to his publication, never was any political writer more mistaken. His

pamphlet will injure the *cause* he undertakes to defend wherever it appears. It might be expected that *Aristides* would be more competent to understand the part of the new constitution, that establishes the JUDICIARY, than any other. He approves the *whole* system, and yet he knows the *least* of what he ought to understand the *most*. He says the article erecting the *judiciary* has been generally misconceived, and the *Farmer* verily believes by no person more than by *Aristides*. That Farmers and Planters should not comprehend the jurisdiction of the *federal judicial power* might be expected; but that a great *law character*, like *Aristides*, should so egregiously blunder, is very astonishing. A man grossly mistaken in his profession may be justly suspected in other subjects.

Aristides asserts, "that *the inferior federal* courts, and the *State* courts will have *concurrent original* jurisdiction in all the enumerated cases, *wherein an appeal lies to the supreme federal court*, except only the cases created by, or under the proposed constitution."[59]—By the second section of the third article, "The judicial power is to extend to all cases, in law and equity, arising under the *constitution*, or the LAWS of the United States; and to all controversies between citizens of *different* States, and the citizens of any of the United States, and the citizens, or subjects, of *foreign* States"; and by the eighth section of the first article, "The Congress are invested with *power* to levy and collect taxes, duties, imposts, and excises; and to make such *laws* as shall be necessary and proper for carrying into execution these powers." *Aristides* contends that a *federal* officer, say an excise officer, may be sued by a citizen in a *State* court (I suppose any county court as well as the supreme court) for an abuse of his authority; and with confidence he asserts, "That *no sound lawyer, of a good moral reputation* will maintain the contrary opinion"; and he treats with supercilious contempt the objection of want of remedy in a *State* court, and a trial by jury *for* the citizen *against* a *federal* officer, for an abuse of office, "as a ridiculous bugbear, fit only to alarm minds on which no science has ever dawned."[60] Is it not evident that the jurisdiction in the cases *above-mentioned*, is *expressly* given to the *inferior federal* courts, with an appeal, both as to law and *fact*, to the *supreme federal* court?—Is it not clear that it was intended to keep the *federal* and *State* jurisdictions entirely separate? Were not the *subordinate federal* courts established to protect the continental revenue officers from the *State* jurisdictions?—If an action would lie *against* a *federal* officer in the *State* courts would it not blend and confound the *two* jurisdictions, and that too without any appeal from the *State* courts?—Is not the *supreme federal* court superior to the *State* courts? Is it not superior to the bills of rights, and the constitutions, of the several States?—If the *State* courts have *concurrent jurisdiction* with the *inferior federal* courts, that is, if any suit of which the *latter* has cognizance by the *new* government, may notwithstanding be instituted in the *former*, is it not self-evident that there may be *different* adjudications on the SAME question; and if decided in the

5.1.89

inferior federal court with an appeal, if decided in a *State* court without any appeal, to the *supreme federal* court? What would be the effect of opposite decisions by two courts having concurrent jurisdiction?—If an action is commenced in a *State* court, *Aristides* thinks, and justly too, that thence there is no appeal to the *supreme federal* court, but only to their own high court of appeals, as heretofore. With confidence he maintains that as the jurisdiction of the *State* courts is *not* taken away by an *express* clause, or *necessary implication,* that they will still have cognizance of those cases of which jurisdiction is given to the *inferior federal* courts. The *Farmer* believes there is not another lawyer, or Judge, *of sound judgment in the law,* in all America, that entertains a similar opinion.—The *Farmer* is so bold as to hazard his opinion, contrary to that of *Aristides,* that if a citizen of Georgia, or subject of Great-Britain, has any claim against a citizen of Maryland, or if he has any claim against them, that suits in such cases, after the establishment of the *national* government, can only be commenced and prosecuted in the *inferior federal* courts, because the *State* courts are ousted of their jurisdiction of those cases, by *necessary implication,* from the obvious motives for the establishment of the *federal judiciary,* and the evident absurdities that must flow from a *concurrent jurisdiction* in the SAME cases. Is it not absurd to suppose that the *national* government intended that the *State* courts should have jurisdiction to decide on the LAWS of the *United States,* whether consonant or repugnant to the *national constitution;* or whether the *federal* officers abuse their authority?—And yet the grave, the solemn, the didactic *Aristides* asserts, "That every *State* Judge will have a *right* to *reject* any *act* handed to him as a *law* of the United States, which HE may conceive repugnant to the constitution."[61] How perverted or confused must be the head of that man who can seriously entertain so ridiculous an opinion! He can never claim from his knowledge of the *national,* or any other government to be one of the Judges of the most inferior of the inferior *federal courts—Risum teneatis.* A puisne Judge of a petty State (of Delaware, or Rhode-Island) to have a *right* to declare a LAW of the United States VOID? Will any *sound lawyer,* his moral reputation out of the question, risk his *legal* character so far as to maintain his assertion?—If *Aristides* has not too much pride to be convinced, if he has the candour he professes, or the legal or political knowledge he wishes the world to believe, he would not obstinately continue in error, but confess, how greatly he has misunderstood the *judiciary* system of the *national* government

5.1.90 If *Aristides* shall determine to mix *private* resentment with a *public* cause, if he cannot discuss political questions without descending to offensive personalities, or if he wishes to examine into the motives or private reputation of his *adversary,* as he very improperly calls the *Farmer,* he is informed that the *Farmer* has left his *real* name with the Printer.—If *Aristides* can discover ought in the life or manners of the *Farmer,* the detection of which may serve the public cause, or gratify private malice, he has free liberty to

publish, to expose it to the world, in the strongest colours;—he will for his own sake confine himself to fact.—Calumniating invective may rouse any temper. *Aristides* has too long held a licentious pen with impunity.

A Farmer.

March 24, 1788.

VII
4 April 1788

Aristides with a degree of confidence, which many will deem presumption, insinuates that his arguments can only be combated by sophistry:— Language expressly calculated to impose on the uninformed mind may be justly suspected; but remarks addressed to the reason of *those* who are happy in education and leisure for reflection, can never do injury:— *Sophistry* may blind or mislead the wavering and inconstant mind, of the humble and unenlightened individual; but to convince the understanding and rouse the spirit, of the intelligent part of mankind, is the sacred province of *truth* alone. 5.1.91

To examine and elucidate the great and leading principles of government, we must penetrate to the source of human action, and explore the heart and constitution of man;—a consciousness of the equal rights of nature, is a component part of that aetherial spirit, which we dignify with the appellation of soul; the ardent desire and unceasing pursuit of equality, can therefore be no more destroyed by human power, than the soul itself; the chains of terrestrial despotism may confine, afflict and bow down to the earth, this mould of flesh; but the soul more free than air, quits this mortal frame, surrounded by ills no longer supportable, and after witnessing the final overthrow of all its hopes in this world, retires with indignation, into a world unknown. 5.1.92

Let any people be personally and fairly consulted on the form of that government, which is to rule them and their children, and they will establish the *law of equality* as its basis;—the unequal division of property silently and gradually undermines this foundation, almost as soon as society is formed; or before a new compact is confirmed, this equality is materially injured if not destroyed.[62]—Montesquieu justly observes that men, in the advanced stages of government, quit the equality of nature, from the moment of their birth, never to re-enter it but by the force of equal law;[63]—the law then that is equally enforced on all ranks of society, to which the *great* and the *humble*, are compelled to submit, is the next state of equality, to which this ever active principle of the mind aspires; with this it would be content, as the most perfect state of liberty, which exists only, in a just 5.1.93

medium between two extremes; but in the attainment and preservation of this, the efforts of the human understanding never keep pace with the will.

Quicquid delirant reges, plectuntur achivi.

It is the poor people who suffer for the misrule of the great.[64]

5.1.94 Laws are cobwebs, catching only the flies and letting the wasps escape. The great and powerful can easily bring to justice, the *poor and humble offender;* but who is to lead to punishment the *great?* These lords of the earth, who have extensive and powerful connexions, who aim at no trifling larcenies; but who plunder a people of their liberties and put public revenues into their private purses, under the sanction of laws made by themselves:—These are the men who deprive their fellow mortals of their fondest hopes, and compel them to resort to the supreme aim of a monarch—to the authority of a single person—who exalted far above all may reduce them all, once more to that common level of equal law, of which mankind never lose sight:—*Come we will choose one man to rule over us!* is the cry of a people who are tired of the rule of the *elders*—the meaning of the word senate, is an assembly of elders; but this the last and most fatal step, is never retrieved, until government returns through blood into that original chaos—from the discordant elements of which, new and equal forms of society arise, created upon first principles.

5.1.95 The corruption of the rule of one man is also regular and perhaps like every other progressive step of *mixed government*—unavoidable.—He is at first limited and his hands tied; but as the powerful and strong are alone able to keep him confined—they are the checks which are necessarily imposed.—The elders, or the senate, are always joined in power to guard against his usurpations:—The people in this event, find that instead of a protector of their equal rights, they have elected a patron for the rich and powerful, who, under the sanction of his name and authority, plunder and oppress with still greater security.—If a weak Prince should attempt to curb their insolence, he generally becomes himself the sacrifice to his own temerity—the proud chiefs rebel—put new shackles on their principal;—until at length tired of his own uneasy and dependant situation—disgusted at sheltering evil and his incapacity to do good—Some able and politic chieftain breaks the bonds of restraint; perhaps with the manly boldness of a Gustavus Erickson, he may demand of the representatives of the nation, to take back that power which is only a cloak for vice and which is too weak to do good.—He may request them to deprive him of the authority he had received, or give him that which would enable him to secure the public prosperity and private happiness.—Let him leave the legislature with a stern firmness—retire to an army who adore him, the submission must follow;—or let such a chief pursue the more usual rout to power—let him profit of the discontents of the multitude and he will quickly fasten the cords of authority around the necks of the great.

5.1.96 The chief magistrate is now cloathed with full authority to *do good.*—If he

does so, he confirms a solid tyranny for his degenerate successors—For if power does not corrupt him it certainly will those that follow:—In this view, the best elected magistrates have only entailed misery on mankind—the wise and moderate administration of Augustus, (who was appointed commander in chief of the established forces, and was annually elected consul during the whole period of his life) secured the power and gave full scope to the vices of Tiberious. Caligula and Nero in whom the Julian line ended:—A veneration for the memory of Titus enabled his brother Domitian to sink the spirit of the world, and the divine Marcus Aurelius found that the lustre of his own virtues would frustrate every endeavour of his disinterested and patriot head, to set aside the election of that monster, his son, or rather his wife's son Commodus; for Marcus Aurelius could never have been the father of such a son—and the latter end of this all-accomplished mortal, was embittered with the prospect, of the misery of his fellow citizens under the administration of a brute—As to hereditary chief magistrates, I perfectly agree with the Marquis Mirabeau, and what he says of France may be justly extended to the whole world—he says, if I recollect right, that in 1100 years there have been but four Princes on the French throne, that did not deserve the gallows.[65]—In England, an Henry IId. was succeeded by a brute, a coward and a fool.—Richard, John and Henry—the valiant and just Edward the Ist. made way for the mean and despicable Edward IId—the Great Edward the IIId and his adored son, the Black Prince, crowned the English throne with laurels to be lavished away by the profuse and injudicious hand of Richard IId—and the valiant Henry the Vth. transmitted his glory and authority to be tarnished by his weak son, Henry the sixth.—In fine, there is no general truth more fully established than, that human beings entrusted with power will abuse it—from the Prince who fills the throne, down to the degraded negro, who beats his poor plough-horses and oxen so unmercifully:—There is a humane and benevolent saying of an illustrious Prince, the Marshal Vendome, which deserves to be imprinted on our minds in indelible characters.—He said that in a long march he listened attentively to the quarrels between the muleteers and the mules, and that he found the mules always in the right—thus the possession and the abuse of power seem inseperably connected.[66]

The rule of any one man, who is elevated to a pre-eminence of power, is always surrounded by those vile minions and favorites, who bask in the sunshine of courts—deify the object of their adoration with the venal incense of flattery—intercept every avenue to truth, and who never can be satisfied until they reduce the people to the slavery of the ancient Persians—who, when their Prince ordered them to be well bastinadoed, were obliged to fall down upon their knees and say—*We thank you most gracious Sovereign for deigning to recollect us.*— 5.1.97

But it will be asked can this happen in America?—My countrymen, you will yet discover before your day is cold, a truth long established by every 5.1.98

political enquiry—that in all governments, in which there is sown the smallest seed of the rule of one man, no checks—no bars, can prevent its growing into a monarchy, or a despotism if the empire is extensive—And that to attempt to form a virtuous republic on the unqualified principles of representation is as vain as to expect a carriage to run with wheels only on one side.—Wheels will be added on the other, and the machine once set in motion down hill will never stop until it carries us to the *bottom*—then let us not set off without every necessary check.

5.1.99 It is true the proposed national system guarantees to each State a republican form of government—Whoever will look into Coxe's Northern Travels, will find that in the treaty whereby the three arch-despots of Russia, Germany and Prussia, divided that poor distracted country, Poland—they solemnly guarantee (in express words) to the said Poland—a *republican government forever.*[67]

A Farmer.

(To be continued.)

8 April 1788

(Continued from our last.)

5.1.100 The chief who is thus liberated from constitutional restraints, is under no control but the licentiousness of the soldiery:—The praetorian bands of the Roman and the Janizaries of the Turkish empire, have frequently stained the imperial purple with blood, and applied the bow-string to the haughty descendants of Othman—yet they are always the willing instruments of the cruelty of the Prince against all ranks of his subjects.

5.1.101 Here then we arrive at the summit of imperfection in human legislation—the magistrate whose will is law, is no longer restrained by the influence of manners—a regard to reputation or the desire of glory—the three ruling principles that guide the heart to virtue;—his own inclinations become the manners of the empire—establish reputation and fix the standard of fame.—Caius Caesar, who was declared Imperator or Emperor of the Roman republic (a title in its most extensive signification meaning only a military commander in chief) was devoted to lust—A grave senate of Rome—that senate which twenty or indeed ten years before, had commanded the awe and veneration of mankind, solemnly proposed a law, as Suetonius informs us, to submit their wives and daughters to his embraces[68]—it was his regard for the public reputation that alone forbad this sacrifice of the honor of the empire—the first Caesar was a compound of the most exalted virtue and deepest vice—but the fact discovers what instantaneous change, the slightest alterations of government may create in

the manners of a people—of a most enlightened and virtuous people—for the age of Julius Caesar, was the age of Cicero, Cato, Brutus, Cassius and of all that noble but unfortunate band of conspirators.—

But this furious passion which has celestial beauty for its object, soon 5.1.102
banishes philosophy and moderation—even the glowing idea that gives all that is beautiful and amiable to our arms, makes the senses drunk with passion—What effects then must spring from the *idea realized*—all history informs us—the minds of all men, even the best unrestrained by their own, or the constitution of the State become inebriated with lust, from the times of David, the second chief magistrate of Israel—a man after God's own heart—and his son Solomon—the wise, who had the moderate share of seven hundred wives and three hundred concubines—down to the amorous Charles, (who restored to the English throne, before the republican fever had cooled, or Presbyterian sanctity had relaxed) yet contrived to fill the English peerage with his bastards.—The nation made one jump from the cold pulpit of religion into the hot-bed of vice—This irresistible passion marked with celebrity the decemvirate of Rome—a *tyranny* established by the free suffrages of the people, in the infancy and most quiet and virtuous aera of the republic; because they took it into their heads that their old constitution and laws were not good enough, and therefore sent to Greece for new ones:—If in the six and twenty senators of America, some future Appius may be found, I yet trust from the high confidence I repose in my fair countrywomen, that for many years a Virginia will not be wanting to re-act the Roman tragedy;—but all human virtue is frail—What the senate intended by law for Julius Caesar, the influence of manners provided for Octavius and his successors—Matrons and the beauties of the first rank of Rome esteemed it the highest honor to prostitute themselves to the artful Augustus, and even to such an infamous villain as Caligula:—The amorous dispositions of a succession of Princes, have rendered the present of the handkerchief the highest honor, to which female beauty and merit could aspire in the seraglio of Constantinople, and in the courts of the two Lewises—who preceded the present amiable and virtuous monarch of France; yet they were rewarded with implicit obedience, and Lewis the 16th meets with turbulence and resistance in his most meritorious acts:—Virtue only breeds confusion in perverted government.—Whoever will read what the pens of Suetonius and Tacitus have described, will be lost in admiration at the original and surpassing wickedness to which Rome arrived in less than half a century—But can these things happen to the Americans? What distinguishes the Americans, from the French—the Germans—the Turks or the Persians?—America is in a great measure peopled by emigrants from the old countries, now enthralled in slavery—Does crossing the Atlantic alter the nature of these people?—Let our countrymen reflect on this awful truth, that nothing creates that wide distinction between them, and the white slaves of the old world, or indeed their black slaves here, but *their*

government—Let them consider this well, and they will be rendered cautious how they change it—(bad as it is) for new imported constitutions—Amalgomated as we were with a corrupt old monarchy—with the combined corruptions of three armies—a constant communication with the luxurious and debauched capitals of the old world—we cannot be surprised, that some of our great cities are now ripe for any thing.—These remarks are intended for the thinking part of our citizens, and particularly those who are most active in promoting this revolution.—In the most important characters of this class of men, the author has great confidence:—America has more to dread from the want of information than the want of integrity in her rulers; and her own precipitation is the most dreadful of all. People should be liberal of every thing but power—but to give away an atom of their liberties is as criminal as dishonorable.

5.1.103 However degrading and disgraceful the state of society just described may be—worse as it is far than ten thousand deaths to a feeling and delicate mind—yet to the mass of the people it is not so afflicting as the loss of the other moral virtues, which in large governments, are exchanged for the fashionable vices of him who *presides:*—Under Caligula, the Roman legions were not ashamed to adorn their helmets with cockle-shells in triumph for their expedition against Britain, in which, they never ventured to leave the shores of Gaul—this Prince—the degenerate son of the adored Germanicus, happened to be a poltron.—During the reign of Nero, fiddling—dancing—singing—burning cities—plundering States—perfidy and assassination were the manners of the age, and discover the motley mind of this monster of levity and vice.—Domitian who like every man that from weakness—vicious heart—or the allurements of pleasure, deserts the paths of virtue—hated cordially those examples of merit which he could not imitate. Tacitus informs us, that during his life—*virtue became a death warrant*—Philosophy fled—Pliny sat himself down quietly to compose a grammar—the only work of science then safe—in short, nothing was honourable or profitable but assassinations, informations, and all sorts of corruptions and pollutions.

A Farmer.

(To be continued.)

11 April 1788

(Continued from our last.)

5.1.104 Human misery is wound up to its highest pitch in this last stage of corruption, to which the social union can arrive:—At length the poor, wretched beings, who, let whatever be the change, and in every preceding gradation of government, have invariably fallen from bad to worse—turn their weary

eyes, from a world which presents so frightful a prospect—to the world of hope,—the kingdom that is to come hereafter—the only solace and comfort of those who are miserable here;—there all the fond images of equality, which men are fated ever to retain, are once more revived—Scenes of never-ending bliss are painted in the most delightful colours—the imagination grows warm with the prospect—mad with the hopes of celestial happiness, the souls of all men seem anxious to take their flight, to their Omnipotent Author—the Sovereign Legislator of nature—who, peerless and above all, dispences equal law to willing minds:—The people flock in crouds to hear preachers—who, exalted by the presence of numerous and passionate audiences, are elevated into flights of native eloquence, surpassing the strains of the most studied oratory:—The people mind nothing but preaching; the things of this miserable world, are despised when put in competition with the joys of Paradise—agriculture is neglected—famine ensues—government is at length roused for want of plunder and a supply of luxuries—the sword of coercion is drawn—but it increases the phrenzy—One martyr makes fifty converts—such was the first rise of the Christian religion, as it is exactly and pathetically described by the historic pen of Ammianus Marcellinus:[69]—The empire torn by intestine convulsions becomes an easy prey to any bold invader.

Thus it is that barbarity—cruelty and blood which stain the history of religion, spring from the corruption of civil government, and from that never-dying hope and fondness for a state of equality, which constitutes an essential part of the soul of man:—A chaos of darkness obscures the downfal of empire, intermixed with gleams of light, which serve only to disclose scenes of desolation and horror—From the last confusion springs order:—The bold spirits who pull down the ancient fabric—erect a new one, founded on the natural liberties of mankind, and *where civil government is preserved free, there can be no religious tyranny*—the sparks of bigotry and enthusiasm may and will crackle, but can never light into a blaze.— 5.1.105

The truth of these remarks appear from the histories of those two great revolutions of European government, which seem to have convulsed this earth to the centre of its orb, and of which we have compleat record—The Roman and the Gothic, or as it is more commonly called the feudal constitution:—In the infancy of the Roman republic, when enterprizing and free, their conquests were rapid, because beneficial to the conquered (who were admitted to a participation of their liberty) their religion, although devoid, was not only unstained by persecution, but censurably liberal—they received without discrimination the Gods of the countries they subdued, into the list of their deities, until Olympus was covered with an army of demigods as numerous as the legions of Popish Saints; and we find the Grecian divinities adored with more sincere piety at Rome, than at Athens.—Rome was then in the zenith of her glory—in the days of her wretched decline—in the miserable reigns of Caracalla, Eliagabalus and Commodus.—Ammianus and others, inform us that the Christians were 5.1.106

butchered like sheep, for reviving the old exploded doctrine of a future state, in which Emperors and Senators were to be placed on a level with the poorest and most abject of mankind:—And in the succeeding despotisms when christianity became the established religion, it grew immediately as corrupt in its infancy, as ever it has proved at any period since—the most subtle disquisitions of a metaphysical nature became the universal rage—the more incomprehensible—the more obstinately were they maintained, and in fine, the canonized Austin or Ambrose, (I forget which) closed his laborious enquiries, with this holy position—*that he believed, because it was impossible.*[70] At length the great question, whether the three persons of the divinity, were three or one, became publickly agitated, and threw all mankind into a flame—Councils after councils, composed of all the wisdom of the divines, were assembled, and at length the doctrine that three were one prevailed, and such would have been the determination had it been proposed that three were sixteen—because misery is the foundation, upon which error erects her tyranny over the vulgar mind.—After this determination the arm of the Magistrate was called in, and those poor misled Arians who were still so wicked as to imagine that three must be three, were not only declared guilty of a most abominable and damnable heresy, but were thenceforth exterminated by fire and sword.

5.1.107 In the first age of the *Gothic* government, those free and hardy adventurers, deserted their Idols and embraced the doctrines of Christianity with ardent sincerity:—The King and a large majority of a nation, would be converted and baptized with as much celerity as the ceremony could be performed—but still liberty in the temporal, secured freedom in the spiritual administration: Christians and Pagan citizens lived together in the utmost harmony—Those bold and hardy conquerors would never listen to Bishops who advised persecution, and held in sovereign contempt all those metaphysical distinctions with which a pure religion has been disgraced, in order to cloak villainous designs and support artful usurpations of civil powers in feeble and turbulent governments. The Gothic institutions were however much sooner corrupted from internal vices than the Roman, and the undeniable reason was, that in the former, government by representation was admitted almost coeval with their first inundations;—whereas with the Romans, the democratic branch of power, exercised by the people personally, rendered them invinsible both in war and peace—the virtue of this internal institution could only be subdued by the greatness of its external acquisition—extensive empire ruined this mighty fabric—a superstructure, which overshadowed the then known world, was too mighty for the foundation confined within the walls of a city—the wealth imported by the Scipios from Spain and Afric, and by Flaminius, Lucullus, Sylla and Pompey, from the East, enabled the *few* to corrupt the *many*—a case that can never exist but where the legislative power resides exclusively in the citizens of the town—The Roman republic then became diseased at the heart, but as it was ages in forming, so it required ages of corruption to destroy a robust con-

stitution where every atom was a nerve: It was not so with the Gothic constitution, mortal disease soon made its appearance there—Civil liberty was early destroyed by the insolence and oppressions of the great—The temporal power availed itself of that spiritual influence which nature has given religion over the hearts of men—A religion, the divinity of which is demonstrable by reason alone, unassisted by revelation became the corrupt instrument of usurpation.—Those who were the authors of the disorders which disgraced civil government, cut the reins of ecclesiastical persecution: And an universal and tyrannic confusion was mingled with absurdities that excite both ridicule and horror. We see a Duke of Gandia (who was betrayed and assassinated by that monster of perfidy Caesar Borgia, the bastard of the infamous Pope Alexander the VIth) in the last moments of his existence, begging the cut throat son, that he would intercede with his father, the Pope, in favour of his poor soul, that it might not be kept long in purgatory, but dispatched as soon as possible to Heaven, to dispute the infallibility of those vice-gerents of God, who generally patterned after the devil, was considered as an heresy more damnable than blaspheming the most high. Religious tyranny continued in this state, during those convulsions which broke the aristocracies of Europe, and settled their governments into mixed monarchies: A ray of light then beamed—but only for a moment—the turbulent state and quick corruption of mixed monarchy, opened a new scene of religious horror—Pardons for all crimes committed and to be committed, were regulated by ecclesiastical law, with a mercantile exactitude, and a Christian knew what he must pay for murdering another better than he now does the price of a pair of boots: At length some bold spirits began to doubt whether wheat flour, made into paste, could be actually human flesh, or whether the wine made in the last vintage could be the real blood of Christ, who had been crucified upwards of 1400 years—Such was the origin of the Protestant reformation—at the bare mention of such heretical and dangerous doctrine, striking (as they said) at the root of all religion, the sword of power leaped from its scabbard, the smoke that arose from the flames, to which the most virtuous of mankind, were without mercy committed, darkened all Europe for ages; tribunals, armed with frightful tortures, were every where erected, to make men confess opinions, and then they were solemnly burned for confessing, whilst priest and people sang hymns around them; and the fires of persecution are scarcely yet extinguished. *Civil and religious liberty are inseparably interwoven–whilst government is pure and equal—religion will be uncontaminated:—The moment government becomes disordered, bigotry and fanaticism take root and grow—they are soon converted to serve the purpose of usurpation, and finally, religious persecution reciprocally supports and is supported by the tyranny of the temporal powers.*

A Farmer.

(*To be continued.*)

(*Continued from our last.*)

5.1.108 Although both civil and political liberty may be truly said no longer to exist in Europe—yet from one effect of the *feudal institutions,* that enlightened part of the globe, has in a great measure, recovered from the disorders occasioned by their irreparable loss:—What I allude to is the division of that quarter of the world into a multitude of separate States and sovereignties, and that extreme attention to the preservation of each and to the balance of power, which has become a fundamental law of the whole; this secures the influence of political moderation, or a species of *fœderal liberty,* which is the next blessing that government can afford; and certainly were wise men obliged to confine themselves to the choice of one alternative—fœderal or national liberty—they would prefer the former—whilst the influence of that exists, it must support the substance in a great measure of the latter, although the forms should no longer remain—But when that ceases, national liberty, which includes both civil and political freedom, must soon expire.—The history of mankind furnishes a series of invariable and frightful examples of this.—The Roman republic included a variety of other republics, States and Kingdoms living in a perfect liberty, and according to their own laws; this variety and contrariety of interests seemed to promise internal freedom, independant of external influence—But the time of their delirium had arrived—after the conquest of Hannibal and the peace which the first Scipio made with the Carthaginians—that immortal statesman and hero gave his countrymen this remarkable advice—to restore Carthage, as an enemy worthy of Rome—but the opinion of that stupid old fool Cato, the censor, prevailed as more consonant to the vulgar level of men's judgments, and *delenda est Carthago—Carthage must be destroyed,* became the motto of the day—the consequence of this political advice was, that Carthage being razed to the ground, and no enemy existing contiguous to Rome, which she could dread—not all her internal institutions—not all the variety of interests, which a multitude of almost independant States afforded, could prevent her speedy destruction—*ruit mote sad—she fell by her own weight*—and their liberty became such liberty as a Nero and the Praetorian bands thought fit to distribute. The Turkish empire is at this day extended over a multitude of kingdoms, States—even democratic and aristocratic republics, oligarchies, and every species of institution which the inventive genius of man has created—but I do not see that it has moderated its despotism.—Spain still contains in her bosom that very extensive and well formed republic Biscay—but the slavery of Spain has since the reign of Charles the Vth, nearly depopulated the finest part of Europe.—France contains an extensive free country, which would not submit to the general government but on conditions that have hitherto secured them a superior

degree of happiness—I mean Britany, which was annexed to the crown by the marriage of Anne, of Bretagne, with Lewis the VIIth. There was a democracy until lately within the territory of France, Marseilles—A French gentleman once told me, *we had one republic in France, which made one very great noise, at last the King he did build one little citadel in the middle of it, and then he teach them republicans how to behave themselves*—The melancholy truth is, that the internal institutions of an extensive empire signify nought—the principle that the convenience, the rights and interests of a part must give way to what is called the good of the whole, unhinges every species of just and equal government, because it is a principle that has no limits.[71]

Still however the division of Europe into small independant States, pre- 5.1.109
serves a degree of social happiness very different from what exists in other parts of the world—we find them injured by foreign war—but the moderation of a political influence exempts them from the desolations of those internal commotions which lay waste two extensive empires—Their wars too are becoming more mild and less frequent than formerly, and certainly if they could not be entirely prevented, they might be quickly suppressed by keeping up an annual Congress of diplomatique ministers, instead of their present imperfect mode of negociation, which defective as it is, has notwithstanding rendered peace more durable, and war less destructive; the only satisfactory reason their greatest patriots have given for neglecting, what at first view appears so important an improvement, is that terror with which they justly view, any thing in the shape of general government, which they universally admit to be the greatest curse that can befal mankind:—The enlightened statesmen of the old world, have imprinted on their minds the wisdom of the ancient fable, which I shall now repeat to the Americans—"The lion, the king of the beasts, gave out that he was sick—he confined himself to his den, and his friends did not stick out to say that he must die of that disorder—all the beasts went to pay their court and assist him but the fox—at length the lion appeared abroad and took Reynard roundly to task, why he had not come to see him, when he was so ill—the fox, who in fable is the emblem of wisdom, made this memorable reply—In truth I did intend to pay my respects to your majesty, *but when I came near your den, I saw all the feet pointing in and none coming out*"—So invariably have powers been travelling to the centre, never again to return to those who bestow them.

At present as a recompence for the evils of occasional broils, Europe has 5.1.110
the consolation to reflect, that she is secure from the terrible despotisms which reign over the other three quarters of the globe.—Those States who admit the sanction of the laws of nature and nations form as it were a *great fœderal republic*, and the balance of power, even under an imperfect system, has prevented those great revolutions and shocks which sweeping myriads of mortals at a blow, degrade mankind in the eye of philosophy, to a level with the ants and other insects of the earth—negociation unnerves the

arm of conquest, and the genius of a Marlbrough, an Eugene, a Saxe and Turenne, is desplayed in harmless counter-marches, which in Asia, or even Europe, some centuries back, would have formed an Alexander, a Caesar, a Gengis Khan and a Tamerlane.

5.1.111 To this balance of power, France has long owed her safety, and that only can save her at this particular and awful crisis of turbulence; the despotism of Constantinople would soon reign at Paris, but that the territory of France is not sufficiently large for such a tyranny, and she is surrounded by numerous, warlike and independant sovereignties—the influence of manners, which their philosophers boast of, as one great security, if not ironically introduced, is certainly but an empty sound—their manners—reputation and every thing, have been long regulated by the capricious vices of the Prince who sat on the throne—but France is not sufficiently extensive to defend her empire by such immense deserts, as surround the despotisms of Turkey, Persia, China and Morocco, and secure them from foreign conquest—If the Prince, in France, was to destroy all their fundamental laws, which by what they now call their constitution, he evidently may do and subject his subjects to the caprice of a Turkish yoke, which 200,000 standing troops will accomplish for him whenever he pleases:—The inevitable consequence would be, that he would only subject himself and his slaves to instant conquest and partition among his neighbours.—No Prince of France will therefore ever be permitted to attempt this, whilst the present balance of power remains.

A Farmer.

(*To be continued.*)

22 April 1788

(*Continued from* No. 368.)

5.1.112 It remains to apply the foregoing principles to the American States—It is now evident, that they are not to be fixed as a constellation to give light to revolving ages—they have blazed for a moment like meteors in a troubled sky: Scarce has peace secured them the independance they sought, when a mighty revolution is to annihilate their separate and independant sovereignties, and to embrace them in the wide arms of one general government; it is impossible that the free citizens of these States could listen for a moment, to such a tremendous and awful change, but from some real defects which they have experienced in their separate constitutions—That there are such cannot be denied—but still the author has no hopes that the citizens of these States will ever be again so happy as they were under the government of Great-Britain and since the revolution—The state of society

before the late war was remarkably mild and moderate, and what is uncommon, we rather combatted the theory of tyranny than the practice[72]—since the war we have been much embarrassed by a great encrease of private, and the creation of an enormous public debt, with its attendant paper securities, the corrupting influence of which would contaminate a society of angels; our new elevation among the nations of the earth has opened to our principal citizens unbounded prospects of national splendor and private preferment, which lay dormant in our former dependant situation—all these, and a variety of other causes have combined to disturb the public tranquility and vitiate our social happiness.—We have no opportunity of comparing our situation but with that which existed before the late revolution, and from this we conclude our forms of government are defective, without considering our change of situation, or without reflecting how few countries in the world are so happy as we are at this moment—notwithstanding we are in the most disturbed of all situations of society, that is on the eve of a great revolution; suppose such a change was now impending in any other country in the world—a change opening such unlimited views to some and so detrimental to other individuals, involving the interests and agitating the passions of every citizen—could so much moderation and candor be expected—the general abhorrence which we all entertain of the violences of the mad partizans of the new system, evinces the mild state of our present institutions.

Notwithstanding this, no man is more thoroughly convinced than the Farmer, that there is not a government in the confederacy perfect, or indeed founded on solid fixed principles.—Pennsylvania has the boldest direction to a happy theory of all the new contrivances—but still it is fundamentally defective, and it is said that they are daily weakening in practice the great virtue of their institution, instead of substantiating so glorious an idea—The four New-England States were practically the most solid in their formation, until two of them were spoiled by their nasty new ginger-bread work—and yet they originally required amendments—their town meetings, which were the essential pith and marrow of their constitution seem rather to have been regulated by manners, than substantiated by proper and legal powers; as for the others they were all begun in the middle and formed without materials necessary for the work—they remain and must remain governments on paper, substantiated by anarchy and misrule—*New-York* indeed, by an excess of inverted ingenuity, has contrived to make something like a real government, that would for a length of years secure their political freedom—On the other hand *Georgia* is utterly incomprehensible—it appears at first sight all body and no head or feet, and on nearer view it has no body either—it is in fact a lusus naturae in the political world—However, should they all escape the stroke that now impends, which is hardly to be expected, it is in my opinion utterly impossible for nine out of thirteen to prolong their feeble existence for twenty years without considerable

5.1.113

alterations.—I see nothing that could greatly injure New-York, Connecticut or Rhode-Island. Were I to give a model of a perfect government, it would not vary greatly from the Connecticut charter—the amendments would be all in the town-meetings—Rhode-Island lays under a popular odium—all governments have their inconveniences, but I should be apt to ascribe those of Connecticut and Rhode-Island to their paper securities and other evils of the late war.—When parties run high, popular odium is a very uncertain test of truth, and *audi et alteram partem—hear both sides,* is the best maxim of political and moral justice. However the conduct of Rhode-Island with regard to paper money, as we hear it, is incomprehensible—What shall I say of Pennsylvania? When I view this bold effort of the human understanding, I am struck with admiration and surprize at the masterly hand of him that broke through the mounds of prejudice and education, guided by the glimmering of a distant light; he adventured boldly into the realms of truth, but the brilliant resplendence dazzled his sight—he found himself alone and unsupported, and he retired precipitately to his companions, who were groping in error and darkness[73]—Let Pennsylvania pursue with energy and propriety the ray of light, which beams through the mass of her constitution; let her establish county meetings of *freeholders,* to whom one third of her legislature may refer a contested law for the revision of the great body of the people *by actual vote*—establish county seminaries of learning and similar institutions to promote true patriotism and true knowledge, and she will last the envy of mankind until time shall be no more—As it is she is a child of nature, and strong convulsions must attend her destruction. As to all the other institutions of this continent, they are governments of the people, and yet the people are excluded from all share in the government.[74] They can only be supported by the *few* individuals who are objects of elections, maintaining a disinterested preference of the public good to their private convenience—for it must be ever held in view, that the interest of the *few* is opposed to the public interest, but the interest of the *many,* is the public interest—on which great distinction the weakness of representative government depends—The elected few are tempted to corruption by all the emoluments of government, and by that plunder which public disorder affords—they are screened from punishment by making legislation subservient to their interested purposes, and there is no control but public manners and the propinquity of our independant States, which enforces moderation by interest, emulation and example[75]—Public manners are daily corrupting by a fell avarice, which is the canker worm of public and private virtue—the facility of gratifying avaricious views, by prostituting legislative authority, renders intrigue the only profitable quality in an age of venality. Profit, honor and distinction are all inseparably interwoven, and a man of deep intrigue must be necessarily, the most respected character in perverted governments—if virtue gets into office, rotation wheels it out, hated and despised.—This view which I believe to be in a great measure just, although

the principles are but develloping, discover our systems to be fundamentally wrong, did not the proposed revolution bear a more fatal testimony; the truth is that we aimed at, and still aim at premature public splendor and private luxury, forgetting that bodies politic, like natural bodies have their duration of manly vigor and the decline of age, prolonged and regulated by the length of years in which they have been arriving at maturity.—We wanted to be every thing at once—that is what we now wish, and in the event we shall be nothing or worse than nothing; we strived to patch up the ruined fabric of the British constitution for our use, and rushing headlong to our object, we did not discover the precipices that lay in our road—we never reflected, that we had none of those distinctions of ranks which preserve that government—that the state of our society was altogether different—and that we had only the wishes, but none of the means.

A Farmer.

(To be continued.)[76]

1. This essay was written in reply to a pamphlet by Aristides, the pseudonym of Alexander Contee Hanson, a Maryland legislator and judge. The pamphlet is reprinted in Ford, *Pamphlets* 217–57.

2. Aristides had argued, near the end of his pamphlet: "The characters of the principal advocates and opponents are well known. To him who declines not a public avowal of his sentiments, some credit is due, for his candour; and he is entitled to your patient attention. But he that prefers a secret corner, for dealing forth his objections, and expositions, should be heard with caution and distrust. It is in a land of slavery alone, where truth shuns the open day." Ford, *Pamphlets* 254. Later, Aristides explained that his signature is equivalent to "a public avowal of the author." *Maryland Journal and Baltimore Advertiser* 4 March 1788. This controversy is continued in subsequent exchanges, with A Farmer finally leaving his name with the printer and both writers expressing their determination to resist personal attacks. See VI, 5.1.90. For a similar controversy see Philadelphiensis I, 3.9.1.–6.

3. Turning, as he said, "to attack the whole body of anti-federalists in their strong hold," Aristides had made the common Federalist argument that the reservations of individual rights that are appropriate where a government is given a general grant of power to do what it thinks necessary are not necessary or appropriate where the powers of government are so defined that such government cannot, "without manifest usurpation, exert any power not expressly, or by *necessary* implication, conferred by the compact." He went on to the argument that the insertion of a bill of rights would, at least, have done no harm. Among other things, "the very appearance of it might raise more clamour than its omission,—I mean from those who study pretexts for condemning the whole fabric of the constitution.—'What! (might they say) did these exalted spirits imagine, that the natural rights of mankind depend on their gracious confession. . . .' " Ford, *Pamphlets* 241–43. Aristides defends his argument against what he contends to be A Farmer's misrepresentation, in the *Maryland Journal and Baltimore Advertiser* 4 March, 1788. (This reply is not reprinted by Ford; A Farmer makes a somewhat feeble defense in his sixth essay, 5.1.84–87). Later in this reply, however, Aristides makes this interesting (if dubious) argument. "It is indeed impossible to divine, what laws it may frame, in pursuance of its particular powers. It is also impossible to say, what laws may, at all times, be 'necessary and proper.' But this we may say,—that, in exercising those powers, the Congress cannot legally violate the natural rights of an individual. And this again is all you could say, were there an express constitutional avowal of those rights." See Mason 2.2.1 n. 1.

4. Filmer does assert this doctrine in his *Patriarcha* passim., but Aristides does not. One of Aristides' defenders, A Plebeian, writing in the *Maryland Journal* on 14 March, presents a good statement of several elements of the Federalist view of the bill of rights question: "To alarm the apprehensions of the croud with an intended destruction of their *bill of rights*, when, by the constitution, the executive power is not only liable to impeachment, but so circumscribed, checked and limited, that it is scarce reasonable to imagine it can err, can be supposed to be nothing better than the last resource of a disappointed incendiary. In governments like Britain, where the executive is hereditary, and may probably fall into the hands of a person in every respect disqualified, a bill of rights is considered as necessary to guard the people against the encroachments of the crown. Our constitution hath, in this respect, freed us from the necessity of such a security. Should we hereafter be obliged to have recourse thereto, how does it appear beyond our reach? So long as we are sensible of being the origin of all power; so long as we resolve to be a free, virtuous and independent people; so long shall such principles be the best bill of rights for our security; and so long shall we be able to command it from any delegated administration whatever."

5. *Debates of the House of Commons, from the Year 1667 to the Year 1694*, collected by the Honorable Anchitell Grey, Esq. (London 1769) X.

6. John Somers, *A Vindication of the Proceedings of the Late Parliament of England* (1689); from *A Collection of Scarce and Valuable Tracts* (London 1748) II, 341–54.

7. Bracton had the king subject to *God* and the law; *On the Laws and Customs of England*, "The King has no equal," f5b.

8. Aristides replies that "An act to authorize general warrants would be agreeable to no power conferred by the constitution" and "the party injured will most clearly have redress in a state court." *The Maryland Journal and Baltimore Advertiser* 4 March 1788. See VI, 5.1.86. On a bill of rights as a standard of governmental action, see Agrippa VI, 4.6.23 n. 14; on the relevance of state bills of rights, see above Brutus II, 2.9.32 n. 23.

9. The subject of jury trial is treated at length in IV, 5.1.61 ff.

10. A Farmer may be referring to Thomas McKean; see McMaster and Stone 252, 272. See the arguments to the same effect by James Wilson (252–54; 313–15); James Bowdoin, Elliot II, 87; The Landholder, Ford, *Essays* 163; A Citizen of New York, Ford, *Pamphlets* 77; Remarker, Boston *Independent Chronicle* 27 December 1787; *The Federalist* no. 84. For an explicit statement to the contrary, see below Impartial Examiner 5.14.5, 10.

11. Thus A Farmer accepts a fundamental Federalist proposition, the overriding danger of majority tyranny, and makes it the basis for a contra-Federalist argument on a bill of rights. Cf. *The Federalist* nos. 10, 48, and 49, and James Madison to Thomas Jefferson, 17 October 1788, Madison, *Writings* (ed. Hunt) V, 269–75. See Agrippa XVI, 4.6.73.

12. "For want of some plain and obvious distinctions, there has been vented so much senseless clamour against standing armies, that they are become a political bugbear." "In fine, I consider this grand objection, as a mere pretext for terrifying you, like children, with spectres and hobgoblins." Ford, *Pamphlets* 234–35.

13. In a footnote dealing with Montesquieu's views of representation in a confederation, Aristides said: "Could the immortal spirit of Montesquieu revisit the earth, and behold the model now offerred to America, how quickly would his favorite republic [Lycia] sink in his estimation. In a new quarter of the globe scarcely heard of by the greater part of Europeans in his day, and since the commencement of the present century, he would see men who have obtained a perfection in the science most conducive to human happiness, in that study which was the principal occupation of his life, in which his predecessors had acquired only a few glimmering lights, and of which it was reserved for him to develope most of the true first principles." Ford, *Pamphlets* 223–24. See also *The Federalist* no. 9. Cf. [New Hampshire] Farmer 4.17.13 n. 8.

14. The reference seems to be to Peter Kolb, *The Present State of the Cape of Good Hope,* trans. G. Vido Medley (London 1731) I; but no such observation is to be found here.

15. On the dangers of innovation see Republican Federalist 4.13.14–15; [New Hampshire] Farmer 4.17.13 n. 8.

16. Governor Huntington argued, on 9 January 1788, that history shows that it is dangerous to trust supreme power to one man and that it is dangerous as well as inconvenient for the people of a large community to exercise in person the supreme authority. "Hence arises the necessity that the people should act by their representatives; but this method, so necessary for civil liberty, is an improvement of modern times." Elliot II, 198.

17. Cf. Mercer 5.5.11; *The Federalist* no. 63, 427–28. For other Anti-Federalist discussions of representation see Federal Farmer II, 2.8.15 n. 11.

18. *Discourses* I, 55.

19. Cf. Mercer 5.5.9; Farrand II, 284. For other Anti-Federalist discussions of the natural aristocracy see Federal Farmer VII, 2.8.97 n. 64.

20. "There is one universal division in all states, which is between the innocent and the criminals; and another between such as are, in some measure, contented with what they possess by inheritance, or what they expect from their own abilities, industry, or parsimony; and others, who, dissatisfied with what they have, and not trusting to those innocent ways of acquiring more, must fall to others, and pass from just to unjust, from peaceable to violent. The first desire safety, and to keep what they have; the second are content with dangers, in hope to get what others legally possess: one loves the present state and government, and endeavors to secure it; the other desires to end this game, and shuffle for a new: one loves fixed laws and the other arbitrary power; yet the last, when they have gained enough by factions and disorders, by rapine and violence, come then to change their principles with their fortunes, and grow friends to established orders and fixed laws." Sir William Temple, *Of Popular Discontents,* sec. 1, *Works* (1754) II, 364–65.

21. For other expressions of this theme see Federal Farmer IV, 2.8.58 n. 44.

22. This reference has not been identified.

23. Cf. Mercer 5.5.10.

24. Cf. Farrand II, 284–85. Cf. Federal Farmer XIV, 2.8.178 ff.; Henry 5.16.14; Monroe 5.21.24–27.

25. Ford, *Pamphlets* 234–35. See Adams, *Defence,* preface (*Works* IV, 288). For references to other Anti-Federalist discussions of standing armies see Brutus VIII, 2.9.97 n. 66.

26. James Wilson, "Address to the Citizens of Philadelphia," 24 October 1787, McMaster and Stone 145–46; see Brutus IX, 2.9.110 n. 73.

27. John Williams, *The Rise, Progress and Present State of the Northern Governments* (London 1777) I, bk. 3, ch. 2, pp. 600–601.

28. Ibid., I, bk. 2, ch. 2, pp. 298–315.

29. Alexander Pope, *Essay on Man* III, line 303. See Federal Farmer I, 2.8.1 n. 3.

30. The section from here to II, 5.1.46, and the last paragraph of this essay (5.1.49) were included in the pamphlet edition of Luther Martin's *Genuine Information* published at Philadelphia by Eleazer Oswald in 1788.

31. "A limited monarch, with the means of maintaining, at all times, an army devoted to his will, might soon trample on the natural and civil rights of his subjects. Could the present congress find means of augmenting the force, which it now maintains, which of you, on that account, would experience the slightest anxiety?" Ford, *Pamphlets* 234.

32. On the confusion of names, see above Martin, 2.4.43 n. 12. The discussion that follows here may be compared with that of Publius on the utility of union, *The*

Federalist nos. 2–14. On Anti-Federal opposition to consolidation, see Federal Farmer I, 2.8.10 ff. and n. 9; *Plebeian* 6.11.15 n. 9.

33. Carlyle quotes an aphorism from Montesquieu, "Happy the People whose Annals are blank in History Books." Thomas Carlyle, *History of Frederick II of Prussia* IV, bk. 16, ch. 1. See also J. J. Rousseau, *The Emile* (Everyman, ed.) 199; Benjamin Franklin, *Poor Richard's Almanack* 1740.

34. See V, 5.1.74–81.

35. Letter from John Francis Mercer to Thomas Jefferson, 27 October 1804: "I lamented also that the great and indeed only security of a confederation of Republics was destroyed by so far consolidating the general Government as to sink the distinctive spirit of separate States. A diversity of State-interests, prejudices and parties (for parties will exist in some degree where there is freedom) acting without uniformity and frequently counteracting each other, leaves the great majority of the Component Members sound and cool to repress the agitation of a part." John Mercer Garnett, "John Francis Mercer," *Maryland Historical Magazine* September 1907, p. 210.

36. See 5.1.89–111; cf. Mercer 5.5.5–6; cf. also [Maryland] Farmer VII, 5.1.108–11.

37. This important and rather unusual argument should be compared with *The Federalist* nos. 9, 10, 15, 23.

38. The original reads, "by 3dly. The Free-booters . . ."

39. Virgil, *Ecologues* III, 5–6: "The sheep is milked twice per hour, and the sap of the flock and the milk is stolen from the lambs."

40. Cf. letters from John Francis Mercer to Thomas Jefferson, 27 October 1804: "Parties in politics, like sects in Religion, can only be divested of their danger by multiplying their number and diversifying their objects. Now one universal sympathy pervades the whole Continent on every public question; the individuality of States is solv'd into two great parties, which, as they alternately command the majority, will inflict increasing injuries on each other, until violence and rancour, with their concomitants, anarchy and bloodshed, can admit of no other remedy than the bayonet of a military despot." John Mercer Garnett, "John Francis Mercer," *Maryland Historical Magazine* September 1907, p. 210.

41. See I, 5.1.14. On the importance of the jury, see above, vol. 1, pp. 18–19.

42. Tacitus, *Germania*, ch. 11, line 1. "On affairs of smaller moment, the chiefs consult; on those of greater importance, the whole community."

43. J. L. DeLolme, *The Constitution of England* I, ch. 11. DeLolme is describing the courts of equity.

44. Blaise Pascal, *Pensées*, La Fuma, no. 413.

45. *The Spirit of Laws* XI, ch. 6.

46. Cf. *The Federalist* nos. 71–72.

47. Farrand II, 284.

48. Cf. Mercer 5.5.11. See Centinel I, 2.7.7 n. 4.

49. DeLolme, *The Constitution of England* II, chs. 5–8. See Centinel I, 2.7.7 n. 4.

50. Cf. references to Switzerland noted in Old Whig IV, 3.3.30 n. 22.

51. This reference has not been identified.

52. William Coxe, *Sketches of the Natural, Civil, and Political State of Swisserland*, 2d ed. (London 1780) 274–75; cf. 51–53, 124–25.

53. Cf. John Adams' less favorable view of San Marino, in his *Defence* I, letter 3 (*Works* IV, 308–10).

54. See Machiavelli, *Discourses* I, ch. 6.

55. The reference is presumably to Aristides' essay in the *Maryland Journal* 4 March 1788.

56. See I, 5.1.4–5 and n. 4.

57. See the remark to this effect by Thomas McKean in the Pennsylvania ratifying convention, 28 November 1787; McMaster and Stone 252.

58. The reference may be to William Paca, former governor of Maryland, although no statement by Paca linking Aristides and Filmer has been found. (Aristides said in his essay of 4 March, "One other person has indeed discovered a congeniality between Filmer and Aristides. Perhaps the Farmer is only paying his court. If so, Aristides will freely forgive the *injury*.")

59. ". . . *except*," Aristides went on, "*only the cases created by or under the proposed constitution, in which, as they do not now exist, the inferior federal courts will have exclusive jurisdiction.*" Ford, *Pamphlets* 238. See I, 5.1.12. Aristides was right in expecting that the state and federal courts would have concurrent jurisdiction in many areas, but he was wrong in expecting that actions begun in state courts could not be transferred to a federal inferior or supreme court. (Ford, *Pamphlets* 237–38.) Given this latter view, the notion of concurrent jurisdiction is, of course, much more open to the criticism of A Farmer than the present system of concurrent jurisdiction subject to final determination by the federal Supreme Court.

60. The full remark is: "Suppose now a federal officer under colour of his legal authority, to commit a daring outrage; may not the party injured obtain redress in a state court?—With submission to all Farmers, and antifederalists, I think, he may.—If a suit be brought, and the defendant attempt to justify, there will be two points for decision.—Did the officer act agreeably to law? Is such law agreeable to the constitution?—In Like manner, were there a federal bill of rights, the question before the court would be, is such law agreeable to the bill of rights?—I am under no fear, that any sound lawyer, of a good moral reputation, will say, that, on the defendant's barely producing a federal commission, the action in a state court must of course be dismissed. Away then with this ridiculous bugbear, fit only to alarm minds, on which no science has ever dawned." *Maryland Journal* 4 March 1788.

61. Ford, *Pamphlets* 234.

62. Cf. *The Federalist* no. 10.

63. *The Spirit of Laws* VIII, ch. 3.

64. Horace, *Epistles* I, ch. 2, line 14.

65. This reference has not been identified.

66. See Helvétius, *De L'Esprit*, (1758) III, xviii.

67. William Coxe, *Travels into Poland, Russia, Sweden and Denmark* I, ch. 4.

68. Suetonius, *Lives of the Twelve Caesars*, Caius Julius Caesar, sec. 52.

69. Ammianus Mircellinus.

70. Rather, Tertullian, *On the Flesh of Christ*, ch. 5.

71. Cf. above, *Agrippa* VII, 4.6.26; XII, 4.6.58 n. 31.

72. Cf. Mercer 5.5.12.

73. The reference is probably to Benjamin Franklin, who presided over the Pennsylvania constitutional convention in 1776. Mercer certainly would have known, from his own observation and from reports of the proceedings prior to his arrival on 6 August 1787, of the silence and lack of support that met several of Franklin's proposals in the federal Constitutional Convention; he arrived too late to hear Franklin describe the Convention "groping as it were in the dark to find political truth" (Farrand I, 451), though he may well have heard or read reports of that speech, or even seen the manuscript of the speech itself.

74. Cf. *The Federalist* no. 63, 428.

75. Cf. Farrand II, 284.

76. There appear to have been no more essays published.

Essay by
A Farmer and Planter

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This essay,[1] written shortly before the election of delegates to the state ratifying convention, attacks the Constitution as a scheme for aristocracy fostered by the rich men. A Farmer and Planter is particularly fearful of the oppressive consequences of the powers to tax and to use the militia to enforce the laws. He sums up a great deal of Anti-Federal sentiment in his call, "Be wise, be virtuous, and catch the precious moment as it passes, to refuse this new-fangled government, and extricate yourselves and posterity from tyranny, oppression, aristocratical or monarchical government." (5.2.3).

1. Bernard Steiner suggests that there were several articles by A Farmer and Planter, but all of his references are to the article here, and I have found no others. "Maryland's Adoption of the Federal Constitution," *The American Historical Review* October 1899, p. 38 n.5.

To the Farmers and Planters of Maryland

Fellow-Citizens,

5.2.1 The time is nearly at hand, when you are called upon to render up that glorious liberty you obtained, by resisting the tyranny and oppression of George the Third, King of England, and his ministers.—The first Monday in April is the day appointed by our assembly, for you to meet and choose delegates in each county, to take into consideration the new Federal Government, and either adopt or refuse it. Let me entreat you, my fellows, to consider well what you are about—Read the said Constitution, and consider it well before you act—I have done so, and can find that we are to receive but little good, and a great deal of evil—Aristocracy, or government in the hands of a very few nobles, or RICH MEN, is therein concealed in the most artful wrote plan that ever was formed to entrap a free people. The contrivers of it have so completely entrapped you, and laid their plan so sure

and secretly, that they have only left you to do one of two things; that is either to receive or refuse it. And in order to bring you into their snare, you may daily read new pieces published in the News-Papers, in favour of this new government; and should a writer dare to publish any piece against it, he is immediately abused and vilified.

Look around you and observe well the RICH MEN, who are to be your only rulers, lords and masters in future! Are they not all for it? Yes! Ought not this to put you on your guard? Does not riches beget power, and power, oppression and tyranny? 5.2.2

I am told that four of the richest men in Ann-Arundel County, have offered themselves candidates to serve in the Convention, who are all in favour of the new Federal Government;[1] let me beg of you to reflect a moment on the danger you run—If you choose these men, or others like them, they certainly will do every thing in their power to adopt the new government—Should they succeed, your liberty is gone for ever; and you will then be nothing better than a strong ass crouching down between two burthens—The new form of government gives Congress liberty at any time, by their laws, to alter the state laws, and the time, places and manner of holding elections for representatives; by this clause they may command, by their laws, the people of Maryland to go to Georgia, and the people of Georgia to go to Boston, to choose their representatives—Congress, or our future lords and masters, are to have power to lay and collect taxes, duties, imposts, and excises—Excise is a new thing in America, and few country farmers and planters know the meaning of it; but it is not so in Old England, where I have seen the effects of it, and felt the smart. It is there a duty, or tax, laid upon almost every necessary of life and convenience, and a great number of other articles. The excise on salt in the year 1762, to the best of my recollection, in England, was 4s. sterling per bushel, for all that was made use of in families, and the price of salt per bushel about 6s. sterling, and the excise 4s. 6d. on every gallon of rum made use of. If a private family make their own soap, candles, beer, cider, &c. &c. they pay an excise-duty on them; and if they neglect calling in an excise-officer at the time of making these things, they are liable to grievous fines and forfeitures, besides a long train of evils and inconveniencies attending this detestable excise; to enumerate particularly would fill a volume—The excise-officers have power to enter your houses at all times, by night or day, and if you refuse them entrance, they can, under pretence of searching for exciseable goods, that the duty has not been paid on, break open your doors, chests, trunks, desks, boxes, and rummage your houses from bottom to top; nay, they often search the cloaths, petticoats and pockets of ladies or gentlemen, (particularly when they are coming from on board an East-India ship) and if they find any the least article that you cannot prove the duty to be paid on, seize it and carry it away with them; who are the very scurf and refuse of mankind, who value not their oaths, and will break them for a shilling. This is

their true character in England, and I speak from experience, for I have had the opportunity of putting their virtue to the test; and saw two of them break their oath for one guinea, and a third for one shilling's worth of punch. What do you think of a law to let loose such a set of vile officers among you! Do you expect the Congress excise-officers will be any better, if God, in his anger, should think it proper to punish us for our ignorance, and sins of ingratitude to him, after carrying us through the late war, and giving us liberty, and now so tamely to give it up by adopting this aristocratical government?

5.2.3 Representatives and direct taxes shall be apportioned among the several states, which may be included within this union, according to their respective numbers. This seems to imply, that we shall be taxed by the poll again, which is contrary to our bill of rights; but it is possible that the rich men, who are the great landholders, will tax us in this manner, which will exempt them from paying assessments on their great bodies of land in the old and new parts of the United States; many of them having but few taxable by the poll.—Our great Lords and Masters are to lay taxes, raise and support armies, provide a navy, and may appropriate money for two years, call forth the militia to execute their laws, suppress insurrections, and the President is to have the command of the militia.—Now, my countrymen, I would ask you, why are all these things directed and put into their power?—Why; I conceive, they are to keep you in a good humour; and if you should, at any time, think you are imposed upon by Congress and your great Lords and Masters, and refuse or delay to pay your taxes, or do any thing that they shall think proper to order you to do, they can, and I have not a doubt but they will, send the militia of Pennsylvania, Boston, or any other state or place, to cut your throats, ravage and destroy your plantations, drive away your cattle and horses, abuse your wives, kill your infants, and ravish your daughters, and live in free quarters, until you get into a good humour, and pay all that they may think proper to ask of you, and you become good and faithful servants and slaves.*[2]—Such things have been done, and I have no doubt will be done again, if you consent to the adoption of this new federal government. You laboured under many hardships whilst the British tyrannized over you!—you fought, conquered and gained your liberty—then keep it, I pray you, as a precious jewel—trust it not out of your own hands—be assured, if you do, you will never more regain it—the train is laid, the match is on fire, and they only wait for yourselves to put it to the train, to blow up all your liberty and commonwealth governments, and introduce aristocracy and monarchy, and despotism will follow of course, in a few years; for a four-years President will be, in time, a King for life, and after him, his son,

*See the history of the confederate Grecian States—Also the history of England, for the massacre of the people in the valley of Glenco, in the time of William the Third.

or he that has the greatest power among them, will be King also.—View your danger, and find out good men to represent you in convention—men of your own profession and station in life—men who will not adopt this destructive and diabolical form of a federal government:—There are many among you that will not be led by the nose by rich men, and would scorn a bribe.—Rich men can live easy under any government, be it ever so tyrannical—they come in for a great share of the tyranny, because they are the ministers of tyrants, and always engross the places of honour and profit, whilst the greater part of the common people are led by the nose, and played about by these very men, for the destruction of themselves and their class.—Be wise, be virtuous, and catch the precious moment as it passes, to refuse this new-fangled federal government, and extricate yourselves and posterity from tyranny, oppression, aristocratical or monarchical government.

You, who have an opportunity of getting the news-papers, no doubt have 5.2.4
seen the farce and parade at Boston!—they adopted the federal government, and afterwards proposed amendments—let us be wiser—let us not adopt it until it is amended.—I revere the characters of some of the gentlemen that composed the convention at Philadelphia, yet I think they were human, and subject to imposition and error, as well as the rest of mankind.—You lost eight or ten years of your lives and labour by the last war, and were left at last with your debts and incumbrances on you, and numbers of you were soon after the close of it, sued and harrassed for them—your persons have been put into a loathsome prison, and others of you have had your property sold for taxes, and by your rapacious creditors, for one fourth, and sometimes for one tenth of its former and actual value; and you now pay very grievous and heavy taxes, double and treble what you paid before the war; and should you adopt this new government, your taxes will be greatly increased to support them, their officers, servants, and retainers, who will be multiplied upon you to keep you in obedience, and collect their duties, taxes, impositions, and excises. Some of you may say the rich men were virtuous in the last war; yes, my countrymen, they had reason then to be so! our liberty then was in dispute with a mighty and powerful tyrant, and it was for their interest to promote and carry on the opposition, as long as they could stay at home and send the common people into the field to fight their battles—After the war began, they could not with decency recede, for the sword and enemy were at the very entrance of their gates. The case is greatly altered now; *you* conquered the enemy, and the rich men now think to subdue you by their wiles and arts, or make you, or persuade you, to do it yourselves. Their aim, I perceive, is now to destroy that liberty which you set up as a reward for the blood and treasure you expended in the pursuit of and establishment of it. They well know that open force will not succeed at this time, and have chosen a safer method, by offering you a plan of a new Federal Government, contrived with great art, and shaded with obscurity,

and recommended to you to adopt; which if you do, their scheme is compleated, the yoke is fixed on your necks, and you will be undone, perhaps for ever, and your boasted liberty is but a sound. Farewell!—be wise, be watchful, guard yourselves against the dangers that are concealed in this plan of a new Federal Government.

A Farmer and Planter.

March 27, 1788.

1. The Federalist candidates were Charles Carroll, James Carroll, Brice Worthington, and John Hall. The election in Ann Arundel County was won by the Anti-Federalist slate consisting of Jeremiah T. Chase, John Francis Mercer, Benjamin Harrison, and Samuel Chase. See Steiner, *American Historical Review* October 1899, pp. 38, 42. See generally Philip A. Crowl, *Maryland During and After the Revolution* (1943) and his "Anti-Federalism in Maryland 1787–1788," *William and Mary Quarterly* October 1947.

2. Cf. *The Federalist* no. 29, pp. 185–87.

Samuel Chase
Notes of Speeches Delivered to the Maryland Ratifying Convention

April 1788

The notes that follow were taken from the George Bancroft papers at the New York Public Library. They were copied in February 1877, from originals lent to Bancroft by Mrs. C. Chase Oldfield, granddaughter of Samuel Chase, and are thought to be notes of speeches delivered by Chase to the Maryland Convention in April 1788. Chase was an active revolutionary and signer of the Declaration of Independence. He was also a member of the Maryland ruling group and was instrumental in framing the state's high-toned constitution. He has had no full-length biography and remains a paradoxical figure who tended to combine distinguished public service and more or less disreputable behavior. Edward S. Corwin concluded, "His intellectual grasp is fully attested by his judicial opinions; his turbulent disposition appears at every turn in his career."[1] Upon receipt of the Constitution in Maryland, Chase temporized, apparently in recognition of strong Federalist opinion in Baltimore. He favored calling a convention but left his own opinion ambiguous. His only significant written contribution, a piece published in October and appropriately signed "Caution," argues against precipitation but not explicitly against the Constitution.[2]

The notes here are brief and give little indication of how Chase developed his arguments, but they are the only substantial reflection of the views of this important Anti-Federalist leader. In addition, the most interesting portion of the notes is a well developed argument on representation.

The notes are made up of distinct fragments, each of which is left intact here.[3] As there is no way of knowing how Chase used them, the fragments have been arranged here in what seems to be the overall order of the argument. The designations at the head of each fragment have been supplied by the editor.

I. The Constitutional Convention (5.3.1–6)

II. A. The Present Governments of the U.S.: Excellence of State Governments (5.3.7–8)

II. B. The Present Governments of the U.S.: Reform of the Articles of Confederation (5.3.9–15)

III. The tendency of the Constitution to Annihilate State Governments (5.3.16)
IV. A. Objections to the New Government: General (5.3.17)
IV. B. Objections to the New Government: Expense (5.3.18)
IV. C. Objections to the New Government: Liberty of the Press (5.3.19)
V. Representation (5.3.20)

1. "Samuel Chase," *Dictionary of American Biography* IV, 37.
2. *The Maryland Journal and Baltimore Advertiser* 12 October 1787: see reply by A Friend to the Constitution in the same journal, 16 October 1787. The statement of Caution is printed in Ford, *Essays* 325–28; see letter from Daniel Carroll to James Madison, 28 October 1787, *Documentary History of the Constitution* IV, 352.
3. Bracketed material in italics is Bancroft's.

I
The Constitutional Convention

5.3.1 Authority of Delegates to Convention.

Act of appointment.

No authority from legislature to annihilate Confederation and form a Constitution for the United States. Legislature could not grant such power. Deputies acted as mere individuals and not in official or delegated capacity. Express object of delegates to *revise* Confederacy.

5.3.2 Act done—a general or *national* government is formed—the separate sovereignty and independence of each state, and their union by a confederate league is destroyed and they are melted down and consolidated into one *National* Government. In Confederation—*We the States*—in Proposed Constitution—*We the People*—the first is a true *federal government of states* and has no power over the *individual citizens* of any of the states—the latter a national one by express compact of all the people; it establishes a supreme power over the *individuals* of the states.

It annuls the confederacy. See Art. 13.

It swallows up the state governments and state legislatures—it alters our Constitution and annuls our Bill of Rights in many of its most essential parts—How justify this Convention on the principles of Aristides—People no right to interfere, etc.

5.3.3 Aristides p. 9. Amendent in parliamentary language means striking out the *whole*. Convention has only advised—and so might an individual.[1]

Wilson—Convention did not act upon the powers given them by the States but they proceeded upon *original principles*—Independent Gazetteer, 29 Nov.[2]

McKean—State Convention no right to inquire into power of late convention, or to alter or amend their work. Sole question whether to ratify or

reject the whole system.[3] Could convention lessen the *rights* of the people? their right to lessen never surrendered to Convention. People must have a *right* to judge of the Government proposed. No man can controvert the right of proposing amendments. Whether proper and necessary the only question. Aristides 30.[4]

1st. Question. Whether a federal or national government proper for America. S.C. [i.e. Samuel Chase] for the former. Because an extensive country (like United States) on democratical principles only by a Confederation of small republics exercising all the powers of *internal* government, but united by league as to their *external* foreign concerns.—A national or general government however constructed over so extensive a country as America must end in despotism.—If instituted on principles of freedom, not competent to the local wants and concerns of the remote parts of the empire. Montesquieu Vol. I. [Bk. VIII] ch. 16. Brutus No. 1. Cato No. 3.[5] 5.3.4

2nd Question—If *national* whether the one proposed ought to be ratified without any previous amendments. 1. The question is the most important that ever came before an assembly for decision. It involves the happiness or misery of millions yet unborn. The decision requires all the consideration that the utmost exertion of the powers of the mind can bestow. 5.3.5

The present and future generations will bless or execrate us. We [are] at a solemn crisis—and the magnitude of the subject requires that it should be deliberately considered and fully considered with temper and moderation.—[6] 5.3.6

II A
The Present Government of the U.S.: Excellence of State Governments[7]

I am a friend to our present state government because it is wisely calculated to secure all the civil and *religious* rights of the people and fully adequate for *all internal state* purposes, and our *state* Constitution and laws afford security to property and ample protection to the poor from abuse by the officers of our state government and from any oppression of the poor by the rich and powerful. *There is no injury for which our present laws do not provide a remedy.*—There are some few, and not very capital, defects in our form of Government and they may at any time be amended with prudence and sense without any division or commotion—in a word; We might be happy under our present state government, if we knew our own good, and would be contented. I am opposed—averse from the proposed national government, because it *immediately* takes away the power from our *state* legislature to 5.3.7

protect the *personal* liberty of the citizen, and I am convinced in my judgment that it will in a few years entirely absorb and swallow up the state legislature.

5.3.8 Our Bill of Rights which is part of our Constitution provides[8]—

Sect. 2. That the people of this state ought to have the sole and exclusive right of regulating the internal government and police thereof.

Sect. 3. That the inhabitants are entitled to the Trial by Jury according to the course of common law, not only in criminal cases but in all cases between Government and its officers—cause etc.

Sect. 17. Every freeman for any injury to person or property ought to have remedy by the law of the land.

Sect. 18. Trial of facts where they arise is one of the greatest securities of the lives, liberties and estate of the people.

Sect. 23. All warrants without oath to search, etc.

Sect. 13.—Laying taxes by the poll is grievous and oppressive and ought to be abolished.

Sect. 25. Militia proper and natural defence of a free government.

Sect. 26. Standing armies.—27.—28. No soldier to be quartered in any house *in time of peace* without the consent of the owner, and in time of war in such manner only as the legislature shall direct.

Sect. 38. The liberty of the press ought to be inviolably preserved.

Sect. 33. Securing religious rights of conscience.

By our present form of government, the legislature is not supreme but bound by the Constitution.

II B

The Present Government of the U.S.: Reform of the Articles of Confederation

5.3.9 The greatest happiness of a people is to govern themselves. Their greatest misery to be governed by others;—Our *state* government is fully competent to all *internal state purposes*.

For the safety and happiness of the people of this and the other states, *external* objects, or such for which the state governments are not competent are to be provided for.

5.3.10 1. To provide a form to regulate commerce among the states and to preserve peace between the states—resort against domestic enemies, with Indian tribes, and to coin money and to regulate the value thereof, and of foreign coin and to fix the standard of weights and measures—to establish post offices and post roads—may be called a *general internal or continental object*.

2. To preserve all the states from injury or violence from the foreign powers of Europe and to shield them against foreign hostility may be called a *general external or foreign object.*

3. To regulate the trade of the States with foreigners, by Acts of Navigation and by treaties of Commerce with the powers of Europe may be also called a general external or foreign object.

I am for the establishment of power in Congress for all the above or similar purposes. 5.3.11

The 1st—to preserve peace between the states, etc. may be provided for without much difficulty (and about which there never has been nor can be much difference in opinion) by establishing a supreme power to decide all controversies between the states, to coin money, etc., etc. and by a Bill of Rights declaring what the states shall *not* do—as, e.g. not to enter into any treaty, keep troops, coin money, or do any of the above or other acts which the supreme power of all the states are authorized to do.

The 2nd—to preserve all the states etc.—This necessarily includes the power of war;—and the means to carry it on—i.e. to raise money, to maintain troops and to provide a navy.—and it includes the jurisdiction of piracies and felonies on the high seas and of all offences against the law of nations. This also includes the payment of the debt contracted by the United States.

This power is necessary, not immediately pressing—consider the situation of Confederation—but attended with some difficulty. It requires a legislative, an executive and a judicial authority. 5.3.12

Every legislative power should be vested in two, if not three Branches, and they ought to be the *real*, and not the *fictitious* representative of the people. Their numbers ought to be sufficient to know the wants and the wishes of those they represent—too numerous to be corrupted and not so great as to be a mob.

The *Executive* of the States ought to be in a Supreme Magistrate or president—ineligible after a limited time with a Council of short duration and responsible for their advice. 5.3.13

The *Judicial* should be confined to the decision of cases arising on treaties. [*The clause "on treaties" is substituted for—"under the Constitution and laws"—erased*] The great question is in what manner the legislative of the states shall raise taxes on the people of the several states.

I would not give this power only on default of a state to raise its quota as required. If neglected, I would authorise the legislative to lay and collect imposts and duties on tonnage without limitation, provided they be uniform in all the states; also taxes not exceeding limited sums on enumerated Articles of Exports, and stamp and post office duties. If they [be] not sufficient, an excise. Provided they be the same in all the states and that Congress officers be held to account for abuse of authority in the states. And if all [be] not sufficient, a tax on land not exceeding ½ d. per acre. 5.3.14

I would give the above power of taxation without requisition being first made to the states. It is difficult to say what taxes the legislative may lay, but some limitation is necessary.

5.3.15 The Third—to regulate trade—

I am against giving this power—but if it is given let it be to ⅔ of the Senate.

[*Earlier in the original Ms. we find erased—"The 3d—to regulate trade, etc.—This I would agree to"—the sentence being left unfinished.*]

III

The Tendency of the Constitution to Annihilate State Governments

5.3.16 The National Government will in its operation and effects annihilate the State Governments.

1. National Government has unlimited power, legislative, executive and judicial, as to every object to which it extends by the Constitution.

2. The powers of the National legislature extend to every case of the least consequence—it may make laws to affect the lives, liberty and property of every citizen in America, nor can the Constitution of any State prevent the Execution of any power given to the National legislature.

3. The National legislature may impose every species of taxes external and internal (except only on Exports) *excise, land tax,* poll tax, stamps etc. to *any extent,* and may raise and collect them as they please, without any previous requisition to the State legislatures who have nothing to say to the laws for imposing or collecting taxes—

4. The power to impose and collect taxes is the most important of all powers a people can grant—it absorbs all other powers—Maxim—Money finds Men (Troops) and Troops will find money—The power of taxation is the highest object of legislation—it is the necessary means of protection and safety to the people in a *good* government and it ever has been and will be the instrument of oppression and tyranny in a *bad* government.

5. No state can emit paper money—nor without consent of Congress lay any duties on Imports or *Exports* or Tonnage except for executing its inspection laws, and in such cases the net produce is for the use of the United States—Therefore no state can pay its debts—or support its government but only by *direct* taxes on Property—Congress can lay all indirect taxes, and also *direct* taxes when they exercise this power in all its extent. The state legislatures will find it impossible to raise money by *direct* taxes to pay their debts and support their governments—the consequence is certain—without money they will be as Congress is now,—without power, or respect and despised—they will sink to nothing, and be absorbed in the general

government.—The people will not bear the expense of two governments. The state government may come in for some time to carry into execution the National Government—even this may be taken away. Art. 1. Sect. 4. See Aristides 37.[9] Impost 38.[10] Farmer's Letters 9. p. 37.[11] Will impost pay interest of *national foreign and domestic debt* and expenses of new government?

6. The power of the national legislature to raise troops in *peace* (as well as war) without any limitation as to number, or with consent of more than a Majority in Congress [I say not less than 9 of 13 and in same proportion] or a Majority of the state legislatures and to levy money for their support for two years—to control the Militia will also [? *tend*] to swallow up the state governments—

7. The supreme and inferior federal courts will have the same effect by absorbing the state courts—One must be in each state.

8. The power to make laws [*Art. 1. Sect. 8*]—e.g. The state lays a direct tax to pay its debts or to support its government—Congress thinks proper to lay tax on *same property* and as both cannot be paid cannot Congress repeal the State law, or will not their judges declare it void. Will not this conduct deprive the state of all support?

9. [*8 repeated in orig.*] The little power reserved to the states will be an object of jealousy to Congress. The whole Constitution breathes a jealousy of the states—its judges and juries. Truth confirmed by experience of ages that every *individual*, and all bodies of men invested with power, always attempt to increase it, and never part with any of it but by force. It is the very nature of man. The National government will possess this desire and having the means it will in time carry it into execution. I think the people themselves will assent and may be persuaded to call for the abolition of the state governments. It is at this moment the wish of many men in America and some in this state.

IV A
Objections to the New Government: General

I am opposed to the new Government;— 5.3.17

1. Because it gives Congress a power without any limitation to lay any kind of taxes that the invention of Man can suggest—indirect and direct. I particularly object to the power to lay taxes on our lands without any limitation and according to our numbers including 3/5 of our slaves. Also to an Excise and the power to excise officers to enter and search and no remedy by such in state courts—and *Verdict by a Jury;* as under the British government. Clayton's Rep. 44. Woman's shift.[12] Also to a poll tax which Con-

gress is *expressly* authorized—Art. 1. Sect. 9.—to lay on all our whites and 3/5 of our slaves—the most fatal and oppressive of all taxes. N.B. A favorite tax with Congress and R.M. [*i.e. Robt. Morris.*]

2. Because Congress will have a *right* to keep any army in time of peace without number.

3. Because Congress will have a right to quarter soldiers in our *private* houses, not only in time of war, but also in time of *peace*. Bill of Rights 28.

4. Because Congress will have authority over our Militia, and may if they please, march any of them without regard to scruples of conscience against bearing arms, to any part of the United States.

5. Because the inferior federal courts will have the exclusive jurisdiction—Art. 3. Sect. 2 of every controversy between the citizens of the different States—and no trial by Jury. Blackstone 3. c. 33.

6. Because these courts will have the same jurisdiction in controversies between our citizens and subjects of Great Britain or any other foreign state—Tobacco shipped. N.B. An appeal in both cases.

7. Because the Senators or Representatives may be appointed to civil offices under the United States not created or the emoluments increased during the time for which he was elected.

8. Because Congress are to ascertain their own salaries. Art. 1. Sect. 6.

9. Because the Senate are too few in number—only two from each state. 26 at present—a Majority, a Quorum—14—ergo 8 may make a law—liable to corruption—France, Great Britain.

10. Because the Senate are a perpetual body and never die a civil death, although 1/3 is to be chosen every second year—because after first six years there will always be 2/3 of the body in existence—1/3 of which 2/3 will always have served two years and other four years and after first rotation every Senator may serve 6 years.

11. Because 2/3 of the Senate *present* and the president may make treaties of commerce, and the treaties are to be the supreme laws of the land.

12. Because the Representatives are too few in number—1 for 30,000—whites and 3/5 slaves—65 at present—a majority, a quorum 33.—ergo 17 may make a law—liable to corruption.

13. The House of Representatives will not be chosen by the people. Art. 1. Sect. 2.

Maryland is to choose 6 representatives—Every person qualified to elect members to our House of Delegates to be entitled to vote—our legislature is to prescribe the *time, place* and *manner* of electing representatives. Art. 1. Sect. 4—Either the people at large of the whole state must choose the six representatives—or the state must be divided into six districts—say 2 on Eastern and 4 on Western shore.

14. Because Congress may alter the *time, place* and *manner* of choosing representatives. Art. 1. Sect. 4. proceedings Boston 47–51.[13]

15. Because Congress may alter the time and manner of choosing Senators—the place where is not to be altered.

N.B. Treaties supreme law—Sect. 6.

See Aristides p. 11.[14]

Massachusetts propose to restrict this power to cases expressed.

16. Because the *president* will *not* be chosen by the people *immediately*—that is by electors chosen by the people—as pretended. Art. 2. Sect. 2. The legislature are to direct *who are to be* electors, but the number is fixed to be equal to the whole number of Senators and Representatives—e.g. in this state 8—in all 91. Congress are to determine the *time* of choosing electors and the *day* on which they shall elect the president which shall be the same day in all the states.

The electors are to choose by ballot *two* persons. The person having a *majority* of all the electors to be president and if no person has a majority—which is most improbable, except in first instance then from the *five* highest on the list the House of Representatives to choose the President—each State to have a vote.

17. Because the powers of the President are dangerous. Power of nominating to office. Of pardoning *before* conviction.

18. Because he is eligible for life and he ought to be ineligible after a given number of years.

19. Because the *Judicial* Power extends to controversies between citizens of different states and between citizens of the states and subjects of foreign states and in such cases the trial by Jury is taken away.

20. It is said by the advocates for the new government that we are without a government. Ans. They mean a general or national government—not a state government. The former is wanted to make the *states* do their duty, and pay their Quota to discharge the debt contracted during the war—and to protect the states against the Powers of Europe [*There is a power to decide differences between the States in the Federal Congress*] and to regulate trade—If admitted—yet no necessity much less wisdom to do more than is necessary to answer these objects—powers for these purposes can be given without surrendering up our liberties.

21. The new government will take the burthen from the farmer and planter, and the poor people and place it on trade—because duties on imports and tax on *Excise* will be adopted. Ans. Why cannot state governments do the same?—In truth it is only changing *in part* the mode of taxation—Explain it. *Why poll tax* is not for the benefit of the poor.

22. Regulations of trade and treaties of commerce will bring in money—employ our Merchants—shipbuilders. Ans. if true, give those powers but not those granted.

23. The people can't be worse. Ans. Why are they distressed?—many from their *private debts*—some from taxes—all from the scarcity of money. Will new government pay private debts? Will it lessen taxes? It will make

our Continental debt specie—it is now at 8 for 1. £200,000 would pay the proportion of this state—it was proposed by *an emission*—Consider the Expenses of National government.

24. The government is calculated for a few rich and ambitious men—and speculators in certificates—

25. Merchants are for it. Ans. consider them. Birds of passage.

26. General Washington et al. for it.

27. May amend afterwards. Ans. The amendments proposed prove that these are capital defects. Should amend before adoption—1. because it is easy to grant and very difficult to recall power which from its nature is ever encroaching. 2. No wise people ever gave power over their liberties with a view of getting back the power. 3. It is now in the power of five states to obtain amendments—afterwards there must be nine.—4. a bad government becomes more feared every day by its officers. 5. why not *another convention?* Who is violent for it—Ans. Rich Men and speculators and office hunters.

Call on friends to give reasons for new government.

[*On the margin of this paper the following:*]—why call on people at large? Haste—no delay—Senate for Jany.—

IV B

Objections to the New Government: Expense

5.3.18 Expense of National Government.

Civil List—President—Vice-President—Senators—Representatives—Ambassadors—Judicial Department—Judges, Justices, Chanellor, Clerks, Sheriffs, Excise officers, Naval officers—Locusts—Policy to institute a number of lucrative new offices to increase their influence in the States—Army will provide for many expectants.

IV C

Objections to the New Government: Libery of the Press

Liberty of Conscience—Old Whig No 5-4.[15] Brutus No 2[16]

Bill or Declaration of Rights.

Liberty of Press.

5.3.19 1. The Constitution gives no power to Congress *express* or *implied* to abridge or take away the liberty of the press.

2. Art. 1. Sect. 8. Congress have power to promote Science and it is

impossible to promote Science and at same time destroy the liberty of the press—under this clause may write what they please about Government. There is no Bill or Declaration of Rights to restrain Congress—They will have the power and it remains in their discretion when they will exercise it.

V
Representation

Representation. 5.3.20

1. A fact—the continent will be governed by 65. Six northern states—35-seven southern states—30.

2. I do not object that the states have not an equal representation in the second branch or House of Representatives.

3. I object because the representatives will not be the representatives of the people at large but really of a few rich men in each state.[17] A representative should be the image of those he represents. He should know their sentiments and their wants and desires—he should possess their feelings—he should be governed by their interests with which his own should be inseparably connected. The representatives of so extensive a country—consequently such numbers should be numerous.—A few men cannot possibly represent the *opinions*, wishes, and *interests* of great numbers. It is impossible for a few men to be acquainted with the sentiments and interests of the United States, which contains many different classes or orders of people—Merchants, farmers, planters, mechanics and gentry or wealthy men. To form a proper and true representation each order ought to have an opportunity of choosing from each a person as their representative; this is impossible from the smallness of the number—65. Can six men be found in Maryland who understand the interests of the several orders of men in this state and are acquainted with their situation, wants and would act with a proper sense and zeal to promote their prosperity—If such could be found will they be chosen by the people? No—but few of the Merchants and those only of the opulent and ambitious will stand any chance. The great body of farmers and planters cannot expect any of their order—the station is too elevated for them to aspire to—the distance between the people and their representatives will be so very great that there is no probability of a farmer or planter being chosen.—Mechanics of every branch will be excluded by a general voice from a seat—only the *gentry*, the *rich* and well born will be elected. Wealth creates power—the wealthy always have a number of dependents—they always favor each other—it is their interest to combine and they will consequently always unite their efforts to procure those of their own order or rank to be elected and they will generally suc-

ceed. The station is too high and elevated to be filled but by the *first men* in the state in point of fortune and influence. In fact no order or class of the people will be represented in the House of Representatives—called the Democratic branch—but the rich and wealthy. They will be ignorant of the sentiments of the middling [*and much more of the lower*] class of citizens, strangers to their ability, unacquainted with their wants, difficulties and distress and need of sympathy and fellow feeling.

4. The numbers are too few. It is to consist at first of 65—and cannot exceed 1 for 30,000 inhabitants—whites and 3/5 slaves—a majority, a quorum 33—ergo 17 may make a law—liable to bribery and corruption. G.B. and F. [*i.e. Great Britain and France*] will endeavor to obtain an influence to procure treaties of commerce, and alliances offensive and defensive—they will practice the means—Holland is a proof.

This objection applies to the Senate—at first 26—14 a majority—8 may make a law—liable to same bribery and corruption. Madness to vest 25 men with absolute power—no free people ever reposed power in so small a number. The Executive will corrupt them—they are not excluded from office.

The last House of Commons above 500 members. Number of inhabitants about 8 millions—1 for little above 14,000—The numbers in the Democratic branches in 13 states amount to 2,000. The numbers should be too great to be corrupted and not so great as to be a mob.

[5.] The House of Representatives will *not* be chosen by the people.

Art. 1. Sect. 2.

Maryland is to choose 6 representatives—every person qualified to elect members of our House of Delegates is to be entitled to vote. Our legislature is to prescribe the time, place and manner of electing representatives. Art. 1. Sect. 4. Aristides 9.[18] Either the people at large of the whole state must choose the six representatives, or the state must be divided into six Districts for each to elect one man.—Say 2 on Eastern and 4 on Western shore.

If the whole people choose they will meet in their counties on the same day; this is proposed by some—consider such an election.

If in districts the inconvenience—and the last who vote will elect—and choice like as if all chose. Suppose our delegates chosen in this manner. On the whole I am convinced, 1st That the representation will be merely nominal from the persons and the numbers elected; 2nd That the right of electing is nugatory and cannot be effectually exercised—it is only a *fallacious participation* by the people at large in the national legislature.

6. There is no security even for this nugatory right.

7. I have said the *Senate* are too few in number.

8. The *Senate* are a perpetual *body* and never die a civil death (as in this State) although 1/3 is to be chosen every second year, because after the *first six* years there will always be 2/3 of the body in existence—1/3 of which 2/3 will always have served 2 years; and the other 1/3 will have served 4 years

and after the first rotation every Senator may serve six years.—The body is permanent—will act by system—1/3 at end of every second year may be different men if legislature pleases.

9. In classing, the Senator who pleases will not be put in the class to go out before six years. Vide Boston Debates. 73.[19]

1. Aristides [Alexander Contee Hanson], Remarks on the Proposed Plan of a Federal Government, Ford, *Pamphlets* 224–25.
2. See McMaster and Stone 235.
3. *Independent Gazetteer* 29 November 1787; see McMaster and Stone 232.
4. Ford, *Pamphlets* 245–46.
5. The reference to Montesquieu is to *The Spirit of Laws* VIII, ch. 16, to which both Brutus (I, 2.9.11) and Cato (III, 2.6.13) refer.
6. This portion concludes with the following miscellaneous notes:
   1. People will *not* choose representatives.
   2. Congress to alter place!
   Senate—never heard of the resolve of Senate. Resolves of Senate adopted before those of House of Delegates.
   3rd Wednesday of January—Election
   1st Monday in March—proposed an earlier day of meeting.
7. At the beginning of this section is the following note:

[The following sentence at the head of one of the papers is struck out;—I have long since determined that I would not accept a seat in the Convention unless Gentlemen whose political principles I approved would offer their services to the people]

8. Thorpe, *Federal and State Constitutions* III, 1686–91.
9. Ford, *Pamphlets* 252–53.
10. Ibid. 253–54.
11. See Federal Farmer IX, 2.8.122–24; XVII, 2.8.209.
12. John Clayton, *Reports of and Pleas of Assises at Yorke 1631–1650* (London 1651).
13. *Debates, Resolutions and other Proceedings of the Commonwealth of Massachusetts* (1788) 47–51; Elliot II, 23–27.
14. Ford, *Pamphlets* 227.
15. See Old Whig V, 3.3.26.
16. See Brutus II, 2.9.24.
17. See Federal Farmer II, 2.18.15 n. 11.
18. Ford, *Pamphlets* 225–27.
19. Elliot II, 48.

Address of a Minority of the Maryland Ratifying Convention

(BALTIMORE) MARYLAND GAZETTE
6 May 1788

The following address of a minority of the Maryland Convention contains, in addition to an account of the Maryland ratifying proceedings, two lists of proposed amendments. The first group, agreed to by a committee appointed for the purpose of considering amendments, was aimed at preserving the trial by jury, explicitly giving state courts concurrent jurisdiction and limiting the jurisdiction of federal courts, forbidding the use of general warrants, limiting the power of the federal government over the army and militia, and preserving the liberty of the press. The second group contained more stringent restrictions, for example, on the military and taxing powers of the federal government, and these were rejected by a majority of the committee. An attempt by the minority to get majority support for certain of the rejected amendments in return for a promise to support the Constitution was brushed aside, the majority deciding finally to recommend no amendments to the convention. A reply on behalf of the majority was prepared by Alexander C. Hanson, but it was not published.[1]

1. See Steiner, *American Historical Review* January 1900, p. 207 n.1; the report, enclosed with a letter to Madison, can be found in *Documentary History of the Constitution* IV. 645–64.

To the People of Maryland.

5.4.1 The following facts, disclosing the conduct of the late convention of Maryland, is submitted to the serious consideration of the citizens of the state.[1]

On Monday, the 21st of April, the convention met in Annapolis, and elected the Hon. George Plater, Esq. president. On Tuesday they established rules for the conduct of the business; and on the same day the following question was propounded to the convention:—

"When a motion is made and seconded, the matter of the motion shall

receive a determination by the question, or be postponed by general consent, or the previous question, before any other motion shall be received."

And the following question, viz.

"Every question shall be entered on the journal, and the yeas and nays may be called for by any member on any question, and the name of the member requiring them shall be entered on the journal."

Which two questions the convention determined in the negative.

On Wednesday, the proposed plan of government was read the first time, and thereupon it was resolved, "That this convention will not enter into any resolution upon any *particular part* of the proposed plan of federal government, for the United States, but that the *whole* thereof shall be read through a second time, after which the subject may be fully debated and considered, and then the president shall put the question, That this convention do assent to and ratify the same constitution? On which question the yeas and nays shall be taken." 5.4.2

On Thursday, the members who were opposed to the ratification of the constitution, without such *previous* amendments could be obtained as they thought essentially necessary to secure the liberty and happiness of the people (being confined by the last resolution to consider in one view the whole of the plan of government) stated some of their objections to the constitution.—The convention met in the evening, when Mr. Paca, member from Harford, having just taken his seat, rose and informed the president, that he had great objection to the constitution proposed, in its present form, and meant to propose a variety of amendments, not to prevent, but to accompany, the ratification, but, having just arrived, he was not ready to lay them before the house, and requested indulgence until the morning for that purpose.—The proposal being seconded, and the house asked if they would give the indulgence, it was granted without a division, and they adjourned *for that purpose*.[2]—On Friday, at the meeting of the house, Mr. Paca rose and informed the president, that, in consequence of the permission of the house given him the preceding evening, he had prepared certain amendments, which he would read in his place and then lay on the table, when he was interrupted, and one member from each of the following counties, viz Frederick, Talbot, Charles, Kent, Somerset, Prince-George's, Worcester, Queen-Anne's, Corchester, Calvert and Caroline, and one member from the *city of Annapolis, and one from Baltimore-Town, arose in their places, and declared for themselves and their colleagues, "*that they were elected and* INSTRUCTED *by the people they represented, to ratify the proposed constitution, and that as speedily as possible, and to do no other act; that after the ratification their power ceased, and they did not consider themselves as authorised by their constituents to consider any amendments.*"—After this 5.4.3

*The member from the city of Annapolis, did not give it as his opinion that he was not at liberty to consider amendments, but said he had consulted his colleague, and that his colleague had informed him, the citizens were against amendments.[3]

Mr. Paca was not permitted even to *read* his amendments.—The opponents continued to make their objections to the constitution until Saturday noon. The advocates of the government, although repeatedly called on, and earnestly requested, to answer the objections, if not just, remained inflexibly silent,[4] and called for the question, that "the convention assent to and ratify the proposed plan of federal government for the United States?" Which was carried in the affirmative by 63 to 11.

5.4.4 The vote of ratification having thus passed, Mr. Paca again arose and laid before the convention his propositions for amending the constitution thus adopted; which he had prepared by leave of the house, declaring that he had only given his assent to the government under the firm persuasion, and in full confidence, that such amendments would be peaceably obtained, as to enable the people to live happy under the government;—that the people of the county he represented, and that he himself, would support the government with such amendments, but without them, not a man in the State, and no people, would be more firmly opposed to it than himself and those he represented. Sentiments highly favourable to amendments were expressed, and a general murmur of approbation seemed to arise from all parts of the house, expressive of a desire to consider amendments, either in their characters as members of convention, or in their individual capacities as citizens;[5] and the question was put on the following motion:

"*Resolved,* That a committee be appointed to take into consideration and report to this house on Monday morning next, a draught of such amendments and alterations as may be thought necessary, in the proposed constitution for the United States, if approved of by this convention; and Mr. Paca, Mr. Johnson, Mr. S. Chase, Mr. Potts, Mr. Mercer, Mr. Goldsborough, Mr. J. Tilghman, Mr. Hanson, Mr. J. T. Chase, Mr. Lee, Mr. W. Tilghman, Mr. McHenry and Mr. G. Gale, were appointed a committee for that purpose."

A division was called for on this resolution, when there appeared 66 members for, and not more than 7 against, it.

5.4.5 And then it was resolved, "That the amendments proposed to the constitution by the delegate from Harford-county, should be referred to the above committee."

The committee thus appointed, and the convention adjourned to give them time to prepare their propositions; they proceeded with every appearance of unanimity to execute the trust reposed in them.

5.4.6 The following amendments for the proposed constitution were separately agreed to by the committee, most of them by an *unanimous* vote, and all of them by a *great majority:*[6]

1. That Congress shall exercise no power but what is expressly delegated by this constitution.

By this amendment, the general powers given to Congress, by the first and last paragraphs of the 8th sect. of art. 1, and the second paragraph of the 6th article, would be in a great measure restrained: those dangerous expres-

sions by which the bills of rights and constitutions of the several states may be repealed by the laws of Congress, in some degree moderated, and the exercise of *constructive* powers wholly prevented.

2. That there shall be a trial by jury in all criminal cases, according to the course of proceeding in the state where the offence is committed; and that there be no appeal from matter of fact, or second trial after acquittal; but this provision shall not extend to such cases as may arise in the government of the land or naval forces.

3. That in all actions on debts or contracts, and in all other controversies respecting property, of which the inferior federal courts have jurisdiction, the trial of facts shall be by jury, if required by either party; and that it be expressly declared, that the State courts, in such cases, have a concurrent jurisdiction with the federal courts, with an appeal from either, only as to matter of law, to the supreme federal court, if the matter in dispute be of the value of dollars.

4. That the inferior federal courts shall not have jurisdiction of less than dollars; and there may be an appeal in all cases of revenue, as well to matter of fact as law, and Congress may give the State courts jurisdiction of revenue cases, for such sums, and in such manner, as they may think proper.

5. That in all cases of trespasses done within the body of a county, and within the inferior federal jurisdiction, the party injured shall be entitled to trial by jury in the State where the injury shall be committed; and that it be expressly declared, that the State courts, in such cases, shall have concurrent jurisdiction with the federal courts; and there shall be no appeal from either, except on matter of law; and that no person be exempt from such jurisdiction and trial but ambassadors and ministers privileged by the law of nations.

6. That the federal courts shall not be entitled to jurisdiction by fictions or collusion.

7. That the federal judges do not hold any other office of profit, or receive the profits of any other office under Congress, during the time they hold their commission.

The great objects of these amendments were, 1st. To secure the trial by jury in all cases, the boasted birth-right of Englishmen, and their descendants, and the palladium of civil liberty; and to prevent the *appeal from fact,* which not only destroys that trial in civil cases, but by *construction,* may also exclude it in criminal cases; a mode of proceeding both expensive and burthensome; and also by blending law with fact, will destroy all check on the judiciary authority, render it almost impossible to convict judges of corruption, and may lay the foundation of that gradual and silent attack on individuals, by which the approaches of tyranny become irresistable. 2d. To give a concurrent jurisdiction to the State courts, in order that Congress may not be compelled, as they will be under the present form, to establish inferior federal courts, which if not numerous will be inconvenient, and if

numerous very expensive; the circumstances of the people being unequal to the increased expence of double courts, and double officers; an arrangement that will render the law so complicated and confused, that few men can know how to conduct themselves with safety to their persons or property, the great and only security of freemen. 3dly, To give such jurisdiction to the State courts, that transient foreigners, and persons from other States, committing injuries in this State, may be amenable to the State, whose laws they violate, and whose citizens they injure. 4thly, To prevent an extension of the federal jurisdiction, which may, and in all probability will, swallow up the State jurisdictions, and consequently sap those rules of descent and regulations of personal property, by which men now hold their estates; and lastly, To secure the independence of the federal judges, to whom the happiness of the people of this great continent will be so greatly committed by the extensive powers assigned them.

8. That all warrants without oath, or affirmation of a person conscientiously scrupulous of taking an oath, to search suspected places, or to seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend any person suspected, without naming or describing the place or person in special, are dangerous, and ought not to be granted.

This amendment was considered indispensible by many of the committee, for Congress having the power of laying excises, the horror of a free people, by which our dwelling-houses, those castles considered so sacred by the English law, will be laid open to the insolence and oppression of office, there could be no constitutional check provided, that would prove so effectual a safeguard to our citizens. General warrants too, the great engine by which power may destroy those individuals who resist usurpation, are also hereby forbid to those magistrates who are to administer the general government.

9. That no soldier be enlisted for a longer time than four years except in time of war, and then only during the war.

10. That soldiers be not quartered in time of peace upon *private* houses, without the consent of the owners.

11. That no mutiny bill continue in force longer than two years.

These were the only checks that could be obtained against the unlimited power of raising and regulating standing armies, *the natural enemies to freedom,* and even with these restrictions, the new Congress will not be under such constitutional restraints as the parliament of Great-Britain; restraints which our ancestors have bled to establish, and which have hitherto preserved the liberty of their posterity.

12. That the freedom of the press be inviolably preserved.

In prosecutions in the federal courts for libels, the constitutional preservation of this great and fundamental right, may prove invaluable.

13. That the militia shall not be subject to martial law, except in time of war, invasion or rebellion.

This provision to restrain the powers of Congress over the militia, although by no means so ample as that provided by magna charta, and the other fundamental constitutional laws of Great-Britain, (it being contrary to magna charta to punish a freeman by martial law in time of peace, and murder to execute him,) yet it may prove an inestimable check; for all other provisions in favour of the rights of men, would be vain and nugatory, if the power of subjecting all men able to bear arms to martial law at any moment, should remain vested in Congress.

Thus far the amendments were agreed to.

The following amendments were laid before the committee, and negatived by a majority. 5.4.7

1. That the militia, unless selected by lot, or voluntarily enlisted, shall not be marched beyond the limits of an adjoining State, without the consent of their legislature or executive.

2. That Congress shall have no power to alter or change the time, place or manner, of holding elections for senators or representatives, unless a State shall neglect to make regulations, or to execute its regulations, or shall be prevented by invasion or rebellion; in which cases only Congress may interfere, until the cause be removed.

3. That, in every law of Congress imposing *direct* taxes, the *collection* thereof shall be *suspended* for a reasonable certain time therein limited, and on payment of the sum by any State, by the time appointed, such taxes shall not be collected.

4. That no standing army shall be kept up *in time of peace,* unless with the consent of two thirds of the members present of each branch of Congress.

5. That the president shall not command the army in person, without the consent of Congress.

6. That no treaty shall be effectual to repeal or abrogate the *constitutions* or *bills of rights* of the States, or any part of them.

7. That no regulation of commerce, or navigation act, shall be made, unless with the consent of two thirds of the members of each branch of Congress.

8. That no member of Congress shall be eligible to any office of profit under Congress during the time for which he shall be appointed.

9. That Congress shall have no power to lay a *poll-tax.*

10. That no person, conscientiously scrupulous of bearing arms in any case, shall be compelled *personally* to serve as a soldier.

11. That there be a responsible council to the president.

12. That there be no national religion established by law, but that all persons be equally entitled to protection in their religious liberty.

13. That all imposts and duties laid by Congress shall be placed to the credit of the State in which the same be collected, and shall be deducted out of such State's quota of the common or general expences of government.

14. That every man hath a right to petition the legislature for the redress of grievances in a peaceable and orderly manner.

15. That it be declared, that all persons intrusted with the legislative or executive powers of government are the *trustees and servants* of the public, and as such accountable for their conduct. Wherefore, whenever the ends of government are perverted, and public liberty manifestly endangered, and all other means of redress are ineffectual, the people may, and of right ought, to reform the old, or establish a new government; the doctrine of non-resistance against arbitrary power and oppression, is absurd, slavish, and destructive of the good and happiness of mankind.

5.4.8 The committee having proceeded thus far, all the members who voted for the ratification declared, that they would engage themselves under every tie of honour to support the amendments they had agreed to, both in their public and private characters, until they should become a part of the general government; but a great majority of them insisted on this *express* condition, that none of the propositions rejected, or any others, should be laid before the convention for their consideration, except those the committee had so agreed to.[7]

5.4.9 The gentlemen of the minority, who had made the propositions which had been rejected, reduced to the necessity of accommodating their sentiments to the majority, through fear of obtaining no security whatever for the people—notwithstanding they considered *all* the amendments as highly important to the welfare and happiness of the citizens of the States, yet to conciliate, they agreed to confine themselves to the first three of those propositions, and solemnly declared and pledged themselves, that if these were added, and supported by the other gentlemen, they would not only cease to oppose the government, but give all their assistance to carry it into execution so amended. Finally, they only required liberty to take the sense of the convention on the three first propositions, agreeing that they would hold themselves bound by the decision of a majority of that body.

5.4.10 The first of these objections concerning the militia they considered as essential, for to march beyond the limits of a neighbouring State, the general militia, who consist of so many poor people that can illy be spared from their families and domestic concerns, by power of Congress, who could know nothing of their circumstances, without consent of their own legislature or executive, ought to be restrained.

The second objection respecting the power of Congress to alter elections, they thought indispensible. Montesquieu says, that the rights of election should be established unalterably by fundamental laws in a free government.[8]

The third objection concerning previous requisition, they conceived highly important; they thought if money required by *direct* taxation could be paid with certainty and in due time to Congress, that every good consequence would be secured to the union, and the people of the State thereby relieved from the great inconvenience and expence of a double collection

and a double set of tax-gatherers, and they might also get rid of those odious taxes by exise and poll, without injury to the general government.

They were, however, again proposed and rejected.

AFFIRMATIVE, Mr. Paca, Mr. Johnson, Mr. Mercer, Mr. J. T. Chase, Mr. S. Chase.

NEGATIVE, Mr. Lee, Mr. Potts, Mr. Goldsborough, Mr. J. Tilghman, Mr. W. Tilghman, Mr. Hanson, Mr. G. Gale, Mr. McHenry.

Previous to this, a motion was made on Monday the twenty-eighth, in the convention, while the committee were sitting, in the following words, to wit:

"*Resolved,* that this convention will consider of no propositions for amendment of the federal government, except such as shall be submitted to them by the committee of thirteen."

The committee being sent for by the convention, the gentlemen of the majority in committee then determined, that they would make no report of any amendments whatever, not even of those which they had almost unanimously agreed to, and the committee, under these circumstances, attended the house. Mr. Paca, as chairman, stated to the convention what had passed in the committee, read the amendments which had there been agreed to, and assigned the reason why no report had been formally made. A member then rose and proposed a vote of thanks to the president, which had been once read before the attendance of the committee, should have a second reading; and upon the second reading thereof, the previous question was called for by the members, who wished to consider the amendments agreed to by the committee, and such other amendments as might be proposed. The house thereupon divided, and the yeas and nays were called for by the minority, the sense of the convention was taken thereon, and a majority determined that the yeas and nays should not be taken, nor would they permit the vote to be entered on the journal, by which the yeas and nays were prohibited: 5.4.11

To preclude the consideration of any amendments.

A motion was then made "that the convention adjourn without delay," on which the yeas and nays were taken and appeared as follow:

AFFIRMATIVE. The Honorable the President, Messrs. Barnes, Chilton, Sewell, W. Tilghman, Yates, Granger, Chesley, Smith, Brown, Turner, Stone, Goldborough, Stevens, G. Gale, Waggaman, Stewart, J. Gale, Sulivane, Shaw, Gilpin, Hollingsworth, Heron, Evans, O. Sprigg, Hall, Digges, Hanson, J. Tilghman, Hollyday, Hemsley, Morris, Lee, Potts, Faw, J. Richardson, Edmondson, M'Henry, Coulter, T. Sprigg, Stull, Rawlings, Shyrock, Cramphin, Thomas, Deakins, Edwards. 47

NEGATIVE. Messrs. Perkins, J. T. Chase, S. Chase, Mercer, Harrison, Wilkinson, Grahame, Parnham, Ridgely, Cockey, Cromwell, Lloyd, Hammond, Bowie, Carroll, Seney, Chaille, Martin, Done, Johnson, Paca, Love, Pinkney, L. Martin, W. Richardson and Driver. 27

We consider the proposed form of national government as very defective, and that the liberty and happiness of the people will be endangered if the system be not greatly changed and altered. The amendments agreed to by 5.4.12

the committee, and those proposed by the minority, are now laid before you for your consideration, that you may express your sense as to such alterations as you may think proper to be made in the new constitution.

We remain persuaded, that the importance of the alterations proposed, calculated to preserve public liberty, by those checks on power which the experience of ages has rendered venerable, and to promote the happiness of the people by a due attention to their ease and convenience, will justify the steps we have taken to obtain them, to our constituents, and the world.

5.4.13 Having no interest that can distinguish us from the rest of the community, we neither fear censure, nor wish applause. Having thus discharged the duty of citizens and trustees of the public, we shall now submit to the people those precautions and securities which, after mature reflection on this momentous subject, we deem necessary for their safety and happiness.

May that all-wise and omnipotent Being, who made us masters of a fair and fruitful empire, inspire us with wisdom and fortitude to perpetuate to posterity that freedom which we received from our fathers!

William Paca, Samuel Chase, John F. Mercer, Jeremiah T. Chase.	*Members of the committee*
John Love, Charles Ridgely, Edward Cockey, Nathan Cromwell, Charles Ridgely, of Wm. Luther Martin, Benjamin Harrison, William Pinkney	*Members of convention*

1. On the circumstance of the Maryland ratification, see below, vol. 5, part 1, intro.
2. Hanson denied that, in adjourning, the convention had accepted Paca's proposal. *Documentary History of the Constitution* IV, 652.
3. A correspondent to the Annapolis *Maryland Gazette* 8 May 1788 explained that, on the contrary, the position of the Annapolis member was that the representatives of the city were not authorized to consider amendments, not that the citizens were against any amendments.
4. Hanson explained that the majority had concluded that no good purpose could be served by discussion: there had been abundant opportunity for discussion; each delegate was bound to vote according to the sentiments of his constituents; and ratification should be completed "as speedily as was consistent with decorum." *Documentary History of the Constitution* IV, 650.
5. See ibid. 654–57.
6. According to Hanson, the sentiment in favor of amendments grew out of a spirit of accommodation rather than an opinion that the amendments were necessary to protect the people. Ibid. 655.
7. Cf. ibid. 660.
8. Montesquieu, *The Spirit of Laws* II, ch. 2. See Vox Populi 4.4.3 n.1.

Address by John Francis Mercer

April or May 1788

This address was intended to explain to the New York and the Virginia conventions the reason for the action of the Maryland convention in ratifying the Constitution without proposing amendments.[1] The Address was never printed and may not have been finished or sent. It is printed here from manuscripts, in Mercer's hand, in the Etting Collection of the Historical Society of Pennsylvania.[2] The two portions appear to have been written at different times, and they may have been parts of a larger piece. They were probably written in late April or early May 1788, shortly after the conclusion of the Maryland ratifying convention proceedings.

Mercer argues that the initial enthusiasm for the Constitution made it seem prudent to postpone agitation for amendments to a more favorable season but that the citizens of Maryland now definitely favor amendments. The widespread uncritical acceptance of the Constitution shows how difficult it is to preserve mild and free governments in the face of usurpations by the few. The first portion of the Address concludes with an interesting discussion of representation, which, in so large an area, leads either to the representatives pursuing (or pretending to pursue) the general interest and thus masking their responsibility to their constituents, or pursuing the interests of their districts and thus tending to throw the burdens of government on the minority (5.5.5–6).

The second portion of the Address draws a contrast between the stable mixed government of Britain and its weak imitation in the Constitution. Mercer criticizes the great powers of the proposed general government and the weakness of the states. Nor is it sufficient to reply that the government represents the people. Except when closely checked by the people or by a hereditary nobility, representative government "is really only a scene of perpetual rapine and confusion—and even with the best checks it has failed in all the Governments of Europe, of which it was once the basis, except that of England" (5.5.11). The argument here is similar to that presented by A [Maryland] Farmer (5.1 above), which Mercer probably wrote and with which it should be compared.[3]

1. There is some confusion over the attribution of these pieces to John Francis Mercer. They are filed in the Pennsylvania Historical Society with the papers of John Francis Mercer, and the hand appears to be his. The confusion arises from the subsequent attempt of someone (clearly not the original writer) to identify the writer(s). The first segment carries the endorsement, "James Mercer?" but this half-brother of John Francis Mercer, a Virginia judge, does not appear to have taken part in the ratification controversy. The second segment is endorsed at one place, "John Fenton Mercer" at another, "Mercer, Jo Francis." The former is clearly in error, this half-brother of John Francis Mercer having died in 1756. Both Jackson Turner Main and Morton Borden, who prints the second segment of the address, accept without question John Francis Mercer's authorship. Main, *Antifederalists* 158, 175; Borden, *The Antifederalist Papers* 175–77.

2. Lines and words crossed out by the writer have not been included. An attempt has been made to follow Mercer's punctuation and capitalization, but there is little consistency and the manuscript is often unclear.

3. See 5.1. intro.

To the Members of the Conventions of New York and Virginia—

Gentlemen

5.5.1 The galling Chains of Despotizm under the oppressive weight of which nine tenths of our Fellow Mortals groan—the Tortures which unfeeling Tyranny has invented and fearlessly practized in every Age and every Clime, are melancholy and terrifying proofs of the Incapacity of the *many* to defend those rights, which God and Nature gave them, from the artful and unceasing usurpations of the *Few:*—and they are frightful Lessons to teach us a watchful Jealousy of great and unnecessary Grants of Power and of Changes in a State of Society which we know to be mild and free—Still there are moments of national Languor and Lethargy which the Ambitious [,] ever enterprizing [,] mark with Alacrity and use with Success.—The People long unaccustomed in a good and guarded Government, to bold and selfish Designs in their Rulers, look up with an unsuspicious Confidence, to any alteration, which those entrusted with Power may propose—however unconstitutional the changes, if recommended by Men used to govern them, they seem to come forward under the Sanction of legal authority—if prepared in Secrecy—the public mind taken by surprize, and every Engine previously set in Motion—the unconcerted and unconnected Defence of Individuals is branded with the opprobrious Epithet of *Opposition* and overwhelmed in the directed Tide of popular Clamour—a clamour which a Number of wealthy Men may at all Times command at a small Expence from the most indigent of the Populace.[1]

5.5.2 We forbear to remark on the Manner in which the Constitution proposed for the United States came forward—as the Circumstances are known to you, your own Feelings will render any Observations unnecessary.

The Object of our present Address is to prevent your forming unjust Conclusions from the Adoption of the Constitution in the State of Maryland

by so large a Majority of the Convention and the subsequent dissolution of that Body, without proposing any Amendments.[2]—

Permit us to assure You that the Torrent which burst forth at the Birth of 5.5.3
the Constitution had but little Effect on the Minds of many of us—and altho' it might prevent our having that weight with our Countrymen, in the first Paroxisms of Phrenzy which forever accompany great and sudden Revolutions in Government—we were yet determined not to be wanting in our Duty to the Republic, at that Moment when Reason should resume her Empire over the unagitated Minds of our fellow Citizens—from many Circumstances we despaired of this in Maryland untill the adoption of the Constitution—At that Period, when our Efforts could not be subjected to Calumniating Misrepresentation,—we expected that an Appeal to the reflection of our Countrymen, would be listened to with attention and produce those Effects which unanswered and unanswerable Reasons ought to command—All opposition being thus postponed and every necessary Step to inform the minds of our Citizens on one Side neglected—while unremitting Exertions by a Number of wealthy and respectable Characters were continued on the other—it cannot be surprizing that the Elections were generally favorable to the Constitution—In a very few of the Counties did any Candidates propose themselves against it—very few voted and even in those Counties where the Opposition succeeded by such a decided Majority—those Gentlemen's offering was merely accidental. They had refused every Solicitation of the People and had actually determined not to serve in Convention until within 6 Days before the Election—

That the People of the State would have made alterations and amend- 5.5.4
ments a Condition of Adoption, is a Question which from the above Circumstances it is impossible to decide—but that four fifths of the people of Maryland are now in favor of considerable Alterations and Amendments, and will insist on them,—we dont hesitate to declare (as our Opinion) to You and the world.—The difference between amending *before* or *after* adoption (provided it is amended) is certainly not worth a Distinction.—

We are persuaded that the People of so large a Continent, so different in 5.5.5
Interests, so distinct in Habits, cannot in all cases legislate in one Body by themselves or their Representatives—By themselves it is obviously impracticable—By their Representatives it will be found on Investigation equally so—for if these representatives are to pursue the general Interest without Constitutional checks and restraints—it must be done by a mutual Sacrifice of the Interests, wishes and prejudices of the parts they represent—and then they cannot be said to represent those Parts, but to misrepresent them.[3]—Besides as their Constituents cannot judge of their Conduct by their own Sense of what is right and proper—and as a representative can always in this view screen his abuse of Trust under the Cloak of Compromize, we do not see what check can remain in the Hands of the Constituents—for they cannot Know how far the Compromise was neces-

sary, and the representative wrong—and to turn out and disgrace a Man when they cannot prove him wrong, and when he will have of Course the voice of the Body he is a Member of in his Favor, would in the Event be found subversive of the Principles of good Government.—

5.5.6 Thus then the pursuit of the general Interest produces an unchecked Misrepresentation—but if Representatives are to pursue the partial Interests of the Districts they represent (which to recommend themselves to their Constituents it is most probable they will do) then the Majority must ruin the Minority, for the Majority will be found interested to throw the Burthens of Government upon that Minority which in these States present a fair Opening by difference of *Cultivation—Importation* and *property*—In such extensive Territories governed by one Legislature, the Experience of Mankind tells us that if not by Preference the People will at least be led gradually to confide the legislative Power to the Hands of one Man and his Family—who alone can represent the whole, without partial Interests[—]and this is or leads to unlimited Despotizm—

5.5.7 We have not that permanent and fixed distinction of ranks or orders of Men among us, which unalterably seperating the interests and views, produces that division in pursuits, which is the great security of the mixed Government we seperated from, and which we now seem so anxiously to copy;[4]—[I]f the New Senate of the United States will be really opposite in their pursuits and views from the Representatives, have they not a most dangerous power, of interesting foreign Nations by Treaty to support *their* views?—for instance the relinquishment of the navigation of Missisippi—And yet these Treaties are expressly declared paramount to the Constitutions of the several States and being the *Supreme Law,* must of course control the national legislature, if not supercede the Constitution of the United States itself—[T]he check of the President over a Body, with which he must act in concert, or his influence and power be almost annihilated, can prove no great Constitutional security; And even the Representative body itself—and much more the Senate—are not sufficiently numerous to secure them from corruption—for all Governments tend to corruption, in proportion as power concentrating in the hands of the *few,* renders them objects of corruption to Foreign Nations and among themselves—

5.5.8 For these and many other reasons we are for preserving the Rights of the State Governments, where they must not be necessarily relinquished for the welfare of the Union—and where so relinquished the line should be definitely drawn[.][5] [I]f under the proposed Constitution the States exercise any Power, it would seem to be at the mercy of the General Government—for it is remarkable that the clause securing to them those rights not expressly relinquished in the old Confoederation, is left out in the new Constitution; And we conceive that there is not Power which Congress may *think* necessary to exercise for the *general welfare,* which they may not assume under this Constitution—and this *Constitution* and the Laws made

under it are declared paramount even to the unalienable rights, which have heretofore been assured to the Citizens of these States by their Constitutional compacts.—

5.5.9 Altho' this new Constitution can boast indeed of a Bill of Rights of seven Articles—yet of what nature is that Bill of Rights? to hold out such a security to the rights of property as might lead very wealthy and influential Men and Families into a blind compliance and adoption—whilst the Rights that are essential to the great body of Yeomanry of America are entirely disregarded.—

5.5.10 Moreover those very powers, which are to be expressly vested in the new Congress, are of a nature most liable to abuse—They are those which tempt the avarice and ambition of Men to a violation of the rights of their fellow Citizens, and they will be screend under the sanction of an undefined and unlimited authority—Against the *abuse* and *improper* exercise of these special powers, the People have a right to be secured by a sacred Declaration, defining the rights of the Individual and limiting by them, the extent of the exercise—The People were secured against the abuse of those Powers by fundamental Laws and a Bill of Rights, under the Government of Britain and under their own Constitutions—That Government which permits the abuse of Power, recommends it; and will deservedly experience the tyranny which it authorizes; for the history of Mankind establishes the truth of this political adage—*that in Government what may be done will be done.*[6]

5.5.11 The most blind admirer of this Constitution must in his heart confess that it is as far inferior to the British Constitution, of which it is an imperfect imitation [,] as darkness is to light—In the British Constitution, the rights of Men, the primary objects of the social Compact—are fixed on an immoveable foundation and clearly defined and ascertained by their Magna Charta, their Petition of Rights and Bill of Rights[;] and their Effective administration by ostensible Ministers, secures Responsibility—In this new Constitution—a complicated System sets responsibility at defiance and the Rights of Men, neglected and undefined[,] are left at the mercy of events; We vainly plume ourselves on the safeguard alone of Representation, forgetting that it will be a Representation on principles inconsistent with true and just Representation—that it is but a delusive shadow of Representation proffering in theory what can never be fairly reduced to practice;—And after all Government by Representation (unless confirmed in its views and conduct by the constant inspection, immediate superintendance, and frequent interference and control of the People themselves on one side, or an hereditary nobility on the other, both of which orders have fixed and permanent views) is really only a scene of perpetual rapine and confusion.—and even with the best checks it has failed in all the Governments of Europe, of which it was once the basis, except that of England.[7]—

5.5.12 When We turn our Eyes back to the scenes of blood and desolation which we have waded through to separate from Great Britain—we behold with

manly indignation that our blood and treasure have been wasted to establish a Government in which the Interest of the *few* is preferred to the Rights *of the Many*—When We see a Government so every way inferior to that we were born under, proposed as the reward of our sufferings in an eight years calamitous war—our astonishment is only equalled by our resentment—On the conduct of Virginia and New York, two important States [,] the preservation of Liberty in a great measure depends—the chief security of a Confoederacy of Republics was boldly disregarded and the old Confoederation violated by requiring Nine instead of 13 voices to alter the Constitution.—[B]ut still the resistance of either of these States, in the present temper of America (for the late conduct of the Party here must open the eyes of the People in Massachusetts with respect to the fate of their amendments) will secure all that we mean to contend for—*The natural and unalienable Rights of Men* in a constitutional manner—At the distant appearance of danger to these, We took up arms in the late Revolution—and may we never have cause to look back with regret on that period when connected with the Empire of Great Britain, We were *happy, secure,* and *free*.

1. On the danger from the ever-alert few see references in Federal Farmer IV, 2.8.58 n.44.
2. See below, vol. 5, part 1, intro.
3. See Agrippa VII, 4.6.26; XII, 4.6.58 n. 31. On representation see references in Federal Farmer II, 2.8.15 n. 11.
4. On a balance of orders see Centinel I, 2.7.7 n. 4; on the small republic see Cato III, 2.6.12–20 and n. 8.
5. See references in Plebeian 6.11.15 n. 9; Federal Farmer X, 2.8.132 and n. 84; Brutus VI, 2.9.80 and n. 56.
6. See Symmes 4.5.14 n. 5.
7. Cf. [Maryland] Farmer II, 5.1.22–29.

PART 2

Virginia and the South

Introduction

Following the ratification on 23 May of South Carolina, where the opposition of Anti-Federalists like Rawlins Lowndes, Aedanus Burke, and Thomas Sumpter was easily brushed aside, the debate over the Constitution came to a focus in Virginia. The Federalists still feared concerted Southern action under the leadership of Patrick Henry, and they distrusted Henry's motives and aims. Despite Henry's denials, many Federalists believed that he desired a separate Southern confederacy. "You are better acquainted with Mr. Henry's politics than I can be," Madison wrote to Edmund Randolph in January 1788, "but I have for some time considered him as driving at a Southern Confederacy and not further concurring in the plan of amendments than as he hopes to render it subservient to his real designs."[1] Madison was probably wrong about Henry's real design, and the Federalists unquestionably found a rhetorical advantage in accusing their opponents of wanting to break up the Union;[2] but a separate Southern confederacy was surely considered by the Southern Anti-Federalists as a possible outcome, as well as a bargaining point, and it was objectively a genuine possibility.

Still aristocratic in significant respects, Southern politics tended to be based on established and respected individual leaders, rather than on economic interests or on the political parties developing elsewhere in the country.[3] This was particularly true in Virginia which George Ticknor Curtis aptly described as being "filled with the spirit of republican freedom, although its polity and manners were marked by several aristocratic features."[4] This combination of qualities helped to make the Virginia ratifying convention debates the best and most thorough of all the states. As nowhere else on the continent, the political elite in Virginia was divided. The Virginia Anti-Federalists led by such men as Patrick Henry, George Mason, and Richard Henry Lee were more capable and commanded more respect than any other group of Anti-Federalists in the country. A searching debate in convention lasted more than three weeks; and when the vote was finally taken on 25 June, Virginia ratified the Constitution by a vote of 89 to 79, submitting a list of recommendatory amendments.[5]

1. Madison, *Writings* (ed. Hunt) V, 80–81. Six months later John R. Smith wrote to Madison that "the idea of Virginia standing independent of other States, or forming a partial confederacy or a foreign alliance is more openly avowed by some people in

this quarter, than anywhere else, and I am certain the sentiment originates with the old Governor." *Documentary History of the Constitution* IV, 703. On the question of separate confederacies see above, vol. 1, ch. 4, n. 2.

2. This is of course basic to the rhetorical design of *The Federalist*. See *Observer* 6.4.3.

3. Thus Anti-Federalist Henrico county elected John Marshall, a known Federalist, to represent it in the state ratifying convention. John Marshall, *An Autobiographical Sketch*, ed. John Stokes Adams (Ann Arbor 1937) 7.

4. Curtis, *Constitutional History of the United States* I, 632.

5. In the meantime, however, and unknown to the Virginians, New Hampshire had ratified the Constitution on 21 June by a vote of 57–47; New Hampshire was thus the ninth state to ratify, and Virginia the tenth.

Letter of Richard Henry Lee to Governor Edmund Randolph

16 October 1787

In this letter Lee urges that another convention be held to remedy defects in the Constitution.[1] He is particularly critical of the combination of powers in the Executive and Senate; the absence of any genuine responsibility in the government, either through impeachment or an effective control by constituents; the very broad powers of Congress; the absence of a bill of rights; and the danger to the South of the congressional power to pass commercial laws by a simple majority vote. In a postscript, Lee suggests the amendments he thinks necessary.

The mover of the resolution for independence, Lee was always a strong supporter of Union whose views transcended the localism of some Anti-Federalists.[2] He was a continental man, who thought that the Articles of Confederation, in the adoption and operation of which he had taken an active part, were fundamentally sound if only the states would do their duty under them. He only reluctantly conceded that some modest increases in the powers of Congress might be appropriate.[3] Declining a seat in the Constitutional Convention on grounds of ill health and the alleged impropriety of helping to form a document he would have to pass on as a member of Congress,[4] Lee helped to block Congressional approval of the proposed Constitution. While declining to serve in the Virginia ratifying convention,[5] Lee took an active part in the ratification controversy and was reputed to have assisted Elbridge Gerry in drafting his objections and to have helped other Anti-Federalist writers in Pennsylvania and Delaware.[6] The recipient of much virulent criticism, Lee gave a reasonable and moderate response. Writing to Mason in the spring of 1788 of the kind of example Virginia should set to the yet undecided states, Lee urged a "circumspect and careful" course. "[A]s, on the one hand, every possible exertion of wisdom and firmness should be employed to prevent danger to civil liberty, so, on the other hand, the most watchful precaution should take place to prevent the foes of union, order, and good government, from succeeding so far as to prevent our acceptance of the good part of the plan proposed."[7]

Lee's letter was, according to Washington, "circulated with great industry in manascript, four Weeks before it went to press."[8] It was first published in the *Virginia Gazette*, and seems also to have been published as a pamphlet, though it is not listed in Evans' *Early American Imprints*, and no copy of the pamphlet has been found.[9] The letter was very widely reprinted and discussed. In Virginia it was vehemently attacked by A State Soldier in the *Virginia Independent Chronicle* on 12 March 1788 and was taken up and challenged, point by point, and with a good deal of personal abuse, by Cassius in the same newspaper on 2, 9, and 23 April 1788; Cassius was, in turn, rebutted by Brutus, whose essay is printed below.[10]

1. On the question of Lee's authorship of the important Letters from The Federal Farmer, see 2.8 intro.

2. There is no adequate biography of Lee. See the biography by his grandson, Richard Henry Lee, *Memoirs of the Life of Richard Henry Lee* (Philadelphia 1825), and Oliver Perry Chitwood, *Richard Henry Lee: Statesman of the Revolution* (Morgantown 1967).

3. See Lee, *Letters* II, 419, 424, 427–28, 447.

4. Lee to Edmund Randolph, 26 March 1787, and to John Adams, 5 September 1787, ibid. 415, 434.

5. Lee to General John Lamb, 27 June 1788, ibid. 475.

6. Bancroft, *History of the Formation of the Constitution of the United States of America* II, 230.

7. Lee to George Mason, 7 May 1788, Lee, *Letters* II, 466.

8. Washington to Madison, 7 December 1787; *Documentary History of the Constitution* IV, 395.

9. See Valerius, Virginia *Independent Chronicle* 23 January 1788: ". . . with a peculiar air of importance, you thought the *channel* of a pamphlet was more respectable and better suited to the dignity of your letter, than that of a newspaper." See Crosskey, *Politics and the Constitution* 1300. I have found neither the pamphlet version nor the original newspaper printing, and the reprint here is taken from the *New York Journal* 22 December (5.6.1–3) and 24 December (5.6.4–5) 1787.

10. See Brutus (Virginia) 5.15. See also the criticisms by Aristides, Ford, *Pamphlets* 255.

[22 December 1787]

From the VIRGINIA GAZETTE. *Copy of a Letter from the Hon. Richard Henry Lee, Esq., one of the Delegates from this state in Congress, to his Excellency the Governor.*

New-York, Oct. 16, 1787.

Dear Sir,

5.6.1 I was duly honored with your favor of Sept. 17, from Philadelphia,[1] which should have been acknowledged long before now, if the nature of the business that it related to had not required time.

The establishment of the new plan of government, in its present form, is a question that involves such immense consequences to the present times, and to posterity, that it calls for the deepest attention of the best and wisest friends of their country and of mankind; if it be found good after mature deliberation, adopt it; if wrong, amend it at all events, for to say (as many do) that a bad government must be established for fear of anarchy, is really saying, that we must kill ourselves for fear of dying. Experience and the actual state of things, shew that there is no difficulty in procuring a general convention; the late one being collected without any obstruction. Nor does external war or internal discord prevent the most cool, collected, full, and fair discussion of this all-important subject. If with infinite ease a convention was obtained to prepare a system, why may not another with equal ease be procured to make proper and necessary amendments? Good government is not the work of a short time, or of sudden thought. From Moses to Montesquieu the greatest geniuses have been employed on this difficult subject, and yet experience has shewn capital defects in the system produced for the government of mankind.—But since it is neither prudent or easy to make frequent changes in government, and as bad governments have been generally found the most fixed; so it becomes of the last consequence to frame the first establishment upon ground the most unexceptionable, and such as the best theories with experience justify; not trusting as our new constitution does, and as many approve of doing, to time and future events to correct evils, that both reason and experience in similar cases, point out in the new system. It has hitherto been supposed a fundamental maxim that in governments rightly balanced, the different branches of legislature should be unconnected, and that the legislative and executive powers should be separate: In the new constitution, the president and senate have all the executive and two thirds of the legislative power. In some weighty instances (as making all kinds of treaties which are to be the laws of the land) they have the whole legislative and executive powers. They jointly, appoint all officers civil and military, and they (the senate) try all impeachments either of their own members, or of the officers appointed by themselves.

Is there not a most formidable combination of power thus created in a few, and can the most critic eye, if a candid one, discover responsibility in this potent corps? Or will any sensible man say, that great power without responsibility can be given to rulers with safety to liberty? It is most clear that the parade of impeachment is nothing to them, or any of them; as little restraint is to be found. I presume, from the fear of offending constituents. The president is for four years duration (and Virginia for example) has one vote of thirteen in the choice of him, and this thirteenth vote not of the people, but electors, two removes from the people. The senate is a body of six years duration, and as in choice of president, the largest state has but a thirteenth vote, so is it in the choice of senators.—This latter statement is adduced to shew that responsibility is as little to be apprehended from

5.6.2

amenability to constituents, as from the terror of impeachment. You are therefore, sir, well warranted in saying, either a monarchy, or aristocracy will be generated, perhaps the most grievous system of government may arise.—It cannot be denied with truth that this new constitution is, in its first principles, highly and dangerously oligarchic; and it is a point agreed that a government of the few, is, of all governments, the worst. The only check to be found in favour of the democratic principle in this system is, the house of representatives; which I believe may justly be called a mere shread or rag of representation: It being obvious to the least examination that smallness of number and great comparative disparity of power, renders that house of little effect to promote good, or restrain bad government.[2] But what is the power given to this ill-constructed body? To judge of what may be for the general welfare, and such judgments when made, the acts of congress become supreme laws of the land. This seems a power co-extensive with every possible object of human legislation. Yet there is no restraint in form of a bill of rights, to secure (what doctor Blackstone calls) that residuum of human rights, which is not intended to be given up to society, and which indeed is not necessary to be given for any good social purpose.[3] The rights of conscience, the freedom of the press, and the trial by jury are at mercy. It is there stated that in criminal cases, the trial shall be by jury. But how? In the state. What then becomes of the jury of the vicinage or at least from the county in the first instance, the states being from 50 to 700 miles in extent? This mode of trial even in criminal cases may be greatly impaired, and in civil cases the inference is strong, that it may be altogether omitted as the constitution positively assumes it in criminal, and is silent about it in civil causes. Nay it is more strongly discountenanced in civil cases by giving the supreme court in appeals, jurisdiction both as to law and fact.

5.6.3 Judge Blackstone in his learned commentaries (Art. Jury Trial) says, ["it] is the most transcendant privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty, his person, but by the unanimous consent of twelve of his neighbours and equals. A constitution, that I may venture to affirm, has under providence, secured the just liberties of this nation for a long succession of ages. The impartial administration of justice, which secures both our persons and our properties, is the great end of civil society. But if that be entirely entrusted to the magistracy, a select body of men, and those generally selected by the prince, or such as enjoy the highest offices of the state, these decisions, in spite of their own natural integrity, will have frequently an involuntary bias towards those of their own rank and dignity. It is not to be expected from human nature, that the few should always be attentive to the good of the many.["] The learned judge further says, that ["]every tribunal selected for the decision of facts is a step towards establishing aristocracy; the most oppressive of all governments.["][4] The answer to these objections is, that the new legislature may provide remedies! but as they may, so they may

not, and if they did, a succeeding assembly may repeal the provisions. The evil is found resting upon constitutional bottom, and the remedy upon the mutable ground of legislation, revocable at any annual meeting. It is the more unfortunate that this great security of human rights, the trial by jury, should be weakened in this system, as power is unnecessarily given in the second section of the third article, to call people from their own country in all cases of controversy about property between citizens of different states and foreigners, with citizens of the United States, to be tried in a distant court where the congress meets. For although inferior congressional courts may for the above parties be instituted in the different states, yet this is a matter altogether in the pleasure of the new legislature, so that if they please not to institute them, or if they do not regulate the right of appeal reasonably, the people will be exposed to endless oppression, and the necessity of submitting in multitudes of cases, to pay unjust demands, rather than follow suitors, through great expence, to far distant tribunals, and to be determined upon there, as it may be, without a jury. In this congressional legislature a bare majority of votes, can enact commercial laws, so that the representatives of the seven northern states, as they will have a majority, can by law create the most oppressive monopoly upon the five southern states, whose circumstances and productions are essentially different from theirs, although not a single man of these voters are the representatives of, or amenable to the people of the southern states. Can such a set of men be, with the least colour of truth, called a representative of those they make laws for? It is supposed that the policy of the northern states, will prevent such abuses.

(To be Continued.)

(Continued from Saturday.)

But how feeble, sir, is policy when opposed to interest among trading people. And what is the restraint arising from policy? Why, that we may be forced by abuse to become ship builders!—But how long will it be before a people of agriculture can produce ships sufficient to export such bulky commodities as ours and of such extent; and if we had the ships, from whence are the seamen to come? 4000 of whom at lest will be necessary in Virginia. In questions so liable to abuse, why was not the necessary vote put to two thirds of the members of the legislature? With the constitution, came from the convention so many members of that body to congress, and of those too, who were among the most fiery zealots for their system, that the votes of three states being of them, two states divided by them, and many others mixed with them, it is easy to see that Congress could have little opinion upon the subject. Some denied our right to make amendments, whilst others more moderate agreed to the right, but denied the expediency 5.6.4

of amending; but it was plain that a majority was ready to send it on in terms of approbation—my judgment and conscience forbid the last, and therefore I moved the amendments that I have the honor to send you enclosed herewith and demanded the yeas and nays that they might appear on the journal. This seemed to alarm, and to prevent such appearance on the journal, it was agreed to transmit the constitution without a syllable of approbation or disapprobation, so that the term unanimously only applied to the transmission, as you will observe by attending to the terms of the resolve for transmitting. Upon the whole, sir, my opinion is, that as this constitution abounds with useful regulations, at the same time that it is liable to strong and fundamental objections, the plan for us to pursue, will be to propose the necessary amendment, and express our willingness to adopt it with the amendments, and to suggest the calling of a new convention for the purpose of considering them. To this I see no well founded objection, but great safety and much good to be the probable result. I am perfectly satisfied that you make such use of this letter as you shall think to be for the public good; and now, after begging your pardon for so great a trespass on your patience, and representing my best respects to your lady, I will conclude with assuring you, that I am with the sincerest esteem and regard, dear sir, your most affectionate and obedient servant.

Richard Henry Lee.

POSTSCRIPT.

5.6.5 It having been found from universal experience, that the most exprest declarations and reservations are necessary to protect the just rights and liberty of mankind from the silent powerful and ever active conspiracy of those who govern; and it appearing to be the sense of the good people of America, by the various bills or declarations of rights whereon the government of the greater number of states are founded. That such precautions are necessary to restrain and regulate the exercise of the great powers given to rulers. In conformity with these principles, and from respect for the public sentiment on this subject, it is submitted,—That the new constitution proposed for the government of the United States be bottomed upon a declaration or bill of rights, clearly and precisely stating the principles upon which this social compact is founded, to wit: That the rights of conscience in matters of religion ought not to be violated—That the freedom of the press shall be secured—That the trial by jury in criminal and civil cases, and the modes prescribed by the commonlaw for the safety of life in criminal prosecutions shall be held sacred—That standing armies in times of peace are dangerous to liberty, and ought not to be permitted unless assented to by two thirds of the members composing each house of the legislature under the new constitution—That the elections should be free and frequent—That

the right administration of justice should be secured by the independency of the judges—that excessive bail, excessive fines, or cruel and unusual punishments should not be demanded or inflicted—That the right of the people to assemble peaceably for the purpose of petitioning the legislature shall not be prevented—That the citizens shall not be exposed to unreasonable searches, seizure of their persons, houses, papers or property; and it is necessary for the good of society, that the administration of government be conducted with all possible maturity of judgment, for which reason it hath been the practice of civilized nations and so determined by every state in the Union.—That a council of state or privy council should be appointed to advise and assist in the arduous business assigned to the executive power. Therefore let the new constitution be so amended as to admit the appointment of a privy council to consist of eleven members chosen by the president, but responsible for the advice they may give. For which purpose the advice given shall be entered in a council book, and signed by the giver in all affairs of great moment, and that the counsellors act under an oath of office. In order to prevent the dangerous blending of the legislative and executive powers, and to secure responsibility—The privy, and not the senate, shall be joined with the president in the appointment of all officers civil and military under the new constitution—That the constitution be so altered as not to admit the creation of a vice president, when duties as assigned may be discharged by the privy council, except in the instance of proceding [presiding?] in the senate, which may be supplied by a speaker chosen from the body of senators by themselves as usual, that so may be avoided the establishment of a great officer of state, who is sometimes to be joined with the legislature, and sometimes administer the government, rendering responsibility difficult, besides giving unjust and needless pre-eminence to that state from whence this officer may have come.—That such parts of the new constitution be amended as provide imperfectly for the trial of criminals by a jury of the vicinage, and so supply the omission of a jury trial in civil causes or disputes about property between individuals, whereby the common law is directed, and as generally it is secured by the several state constitutions. That such parts of the new constitution be amended as permit the vexatious and oppressive callings of citizens from their own country, and all controversies between citizens of different states and between citizens and foreigners, to be tried in a far distant court, and as it may be without a jury, whereby in a multitude of cases, the circumstances of distance and expence, may compel numbers to submit to the most unjust and ill founded demand. That in order to secure the rights of the people more effectually from violation, the power and respectability of the house of representatives be increased, by increasing the number of delegates to that house where the popular interest must chiefly depend for protection—That the constitution be so amended as to increase the number of votes necessary to determine questions in cases where a bare majority may be seduced by

strong motives of interest to injure and oppress the minority of the community as in commercial regulations, where advantage may be taken of circumstances to ordain rigid and premature laws that will in effect amount to monopolies, to the great impoverishment of those states whose peculiar situation expose them to such injuries.

1. Presumably a letter from Edmund Randolph, written on the day the Constitution was signed, informing Lee of the conclusion of the work of the Philadelphia Convention; this letter does not appear to have survived. Randolph's well-known letter of 10 October explaining his reasons for not signing the proposed Constitution is printed above, 2.5.
2. See Federal Farmer II, 2.8.15 n. 11.
3. *Commentaries* III, 119.
4. *Commentaries* III, 379–80.

Address by Cato Uticensis

VIRGINIA INDEPENDENT CHRONICLE
17 October 1787

This essay, while not deep, is lively and well crafted; it presents a series of moderate, practical objections to the Constitution. Printed first in the *Virginia Independent Chronicle*, the essay was reprinted in Pennsylvania and New York. The author admits that the Articles of Confederation require amendment to give the Congress ample power to regulate commerce and to lay and collect impost duties. He recalls, however, "the well known difficulty of governing large republics with harmony and ease," and suggests that the "blaze of liberty" will be kept alive better "when watched on thirteen altars, than when reunited into one." He emphasizes that in giving the federal government the power of direct taxation, the Constitution opens the prospect of the hated excise, administered by officers from out of state ("Are we not to expect, that New England will now send us revenue officers, instead of onions and apples?"), and backed up by distant federal courts.

To the Freemen of Virginia:

Adventuring, this day, to call your attention to one of the most serious and awful subjects, that ever was agitated by a free people, I must, in the most unfeigned manner, supplicate your kindest indulgence. I must, (it would be presumption to deny it) own that the head which dictates these words, and the hand which guides this pen, trembles at this moment with reverential awe, and, if I mistake not, there are few among thee, whose own feelings will leave any room to doubt it, when you are informed, that I am summing up the courage to question the merits of the *Fœderal Constitution*, proposed to your consideration by the late General Convention. 5.7.1

In the hour of distress, in the moment of confusion and perilous danger, after separately declaring themselves sovereign and independent, the Thirteen States of America associated together in a Fœderal league, for their 5.7.2

common defence, an affair of such magnitude, formed under the influence of such unfavorable circumstances, could not fail of receiving a tinge from them; consequently, when the war, that link, which supplied each defect was over, the yawnings and the chasms of the building began to give evident marks of the hastiness of the workmen: America saw, that without the help of a better cement, the different members were likely to fall asunder, and that, though we may find a lodging in some of the separated pavilions, we must bid adieu to the grandeur and dignity of being inhabitants of a stately palace.

5.7.3 The State of Virginia had the honor of taking the lead in this business, and well aware of its magnitude and import, she delegated some of her choicest sons to it, as did the other States, the result has been anxiously waited for, and in the confidence of its being the offspring of the combined abilities and integrity of America, nobody doubted discovering in it the characteristic features of the parents. The reverence, which every man must feel for them, made me, on examining it, guard against my own opinion with the utmost severity. But, as it is not in the power of man to give up, in any single instance, the dictates of his reason, when he has once been convinced of the propriety of allowing his judgment to be swayed by no other motive, I thought it beneath the dignity of a free agent, with strength of conviction on my mind, to sacrifice it to any authority or predilection whatsoever. To acquire this conviction, 'tis true, I had no small difficulty to bring myself to examine the Fœderal Constitution abstracting from its authors; I hope, nevertheless, that every freeman in Virginia will, in this momentous matter, take the same method, will nobly dare to think for himself, and will not be lulled, perhaps into a fatal stupor, by the whistling of any names whatsoever; this, I am sure, is the wish of the most exalted characters, that formed the Fœderal Convention; and, believe me, when you will not use this priviledge, you are no longer worthy to bear the name of *freemen*. I would wish to find it sunk deep into your recollection, and be early impressed upon the minds of your children, that all the republics, which were, and are not, in the world, owed their loss of liberty and their dissolution, to an overweaning reverence for men and their measures. This consideration is not thrown out to you, with the impious arrogance of insinuating the least doubt of the upright and patriotic views, of the delegates who formed the late General Convention; a vain and presumptuous attempt of that kind would, undoubtedly, have no other effect with you, than that of branding the man, who could be guilty of it, with the most deserved infamy and contempt. The intention of it is, to induce you, as it behoves freemen, to meet the consideration of this matter with minds purged of all kinds of prejudice, and ready to yield to the conviction of your reason.—*Humanum est errare*. The lot of human nature renders it liable to error, and, if we discover it here, it will be a great practical lesson, to humble ourselves before the fountain of ALL WISDOM. Though I have not the fondness to think, that any remarks of mine

shall influence the political conduct of any one, I may, perhaps without incurring the imputation of self-sufficiency, indulge myself with the hopes that they may call forth some abler pens to agitate this matter. It is surely to be wished, that the attention of the citizens of the different States should be fixed, in a cool dispassionate manner, to a subject, which is to have so direct an influence on the future prosperity of them and their posterity.

It has been the language, since the peace, of the most virtuous and discerning men in America, that the powers vested in Congress were inadequate to the procuring of the benefits, that should result from the union: It was found, that our national character was sinking in the opinion of foreign nations, and that the selfish views of some of the States were likely to become the source of dangerous jealousy; the requisitions of Congress were set at naught; the Government, that represented the Union, had not a shilling in its Treasury to enable it to pay off the Fœderal debts, nor had it any method within its power to alter its situation; it could make treaties of commerce, but could not enforce the observance of them, and it was felt, that we were suffering from the restrictions of foreign nations, who seeing the want of energy in our Fœderal Constitution, and the unlikelihood of co-operation in thirteen separate Legislatures, had shackled our commerce, without any dread of recrimination on our part: To obviate these grievances, it was, I believe, the general opinion, that new powers should be vested in Congress, to enable it, in the amplest manner, to regulate the commerce, to lay and collect duties on the imports, of the United States. Delegates were appointed by most of them, for these purposes, to a Convention to be held at Annapolis in the September before last; a few of them met, and without waiting for the others, who were coming on, they dissolved the Convention, after resolving among themselves, that the powers vested in them were not sufficiently extensive, and that they would apply to the Legislatures of the several States, which they represented, to appoint members to another Convention, with powers to new model the Fœderal Constitution. This, indeed, it has now done in the most unequivocal manner, nor has it stopped here, for it has fairly annihilated the Constitution of each individual state. It has proposed to you a high prerogative government, which, like *Aaron's* serpent, it to swallow up the rest: this is what the thinking people in America were apprehensive of; they knew how difficult it is to hit the golden mean, how natural the transition is from one extreme to the other; from anarchy to tyranny; from the inconvenient laxity of thirteen separate Governments to the too sharp and grinding one, before which our sovereignty, as a state, was to vanish. 5.7.4

In *Art* I, Sect. 8. of the proposed Fœderal Constitution, it is said, "Congress shall have power to lay and collect taxes, duties, imposts and excises."—Are you then, Virginians, about to abandon your country to the depredations of exisemen, and the pressure of excise laws? Did it ever enter the mind of any one of you, that you could live to see the day, that any other 5.7.5

government, but the General Assembly of Virginia, should have power of *direct taxation* in this state? How few of you ever expected to see excise laws, them instruments of tyranny, in force in your country? But, who could imagine, that any man but a Virginian, were they found to be necessary, would ever have a voice towards enacting them? That any tribunal, but the Courts of Virginia, would be allowed to take cognizance of disputes between her citizens and their tax gatherers and excise men? And that, if it should ever be found necessary, to curse this land with these hateful excisemen, any one, but a fellow citizen, should be intrusted with that office?

5.7.6 For my part, I cannot discover the necessity there was of allowing Congress to subject us to excise laws, unless, that considering the extensiveness of the single republic into which this Constitution would collect all the others, and the well known difficulty of governing large republics with harmony and ease, it was thought expedient to bit our mouths with massive curbs, to break us, bridled with excise laws, and managed by excisemen, into an uniform, sober pace, and thus, gradually, tame the *troublesome* mettle of the freeman. This necessity could not, surely, arise from the desire of furnishing Congress with a sufficient revenue, to enable it to exercise the prerogatives, which every friend to America would wish to see vested in it; as it would, by unanimous consent, have the management of the impost, it could increase it to any amount, and this would fall sufficiently uniform on every one, according to his ability; or, were this not found sufficient, could not the deficiency be made up by requisitions to the states? Could it not have been made an article of the Fœderal Constitution, that, if any of them refused their quota, Congress may be allowed to make it up by an increase of the impost, on that particular state so refusing. This would, surely, be a sufficient security to Congress, that their requisitions would be punctually complied with.

5.7.7 In any dispute between you and the revenue officers and excisemen of Congress, it is true, that it is provided, the trial shall be, in the first instance, within the state, though before a Foederal tribunal: It is said in *par.* 3. *sect.* 2. *art.* 3. "The trial of all crimes except in cases of impeachments shall be by jury; and such trial shall be held in the state where the crime shall be committed"; but what does this avail, when an appeal will lie against you to the Supreme Foederal Court.—In the paragraph preceeding the one just now quoted, it is said, "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. *In all the other cases before mentioned,** the Supreme Court shall have *appellate jurisdiction,* both as to law and fact, with such exceptions and under such regulations as the Congress shall make." But, where is this Supreme Court to sit? Will it not be, where Congress shall fix its residence? Thither then you will be carried for

*See the Fœderal Constitution.

trial. Who are to be your jury? Is there any provision made, that you shall have a *Venire* from your county, or even from your state, as they please to call it? No! you are to be tried within the territory of Congress, and Congress itself is to be a party; you are to be deprived of the benefit of a jury from your vicinage, that boast and birthright of a freeman.

Should it not, at least, have been provided, that those revenue officers and excisemen, against whom free governments have, always, justly entertained a jealousy, should be citizens of the state? Was it inadmissible, that, they should be endued with the bowels of fellow citizens? Are we not to expect, that New England will now send us revenue officers, instead of their onions and their apples? When you observe, that the few places, already, under Congress in this state are in the hands of strangers, you will own, that my suspicion is not without some foundation: and if the first cause of it be required, those, who have served in Congress, can tell you, that, the New England Delegates to that Assembly have always stood by each other, and have formed a firm phalanx, which the southern Delegates have not; that, on the contrary, the manœuvres of the former have been commonly engaged, with success, in dividing the latter, against each other. The force of names and of habits is well known, though Scotland and England go now under the general name of Great Britain, the distinction of Scotsman and Englishman still subsists, and, how often has the latter complained, that, that northern hive was continually swarming its hungry instruments of undue prerogative over his country. 5.7.8

The ingenious *Lord Shaftsbury* has said, that a wheel within a wheel was an *absurdity* in politics;[1] but, where was this ever so manifest, as in this Foederal Constitution. The phantom of sovereignty, which is left the state, enables it to legislate in many instances, and lay taxes; to have its tax-gatherers and excisemen too. Unhappy situation where the natural jealousy, and the pride inherent in two separate governments, presiding over the same people, will induce them to vie in the race of taxation to snatch the prize, the spoils of the citizen, that is to glut the vanity of their respective consequence! he, who has meditated on man, and the secret springs, which move him, must expect this. Unhappy situation where two rival excisemen battle at your doors for precedence in seizing these spoils!—In the name of God look well before you leap, consider, that the question is, whether, you would rather be a sovereign or a sharer in sovereignty: whether, as only a few from their abilities and consequence can expect to be delegated, in rotation, to Congress, you are not about to lay the foundation of a dangerous aristocracy. Whether, it is, not more likely that the blaze of LIBERTY will be kept alive among us, when watched on thirteen separate Altars, than when re-united into one, be it ever so refulgent. Consider, whether you are willing to see the state of Virginia dwindle into the insignificance of a town corporate: and as the Mayor Court of aldermen and common-council in this make by-laws for its own government, you are satisfied with a Governor, Senate 5.7.9

and Assembly, which will have the same authority as "the United States shall guarantee to every state in this Union a republican FORM of government." Consider that if you pass the Fœderal Constitution *in toto,* you subject yourselves to see the doors of your houses, them impenetrable castles of freemen, fly open before the magic wand of an exciseman, and, that, if you should resent and punish the insolence of office, the daring brutality of the *publican,* perhaps offered to the wife of thy bosom, you will be dragged for trial before a distant tribunal, and there, perhaps, condemned without enjoying the benefit of a jury from your vicinage, your unalienable birthright as a freeman.

Cato Uticensis.

October 10, 1787.

1. "Sensus Communis, An Essay on the Freedom of Wit and Humor in a Letter to a Friend," in *Characteristics of Men, Manners, Opinion, Times, etc.* I, treatise 2, pt. 3, sec. 3.

A Proposal for Reviving Christian Conviction

VIRGINIA INDEPENDENT CHRONICLE
31 October 1787

This is an essay soliciting support of a plan of certain vestries of the Episcopal Church in Virginia to appoint lay clerks in an effort to revitalize religious conviction. Although unconcerned with the new proposed Constitution, the author argues with particular clarity and coherence the dependence of civil institutions on religious sanction, an important concern of many Anti-Federalists and one that is rejected by James Madison in *The Federalist* no. 10 and elsewhere.[1]

1. See Turner 4.18.2 n. 2.

Mr. Davis,

The following paper was transmitted to me by a friend zealous in the true interests of his country: The matter it contains is, in my opinion, of such importance as to justify my requesting the insertion of it in your very useful as well as Independent Chronicle.

I am, sincerely, yours,
A.B.

The unpromising situation of national affairs has of late, induced many well meaning people to submit to the public their sentiments, however unpolished, respecting the proper means of effecting a reform. Several have, and very justly, pointed out the want of virtue, public and private, as one principal source of our distresses, and have recommended the practice thereof with the most plausible arguments. To such writers the community is certainly much indebted for their well meant endeavours. But alas! the experience of every age evinces that arguments drawn from the native charms of moral rectitude, and its necessary connection with the happiness and welfare of states, are too feeble to ensure the requisite practice of virtue when opposed to the allurements of self-interest and self-gratification. 5.8.1

5.8.2 While mankind consider the obligations to the exercise of virtue as derived from no higher source than the advantages accruing therefrom to society, it is no difficult matter for every individual to satisfy himself, that, provided he can persuade others to the disinterested practice, his dispensing with it in his own case will be a thing of little moment. Hence declamations on the advantages and necessity of public and private virtue fall from the lips of every one, while their lives are stained with the most sordid and selfish practices. Though the different states into which mankind are formed, have, generally speaking, enacted laws to restrain and punish enormities, to countenance virtue and discourage vice; yet the most approved and wisest legislators in all ages, in order to give efficacy to their civil institutions, have found it necessary to call in the aid of religion; and in no form of government whatever has the influence of religious principles been found so requisite as in that of a republic. It requires but a slight degree of observation to be convinced that mankind require the awe of some power to confine them within the line of their duty. The dread of a rapacious tyrant ready to take advantage of the smallest misdemeanor (in order to fill his coffers or gratify a cruel disposition) may preserve quiet and order among the subjects, or rather slaves, of a despotic prince. Even in limited monarchies the security of the sovereign as well as the privileges of the people, depending on a strict attention to the laws, in a great measure, secures their being duly administered. But what is there to correct the injustice and irregularities of the member of a republic, even where the most salutary laws exist, while he can associate numbers in his interest; or supposing the administration of the laws in the hands of such as have a fellow-feeling, or are unwilling to risk their popularity by punctually enforcing them.

5.8.3 Whatever influence speculative vanity may ascribe to the indefinite principle termed honor, or political refinement, to an artful collusion of interests, sound reason as well as experience proves that a due sense of responsibility to the Deity, as the author of those moral laws, an observance of which constitutes the happiness and welfare of societies as well as individuals, is the mean most likely to give a right direction to the conduct of mankind.[1] The man who carries his prospects forward to futurity, and considers himself a candidate for the favor of omnipotence, will be actuated, in the general tenor of his life, by motives that elevate him above the little interests and passions which disturb the peace of society, and will discharge the relative duties of his station, unawed by the fear of man, with a consistence and steadiness correspondent to the principle from which he acts.

5.8.4 It has been the misfortune of our infant legislature that in the multiplicity of business which has come before them, they have not had leisure to attend sufficiently to the importance of religious concerns to the welfare of the state. In consequence of this a cold indifference towards religion has crept upon the minds of the elderly; our illiterate youth have been raised in almost total ignorance thereof; and those of liberal education, forming their opin-

ions of it from the absurd notions and practices of a few ignorant and presumptuous enthusiasts, have contracted a hearty contempt for every thing sacred.

The pernicious effects of this general disregard of religion on the morals and manners of the people, are but too obvious, and point it out as the duty of every wellwisher to his country to contribute his utmost towards a remedy. A deep sense of this has induced the members of some of the vestries of the Episcopal Church to take the matter into serious consideration. Sensible that while such a general indifference prevails, salaries, sufficient to engage pastors of character and abilities, cannot be obtained by voluntary subscription, and desirous to revive among the people a personal concern for religion that may supply the place of a legal establishment, they have resolved to appoint clerks of irreproachable morals, who are to attend only on Sundays, and devoutly to go through the church service. A selection of (instructive?) and practical discourses suited to the [ ] of the audience being made by [ ] one of these immediately after service is to be read by them from the desk. The allowance usually made to clerks being inconsiderable, it is expected little difficulty will be found in raising a sufficiency for the purpose; and it is hoped the habit of regularly attending divine worship will create a desire to have it accompanied with the greatest solemnity, and consequently a willingness to contribute to the support of able ministers. It is apparent however that this plan must fail unless countenanced by people of rank and influence. The limits of your paper will not admit of enumerating the many inducements to this which naturally present themselves. Indeed were the Christian religion considered in its genuine character, as delivered by its Divine Author, not merely as a revelation of certain articles of faith and duty respecting the Deity and a future state; but also as comprehending the most complete system of ethics, calculated to harmonize society by laying a restraint on the passions and regulating the affections of its votaries; few arguments would be requisite to persuade persons of every denomination to give it their countenance, even from motives of policy alone. Parents would find a small advantage in having an opportunity weekly of carrying their children to a place whose sacredness would give, at least a temporary check to that levity of mind, so conspicuous in the rising generation, and where they would receive repeated lessons of integrity, candour, sobriety, and every amiable virtue. The community at large would benefit by the introduction of a body of men qualified to instruct its youth in every useful branch of literature. Those seeds of personal prejudice and dislike which shoot up among mankind, when kept at a distance and estranged from one another, would die away when people came to associate cordially in the exercises of a religion whose spirit breathes nought but universal love and benevolence, and an intercourse of friendly offices, highly conducive to the prosperity of the whole, a love of order and respect to the laws would most probably be the consequence. Those who doubt of

5.8.5

the good effects arising from the operation of religious principles, need only turn their thoughts to the state of Pennsylvania, and contemplate the happy and flourishing condition of that province from its first settlement.

5.8.6 It shall only be added further that it must give every well disposed person pleasure to reflect, that while men of rank and abilities are employed in forming the numerous and complicated wheels of the political machine; the most obscure have it in their power, in this case, to render essential service to their country, by promising that spirit which alone can give the necessary spring and regulations to its different movements.

1. See Turner 4.18.2 n. 2; Federal Republican 3.6.21 n. 19.

Essay by A Georgian

GAZETTE OF THE STATE OF GEORGIA
15 November 1787

Although professing a liking for the plan of the new Constitution, A Georgian criticizes its essential principles. He argues, for example, that the system of requisitions by quotas should be maintained; that voting in the national legislature should be by states; and that the Constitution should provide specifically for the salaries of members of the federal legislature and executive, the size of the civil list, the relief of the President as commander-in-chief when incapacitated, etc. This unknown author covers most of the ground common in Anti-Federalist essays, but his proposals are more than usually concrete and restrictive. His objections are well summarized in the next-to-last paragraph. Of interest are his arguments that the constitution is an apostacy from the free, democratic principles of the Declaration of Independence (5.9.16) and that the Southern interest is inadequately represented and protected (5.9.4). The essay produced a good deal of discussion, pro and con, in the *Gazette*, in which A Georgian took some further brief part but wrote nothing more of substance.

Mr. Printer,

Through the channel of your paper we have lately been favoured with the new Federal Constitution, the plan of which I must confess I like, and it is my heart's wish to see a federal constitution established agreeable to the principles of republican liberty and independence, and on the basis of a democratical government, meaning that of the people, being that very government intended by our glorious Declaration of Independence. 5.9.1

Though this new federal constitution, I believe, was framed and intended for the good of the United States, and, as we are well aware, was assented to by the political saviours of our country, to whom all deference and respect is due, yet the sacredness of these illustrious characters has not been sufficient nor able to prevent several articles from creeping into the said constitution, which, by their different constructions and great latitude given them, an American Sylla or Augustus Octavianus, might one day or other make ser- 5.9.2

viceable to his ambition, interest, and to the utter subversion of our SACRED FREEDOM. And as mankind, upon the whole, is so depraved as, with pleasure, to trample upon the sacred rights and privileges of their fellow creatures, it is certainly one of our greatest cares, both for ourselves and our offspring, to frame such constitutional laws, thereby to prevent such designing tyrants (if ever they be) from grasping at a power, to our destruction, in the said federal constitution, within their reach; as also to guard with the safest care against all encroachments, and to bar them forever from paving the way to what is worse yet, an ARISTOCRATICAL government, whereby about 70 nabobs would lord over three millions of people as slaves; as also to establish power, harmony, equality, and justice, for and among the whole of the United States.

5-9-3 I agree, as it may be said, that the Articles of the Confederation are defective; and, to make it answer effectually the purpose of a federal government, it is to be observed, delegates from all the states, except Rhode Island, were appointed by the legislatures, with this power only, "to meet in Convention, to join in devising and discussing all such ALTERATIONS and farther provisions as may be necessary to render the articles of the confederation adequate to the exigencies of the Union."[1] This was the only power in them vested, and, in conformity to it, had they added to the articles of the confederation a power to Congress, viz. To regulate foreign and internal trade—to lay and collect duties and imposts, uniform throughout the United States—to have the sole legislative power in maritime matters—to have a coercive power to enforce the payment of the quota of each delinquent state—but to leave internal taxation and excise to the management of each individual state, the legislature thereof being certainly best acquainted with that important business [—had they done this, a]ll would have been well, and our federal government as good and fully adequate to its exigencies, as could have been wished. But as this Convention has thought fit to destroy such an useful fabrick, as the articles of the confederation, with the before mentioned amendment and addition, would have been, and, on the ruins of that, raised a new structure, rather favourable to aristocratical and destructive to democratical government[;] and as it seems not to have that equality and justice for its basis, [as] it certainly ought to have, among confederated, free, and independent states, I wish to point out the few articles inconsistent with such a constitution, and also to try the remedies thereof, hoping, by that means, that my fellow citizens will, by a candid second reading of said constitution, agree with me in the impropriety of such articles, and their united wisdom, in a Convention guided by the love of their country, and answering the benefit of the whole, will improve the remedies, and so establish a federal constitution capable of deterring any ambitious men from making an use of it to our destruction; as also to keep alive and in due harmony the confederation among the United Independent States, lately so dearly purchased from the government of Great Britain,

because that meant "TO BIND US IN ALL CASES WHATSOEVER."[2] But now to the point itself:

Article I, section 2. This section mentions that, within three years after the first meeting of the Congress of the United States, an enumeration shall take place, the number of representatives not to exceed one member for every 30,000. This article I believe to be inadmissible: 1st, it affording too small a representation (supposing 48 at the highest calculation) and especially in the southern states; their climate, soil, and produce, to a large extent back, not being capable of that population as in the northern states. Would it not therefore be better to increase the number of representatives, say one member for every 20,000 for the states north of Virginia, and one for every 15,000 south of the said state, itself included? Or, 2dly, divide the states into districts, which shall choose the representatives, by which every part of a state will have an equal chance, without being liable to parties or factions? Should it be said it will increase the expence, it will be money well laid out, and the more so if we retain the paying them out of our own hands; and, supposing the voting in the house of representatives was continued as heretofore by states, would it not be more equal still? At any rate I would strenuously recommend to vote by states, and not individually, as it will be accommodating the idea of equality, which should ever be observed in a republican form of government. Or, 3dly, if it was in proportion to the quotas of the states, as rated in taxation, then the number of members would increase with the proportion of tax, and at that rate there would always be an equality in the quota of tax as well as representation; for what chance of equality, according to the constitution in question, can a state have that has only one or two votes, when others have eight or ten, (for it is evident that each representative, as well as senator, is meant to have a vote, as it mentions no other mode but in choosing the president) and as it is generally allowed that the United States are divided into two natural divisions, the northern as far as Virginia, the latter included forms the southern? This produces a wide difference in climate, soil, customs, manner of living, and the produce of the land; as well as trade, also in population, to which it is well observed the latter is not so favourable as the former, and never can nor will be, nature itself being the great obstacle. And when taxation is in agitation, as also many other points, it must produce difference in sentiments, and, in such a dispute; how is it likely to be decided, according to the mode of voting, the number of members north of Virginia the first three years is 42, and the southern, Virginia included, 23; and, when the enumeration takes place, the odds is somewhat more, say 32 north, and 16 south? Is human nature above self interest? if the northern states do not burthen the southern in taxation, it would appear then really that they are more disinterested men than we know of. 5.9.4

Out of these observations I shall leave my fellow citizens to join in an amendment necessary in this section.

5.9.5 Art. I, sect. 4. What advantage can accrue to Congress to have the power to order where, or in what part of the state, the senators or representatives, agreeable to this and the second section, are to be chosen in each state? And, for fear they should convene the state of Georgia at Bourbon or Shoulderbone, I would advise that the words, "*but the Congress may at any time by law make or alter such regulations, except as to the place of choosing senators,*" *be erased.*

5.9.6 Art. I, sect. 6. What advantage can it be to Congress to have the power to pay themselves? and yet it may be very detrimental to the states. May they not do as the members of a certain state assembly did, spend most of the money raised by the taxes in paying themselves? And why is their salary not fixed? for who can say how the senators or representatives may incline to live? perhaps much better than we can afford to pay. Also, is it meant by this section that a member, either of the senate or representatives, is not to account for his acts to his constituents? If so, this is contrary to the idea entertained by freemen who delegate their power for a limited time. That the representative should be called on by his constituents to answer and give his reasons for his measures is one of the firmest barriers to liberty. Therefore I would propose this section to read thus:

"Art. I, sect. 6. The senators and representatives shall receive a compensation for their services, not exceeding five dollars per day, during their attendance and going to and coming from Congress, to be paid out of the treasury of their respective states. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to and returning from the same. And for any speech or debate in either house they shall not be questionable in any other place, except when they shall be called upon for that purpose by their constituents."

5.9.7 Art. I, sect. 8. The words TAXES and EXCISES are inadmissible, and I would recommend them to be expunged; for, by this section, as it stands, there is no limited taxation, and no check. Should not rather the civil list, and other arrangements suitable for a peace establishment, together with debts and interests due, have been made out, and laid before the house? Let this sum then be the tax in times of peace, assess each state with its quota, call it in by a certain day, and, if not paid, let Congress by all means have the necessary compulsory powers. And in case an unlimited taxation in actual war is to be given, let it cease positively immediately on the return of peace. Remember the civil list of England was, not many years ago, but a few hundreds of pounds, and now it is far above a million, and yet there in times of peace, nay even in war, the sums and the uses must be ascertained before it is granted by parliament. Upon the whole, it can never be allowed that we can suffer ourselves to be individually taxed by Congress, they being unacquainted with our private circumstances; but our own legislature is the only body politick to whose management it can be trusted.

That part of the 8th section respecting *tribunals* is utterly inadmissible; its extent being not known and without bounds, and threatening to annihilate all state jurisdictions, it ought therefore to be entirely expunged.

Also that part respecting *the army* I would recommend to read thus: "To raise and support armies only in times of war, invasion, insurrection, or rebellion; and no appropriation of money to be for a longer term than one year to that use. No standing armies to be kept on foot during times of peace within the United States, except what may be necessary to garrison frontier posts."

Further, that part of said 8th section respecting *territorial legislation* for the district where Congress resides, confine it only to five miles square; a larger extent might be made a nursery out of which legions may be dragged to subject us to unlimited slavery, like antient Rome.

Art. I, sect. 9. That part of this section respecting our *home trade* should have this addition, in order to prevent smuggling and a contraband trade, "but they shall be obliged to produce sealed customhouse certificates from the ports they last cleared or sailed from." 5.9.8

That part of the same section respecting *the Writs of Habeas Corpus,* let it, by your leave, read thus: "The privilege of the Writ of Habeas Corpus shall remain, without any exceptions whatever, inviolate forever."

Art. 2, sect. 1. Would it not be necessary to say, "that the president shall hold his office during the term of four years out of eight?" *Query,* What number of men choose a president for the important and almost unlimited trust in the United States? There are no more than 93 for the first three years, and Georgia's quota is five; and, after three years, the number of electors will be but 76, for, I say again, 30,000 people are not so easily acquired; then the right of Georgia lies in three only for so great a trust. If a majority of 558 members have as yet been bought into the court interest in Great Britain, *Query,* How many offices, and how much money, will it take to buy the majority of 76 members, if ambitious men should attempt to set about it? and who can set bounds to the depravity of human nature, if not restrained by wholesome constitutional laws? Therefore let us guard against such an accident by having more electors. 5.9.9

Query, Would it not be necessary to fix the day unalterably forever for choosing of electors, and for them to give their votes for a president?

Also, Would it not be well done to fix the president's salary at once, by saying he shall have 4000 dollars per annum?

Art. 2, sect. 2. If the president should at any time be incompetent for military command in war, etc. (for he cannot be prevented from taking the chief command when it is his right) and should choose to take the command notwithstanding, what ill consequences may not result? for we know there are many wise and good men, and very fit for civil rulers, but are quite unfit for the command of armies and navies. Would it not be better said, "That the president, with the advice of both Houses of Congress, shall be com- 5.9.10

mander in chief, etc. etc. etc." By this clause, ought we not to look into the troubles in Holland, and see how the Stadtholder (laying aside his hereditary claims) behaved, contrary to the positive orders of the States General, his masters, during our late glorious revolution? and has he not accumulated powers destructive to their commonwealth, and which are now the sole cause of their present troubles? and should we not avoid the like by making the president ineligible to the office as many years as you allow him to hold it? and that he only be commander in chief, and nominate and appoint all officers, civil and military, by and with the advice of the senate, etc. only? Therefore I would advise the clause, "*But the Congress may by law vest the appointment of such inferior officers as they think proper in the president alone,*" etc. be struck out.

5.9.11 Art. 2, sect. 3. It will certainly be no harm, but of infinite benefit, if all continental commissions have the clause, "By and with the advice of the senate of the United States." This will prevent the officers from looking up to the president alone as their master and benefactor. This is another observation which has come to us from Holland, where several great officers refused to serve the state of Holland against the Stadtholder, saying expressly they had their commission only from him, and considered themselves under his command, and no other.

5.9.12 And now we come to the point which at once teems with numberless enormous innovations, by introducing strange and new courts, of almost any denomination, into any of the states, whereby our own courts will soon be annihilated, and abolishing the only pledge of liberty, the trial by jury, to tyrants only formidable, in all civil cases, countenancing the greatest injustice to be lawfully, nay constitutionally, committed by the rich against their brave fellow citizens, whose only misfortune is, to be, perhaps, not so rich as they, by dragging their lawsuits of any denomination, and of any sum, however small, if they choose, before the GRAND TRIBUNAL OF APPEAL, to which the poor will be unable to follow, with their evidences and witnesses, and on account of the great expences. Therefore, fellow citizens, pray restrain this encroachment, so destructive to the inestimable rights the more numerous part of middle circumstanced citizens now enjoy. With horror beware of the precipice before you; and, if you will, please join me in amending the third article in the federal constitution thus:

5.9.13 "Art. 3, sect. 1. The judicial power of the United States shall be vested in one supreme court only, which shall be resident wheresoever Congress resides, the judges and officers whereof shall hold their offices, by and with the advice of both Houses of Congress, during good behaviour, and shall at stated times receive for their services a compensation, which shall not be diminished nor increased during their continuance in office. The expences attending a suit in this supreme court shall not exceed 60 dollars."

5.9.14 "Art. 3, sect. 2. The judicial power of this supreme court shall extend to all cases in law and equity arising under this constitution, the laws of the

United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other publick ministers, and consuls; to all cases of admiralty and maritime jurisdiction, and respecting foreign trade; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state, between citizens of the same state claiming land under grants of different states, and foreign states, foreign citizens, or subjects."

"In all cases affecting ambassadors, other publick ministers, or consuls, and where the United States shall be a party, and between two or more states, the supreme court shall have original jurisdiction; but, in all the other before enumerated cases, it shall have appellate jurisdiction only, as well of law as fact."

"The trial of all civil and criminal causes, except in cases of impeachment, (as provided for in article I, section 3) shall be by jury, drawn by lot out of a box from among the freeholders of that state where Congress shall reside, and within five miles thereof; and, when a crime against the United States has been committed within no state, the Supreme Court of Congress shall have the trial of the same where Congress then resides."

"The state's attorney in each and every state shall prosecute all criminals who have committed crimes against the United States. Such trial shall be held where the crime has been committed, by such state court as has jurisdiction of the vicinity."

Art. 4, sect. 5. At the conclusion of the fourth article, add, "The freedom of the press, and trial by jury, shall be held sacred and inviolate throughout the United States forever." 5.9.15

Thus, fellow citizens, have I pointed out what I thought necessary to be amended in our federal constitution. I beg you to call to mind our glorious declaration of independence, read it, and compare it with the federal constitution; what a degree of apostacy will you not then discover: Therefore, guard against all encroachments upon your liberties so dearly purchased with the costly expence of blood and treasure. Show that you have yet that noble spirit, and provide remedies against the numberless evils of an unlimitted taxation,—against the fatal effects of a standing army in times of peace,—against an unfair and too small representation. Let your suffrages at elections never be suffered to be regulated by laws at pleasure, but let it be stated and fixed. Let the trial by jury in civil and criminal causes, and the liberty of the press, be forever sacred and inviolable. Let Congress, for God's sake, not have that power of jurisdiction sought after to our destruction, but confine them to a territory of five miles only, and to only one supreme court, and allow them none extraordinary. Neither appeals in cases between citizens, whereby the rich may fly from justice, and the poor unable to follow them. And, at this rate, I am confident you will establish a government which will be lasting, and a blessing to ourselves and generations hereafter. 5.9.16

Having now discharged my duty, which as a citizen I owe to God, to my country, and myself, I leave you to judge for yourselves, and I hope you will act as becoming freemen and the guardians for your offspring.

A Georgian

1. The language is a somewhat abbreviated version of the Georgia ordinance of 10 February 1787 appointing delegates to the constitutional convention, which was patterned on the original Virginia resolution of 16 October 1786. The delegates were charged, however, to make revisions to render the "Federal Constitution" (not, as A Georgian has it, "the articles of confederation") adequate to the exigencies of the Union. See Farrand III, 576–77; cf. 559–60.

2. This is of course the language of the Declaratory Act of 1766.

Essays by Cato

STATE GAZETTE OF SOUTH CAROLINA
November–December 1787

A rather unusual Anti-Federalist, Cato (unrelated to the well-known New York Cato, 2.6) views the Constitution with pleasure and regards it as well calculated "to direct the movements of our rising empire" (5.10.2). He approves its subordination of the states to the general government and its protections against the mutability of laws and the excesses of parties and factions. He urges the country to "shake off our libertinism, and wish only to be free so far, as well regulated laws will permit and defend" (5.10.2). Cato's criticism of the Constitution concerns the proposed presidency, where he makes a substantial argument in favor of frequent rotation. The presidency will be, in fact, a royal office. Examining the examples of republican Rome and Cromwellian England, Cato argues specifically that the president should serve for four years and be ineligible for a second term. America is not so poor in qualified men as to need to rely on one or a few to fill this office. Indeed, the presidency should be accessible to the numerous citizens of ability and integrity. Such a rotation would moreover avoid the tumult that inevitably arises when a long-term executive finally ends his career.

The first essay appeared on 26 November 1787. It was answered by Maecenas in the same journal on 6 December, with a rebuttal by Cato on 10 December in which he shows rather convincingly that his main argument has been missed by his opponent's shafts.

I
26 November 1787

. . . in discrimen extremum venimus; nihil est jam ante nos reficiamus, aut ubi lapsi resistamus[1] . . .

Countrymen and Fellow-Citizens,

With you have I shared the dangers of a civil war, where humanity on the 5.10.1

side of our invaders was disregarded, and the heart grew callous to the ties of nature. With you have I seen the enemy repelled from our lands, and where oppression formerly waved her iron wand; now does liberty expand her wings in peace. But is your happiness complete for having conquered an[2] enemy, and delivered yourselves from the oppressions of a tyrant? Liberty in all climes is pleasing, and not easily gained: but more hard to be defended, and rendered serviceable to us. Rouse then yourselves to act towards the noble end, of carrying into execution what has been so happily conceived; fix on a sure basis, the constitution of America, and give to your posterity a vigorous and well digested government. Then shall you live in history revered by nations, and blessed by those, who participate the good effects of your counsels. For as the day on which we attain the knowledge of virtue is no less pleasing than when we put her precepts in execution: so those who preserve our liberties and laws, are no less regarded, than those who prepared them for us.

5.10.2 A constitution is at length framed by the federal convention, by men whose names alone give us the ideas of wisdom and integrity. By this constitution if it be approved, is America to be guided, and her sons protected. By it will she either flourish in commerce, or sink in bankruptcy. Be respected by foreign powers, or despised by them. At this momentuous crisis when so much is at stake, surely does it become every one, to act towards the general good; but more especially those whose abilities are great, and whose time is unappropriated. 'Till now have I been waiting for others to step forth, comment upon the resolves of the convention, and explain our situation and dependencies. For every subject the greater the lights be in which it may be viewed, the better will it be elucidated. Hence the reason, why I take upon me to touch upon political principles. With pleasure do I view the plan of government offered by the federal convention; as teeming with many blessings; and as being the only one calculated to direct the movements of our rising empire. But let us not be hurried away so much with transport, as to be blind to what our interests commands us to perceive. Let us not approve of laws until we have well considered them, nor ratify hastily what we may never undo! How long have we rioting in liberty cultivated the ideas that each state should be a sovereign power, and that its laws should not be controuled? How long have we seen a succeeding law abrogating a former one, as the prevalence of party, or the gust of passion influenced our assemblies? How long I say have we seen treaties unattended to, recommendations from congress unavailing, and their laws contracted by the operations of the state legislatures? And after these sad events shall we still foster the wild ideas of liberty, which teach us to give up as little as possible of our power, to influence the spring of our confederated government? No: with a generous effort let us shake off our libertinism, and wish only to be free so far, as well regulated laws will permit and defend. Inconsistent is it to have one sovereignty within an other, or that more

power should be vested in a part, than is consistent with the union and welfare of the whole. Hence the excellence of our new plan of government shews itself, as taking away the ensigns of royalty from every state, and leaving them only powers which are useful and beneficial.[3] But even in this way of thinking let us not be too generous, for by giving to others too much, we shall make them haughty and overbearing. With a jealous eye are we to observe the proposed president in the resolves of the convention; as one who will be possessed of power, royalty, and interest. The name of king, to be sure he will not have; but many of his qualities will be inherent in him. As commander of the army and navy of the United States, we see him invested with great power. Power which in the hands of a good man will be respected, but in those of a bad one will be feared.—During the recess of the senate he is allowed to fill up all vacancies, by granting commissions. This is what if perverted may be attended with serious consequences. And in particular cases he is allowed to adjourn both houses to an indefinite time.[4] After this, is it to be doubted, whether he shall be eligible when his term of four years shall be expired? Reason and experience forbid it, then let your determinations be fixed accordingly. It may be objected by some, that the resolves of the federal convention, do not say that he may be eligible again. But do they say that he shall never enjoy the office but once? This is not mentioned: he *may* enjoy it for his life, he *may* transmit it to his children—when I take a view of past transactions, and adapt them to our present times, my mind informs me that the present crisis demands our most serious consideration. When I consider what is now agitated in Europe, I am to believe that my fears are not badly founded. Thrice happy people if your government be regulated by reason and experience, by rectitude and patriotism! If no ambition be admitted into your councils, but a laudable emulation acting towards the general good—Then shall we see each day productive of some good, and each year strengthen the sinews of the commonwealth. Then shall we see America rise triumphant, and shine with unborrowed splendour—When Rome was so governed, when merit was the guide to offices, and a jealous patriotism reigned throughout each breast; then conscious of her own importance, she was happy; and respected around, she was proclaimed the mistress of the world. We see at that time, no offices of importance (except the dictatorship) were made; but what were restricted in time. The consulship and the tribuneship, those bulwarks of Roman liberty, and springs of Roman actions were confined in duration: and the highest Roman office (the consulship) which was amenable to the laws, was allowed to be possessed only for one year. That jealousy which we should have, and which then the Romans had, would not suffer them to put it in a man's power to be dishonest; would not lull them so much, as to permit their country to be ruined. For many reasons they would only have consuls, from year to year. Should they continue them longer, they feared that their interest and power encreasing with their duration of office, would

in the end be subversive of their own liberty. On the other hand, should, they be eligible only for a small time; they imagined the consuls could not have leisure to act against their country: but their desires would be to excell each other, and thereby act for the general good. And as long as Rome was governed by Consuls, so long did she continue to rise in power and reputation. So long did dictators who were even superior to the laws, not forfeit the trust reposed in them. For they were actuated by honor, and restricted by shame. But as soon as a decree of the Senate suffered a Dictator to be perpetual, we see a Caesar arise; enslave his country, and trample upon those whose credulity he had imposed upon. Suffer me now to return to our present situation; suffer yourselves to think unprejudiced of the matter before you. And surely you will conclude that the office of President should not continue longer than four years—but then shall he not be eligible again? By no means—It has been urged already, and it may be so again; that if he be re-eligible, it will be an incitement to good behaviour.[5] Futile is that reasoning which tends to advance that only one, or a few, are fit for the office. America indeed would be poor, if for every year in a century, she had not a different citizen deserving of the presidentship. Should he be eligible for life, or during good behaviour; what room is there left for men equal to him in abilities or integrity, to hope they may arrive at that office? And certainly in a republic, there should be a free access to every high station. It is a right each individual has to exact, because he supports and defends the constitution by which he is governed. Ungenerous is it in that mind which wishes to grasp every honor, impolitic in those who wish to confine them to a few. If a President by the constitution which we are about to make, should be re-eligible; does not the rashness of the design, strike every thinking observer? He may be a good man, and may extend his country's glory: but an end must be put to his career, and if nothing else can, death certainly will. Then if he should not have fixed his power in his family, as I have said may happen: yet a new election which must follow, would probably cause great convulsions; because great interest would be made to attain to an office, which might be enjoyed for life—If we but turn our eyes to the government of Poland, we will see that the openings given for commotions after the demise of her King, are great, and much to be feared. We will see that whole kingdom, then divided into parties; which are equally impelled by interested motives, and wandering from the line of rectitude and patriotism. We will then see, her blood and strength exhausted: not in the prosecution of her own interests, but in basely forwarding the views of surrounding powers. If we turn them from thence to the United Provinces, we will *now* see them involved in tumult and confusion: we will *now* see sad effects arising from the cause, of continuing an high officer in his power. We will see him striving to encroach upon the people his constituents, and them endeavouring to bind him faster than he now is—If the President shall hold his office for four years only, and never again: then shall we see each man obey his

proper calling, and every thing be placid and serene. He who is chosen will be happy, because he is not envied; and they who have chosen will be also content, because they may arrive to the same station. We shall then see a laudable emulation, predominant among us; and every new Presidentship swell the annals of our country's fame—But that we may view in a proper light some powers of the President, let us revert to the 3d section, of the 2d article, in the proposed constitution. There we will find his unlimited power in adjourning both houses when they disagree "to such time as he shall think proper." A power which when misused will be productive of the most fatal consequences. And to believe that the case of disagreement may not happen, that the members of either house may not be influenced; is to leave ourselves open to a slight contingency. Is to imagine that mankind are not the same at present, as they were eighteen hundred years ago; or that greater patriotism is vested in Americans, then in any other race of men—After Cromwell had in a great measure broken the springs of British government, was not the adjournment of Parliament, *sine die*, the stroke by which he effectually trampled upon the liberties of Great-Britain? And shall we, when our President is to be possessed of this power by law, add still to his authority, by permitting him to be *long* in office? I trust my friends, that this will not be the case. I trust that the fear of our own misery, the hope of our own exaltation, and the experience which we have gained from the calamities of others, will so influence our councils, and determine our opinions; as that the reason of what has been advanced, will be evident and alluring—Then shall we see our President, enter upon his office with satisfaction. And as the rising sun adds joy to the creation, so shall his commencement extend the rays of happiness upon all men: and his career be not only productive of honor to himself, but serve that empire for whose welfare he was exalted.

Cato.

II

10 December 1787

Having already made some observations upon the resolves of the Federal Convention, I hoped to have rested in tranquility. The truths which I spread forth to the general view lately, were self-evident; and do not call upon me now to defend them. So that in vain should Maecenas attempt to draw me forth into action, or his weak insinuations provoke me to a reply; were I not prompted to take notice of his opposition, more by what the Public might imagine by my silence, than the fear that his arguments had done away my 5.10.3

positions, or that his aspersions would rest with generous breasts.[6] When I saw so respectable a Signature in a paper to day, I cannot but confess that

Jure perhorrui
Late conspicuum tollere verticem,
Maecenas equitum decus![7]

I was afraid lest I had left myself open to the confutations of so shrewed a Judge, or advanced doctrines not tenable, when opposed by so great an observer of mankind—However, after having run his scribling over, I am led to believe, that his hopes will be compleatly frustrated; and his work, like the baseless fabrick of a vision, pass away, without any good thing to recommend it, besides an empty name. He says "he means to take into consideration the production of a writer, &c." Have his reasonings tended to do away the main point of that writer's address, (viz.) that the President should not be re-eligible? Or have they only shewn a malevolence, which cannot be pardoned, although it may be overlooked? Are his arguments pointing to one mark, or are they wandering and unconnected?—He opposes Cato, but he asserts that "Frequency of election is the great preservative of the people's liberties." How contradictory then is he to himself? Cato has written for no other cause, than to investigate the nature and consequences of elections; and to prove by conclusions drawn from good premises, the impolicy of re-electing the President.—But it is asserted, that "Virtue is the principle of a Republic." In Plato's imaginary one, perhaps such an assertion might have had its weight; but in other Republics, and in modern times, I deny that Virtue alone is adequate to tumultuous operations—I say that mankind are more actuated by the fear of punishment, than the hope of reward; consequently that laws inflicting penalties, and providing against exigencies, are more forcible, than sweet allurements to the general good.[8] Even supposing that the present age were entirely virtuous, and patriotic; are we to rest so supine with that conviction, as to pay no regard to the calls of posterity? Much has been done already, to snatch us from the oppressions of a Tyrant; but still a great deal is unfinished. We are obligated to defend to our children, by our wisdom, what we have gained by our valour; and to hand down to them a well regulated government. If we let slip this opportunity, and do not protect our constitution from every advantage being taken of it, in a future day we will surely repent our folly. We will see what a miserable thing it is when a law is vague and improperly penned. And as a learned Marquis expresses himself, we shall not enjoy the benefit of being governed by the letter of the law, but be led along according to the prevalence of faction, or the gust of passion.[9] And I dare assert, that although the other parts of the intended constitution be wisely determined; yet if the Presidentship be heedlessly attended to, as trusting to virtuous Citizens, and he be re-eligible; if ever America be en-

slaved by any fault in her constitution, it will be by the ambition of a President.

It is denied, and that *boldly* by my opponent, that the President would be cloathed with the robes of Royalty—Well may he deny, what has never been asserted—If Cato said that he would be possessed of Royalty, he afterwards informed the Public how he would be understood. He pointed out regal qualities with which the President would be invested, and so far he would be cloathed with Royalty. But in order to give some colour to his assertions, Maecenas has quoted Montesquieu, and shewn the shallowness of his reasoning.[10] Truth is ever apparent, it requires no borrowed garb, no authorities to support her intrinsick grandeur; but falshood ever resorts to what she thinks will protect, and which in the end, like an ungrateful friend, will desert her when she has most need of assistance. The proper definition of Royalty is "the administration of certain powers appertaining to the most exalted station," and whoever possesses any of these, is possessed in a greater or less degree of Royalty. But my oppugner says "that no title of nobility shall be granted by the Congress, and no person holding any office under Congress shall accept any title from any foreign King, State, or Empire." As he has given me permission, I will refer, and beg him to do so likewise, to the 9th Sect. of the 1st Art, of the resolves of the convention: where he will find there is still an opening for dignities and titles *with the consent of Congress,* which he has artfully skipped over, and forgotten to mention. When a writer of this sort steps forth, giving one half of the Text he comments upon, and suppressing the other if it be not for his purpose; are we not to conclude that his intent is more to puzzle with opposition, than to convince with fair reasoning? Are we not to imagine that his desire is more to thwart public measures, than to be actuated by generous motives to the public weal? With regard to what Cato advanced in a former paper, what was the end he had in view? Was it not proving the dangers attending the re-election of a President? Has Maecenas by his false conclusions, and badly applied arguments, weakened his reasons tending to that point? No. As waves following waves are nevertheless broken, and turned aside by the opposing rock; so have all Maecenas's arguments been foiled by truths, and his every effort rendered feeble, and ineffectual. His writing is half filled up with quotations, which prove nothing even in his own favor: And his conclusion takes away even what ground he might have gained: for it shews that he did not know what he intended to confute. And he finishes with saying, "that from what he has said, the President will have no powers, but which are essentially necessary for the executory department."[11] Is it not distressing that I must inform this new warrior in the lists of opposition, that Cato never opposed any of the President's powers; for he saw that an officer without power, would be *corpus sine capite*. His only endeavours were to set forth those powers, in such a light: as to persuade his countrymen of the

5.10.4

necessity of restricting the President in the enjoyment of his office. It was to that point his whole attention was bent, and there he hopes now to come off victorious. So that notwithstanding his opponents thoughtful motto, and asserting style; his solecisms and his sophistical reasoning, he has wandered from his mark, and *Parturient montes, nascetur-ridiculus mus.*[12]

5.10.5 Of the Public, now do I take my leave; hoping that I have advanced nothing, which modesty did not dictate, and patriotism support. And trusting that if any thing unguarded may have escaped me, it will be imputed to the impetuosity of passions eager to advance my Country's good; than to any sinister views, which can never find a resting place in the breast of

Cato.

December 6, 1787.

1. Cicero, *Pro L. Murena,* para. 84. "We are in a situation of extreme danger; there is no means now of repairing the losses we have already sustained, or of recovering the ground we have lost."

2. The original reads "and."

3. See Monroe 5.21.12 n. 3.

4. Maecenas points out that the recess appointments expire at the end of the next session of the Senate and that the President can only adjourn the Congress to an indefinite time when the two houses disagree respecting the time of adjournment. *State Gazette of South Carolina* 6 December 1787.

5. See Charles Pinckney's *Observations on the Plan of Government Submitted to the Federal Convention* (Farrand III, 111), which was being reprinted in the *State Gazette of South Carolina* at this time. For other Federalist arguments in defense of reeligibility, see Federal Farmer XIV, 2.8.179 n.107, and Elliot II, 293, 321; Elliot III, 485; Elliot IV, 103–4, 315; on rotation see Smith 6.12.27 n. 25.

6. Maecenas' reply to Cato's first essay appeared in the *State Gazette of South Carolina* 6 December 1787.

7. Horace, *Carmina* 3.16.18: "O Maecenas, gem of Roman knighthood, I have justly dreaded to raise the head that can be seen from afar."

8. On Federalist reliance on virtue and wisdom in rulers see Federal Farmer VIII, 2.8.110 n. 72; for other related references see Federal Farmer IV, 2.8.58 n. 44; Smith 6.12.34 n. 32.

9. This is probably a reference to Beccaria, *An Essay on Crimes and Punishment,* chs. 3 and 4 of which contain the substance, though not the language, of Cato's remark. See Federal Farmer VII, 2.8.97 n. 61, for a discussion of editions of Beccaria's essay.

10. "What is the principle of Monarchy? The celebrated Montesquieu says 'it supposes pre-eminences, Rank, and likewise a Noble descent' " (*The Spirit of Laws* III, ch. 7). *State Gazette of South Carolina* 6 December 1787.

11. Ibid. Maecenas went on to conclude: "Let the Americans be virtuous—let them be firm supporters of Republicanism—let them have confidence in their representatives—then their Liberties will be secured to them, and peace and prosperity will ensue."

12. Horace, *Ars Poetica* 139. "Mountains will be in labor, there will be born a ridiculous mouse."

Essay by Tamony

VIRGINIA INDEPENDENT CHRONICLE
9 January 1788

This essay is a rather crude denunciation of the provisions for the Executive in the proposed Constitution; it is of some small interest because it is referred to by Publius in *The Federalist* no. 69, p. 465n. The essay was reprinted in the Philadelphia *Independent Gazetter* on 1 February, from which it was picked up and reprinted by the *New York Journal* on 8 February.

To the Freeholders of America.

When important subjects demand discussion, they ought to be treated with coolness and moderation, reason should be alone appealed to, and meet no interruption from passion or prejudice. 5.11.1

Those who contend for the new Constitution without amendment think differently, or must condemn their own assertions, for in place of ascertaining how natural rights are secured, or government prudently restrained, they continually exclaim in a tone that assumes authority, "rejection must precipitate into the gulphs of destruction,—adoption leads to national happiness and dignity—men whose fortunes are involved may dread an effective administration and join those who under a fœderal system, would lose an importance dearer to them, than the welfare of their country."

Listen Americans, with caution to declamatory invective, patriotism scorns such language, and recoils from the idea of inflaming prejudice to reduce reflection, the interest of your country requires mental exertion, joined to a manly firmness, that may be compared to the steadiness of time, rises superior to the keenness of death. 5.11.2

Such sentiments exalt human nature, they have acquired one glorious revolution, and must be banished from your breasts, before you can embrace a Constitution, which does not secure a minority of the states, from local oppression, [and] is open to the encroachments of aristocracy, the ambition of an individual.

5.11.3 Happily for America the enlightened wisdom of a Virginia Assembly, has empowered their constituents, to investigate the truth or falsehood of the above assertions, by enacting that their Convention should proceed to a full discussion, and be freed from those fetters artifice wished to impose, under the specious pretence, of confining debate within the compass of absolute rejection or adoption.

5.11.4 The extent thus opened for speculative enquiry, joined to real magnitude in the object, may be styled by enthusiasm or horizon, [which] the eyes of few mens understanding can steadily behold[;] the expression, though poetically just, reduced to common sense, means importance, and instead of superseding the duty incumbent on freeholders to judge for themselves, renders the neglect of doing so, *treason against their country*. What man capable of enjoying that liberty Divine Providence gives as common inheritance to mankind, will at such a crisis restrain his mental faculties from examining a temple built by men equally mortal with himself, for the residence of constitutional freedom, despotism may enjoin a silent reverence, free governments command enquiry, and owe existence to that animation enquiry creates. That citizen who feels and avows such a maxim, need not apologize for collecting the following observations on the fœderal fabric.

5.11.5 Force seems its ruling principle—Forts and garrisons are provided for, a standing army must follow, the celebrated Doctor Price thus addresses Americans, "God forbid that standing armies should ever find an establishment in America[. T]hey are every where the grand support of arbitrary power and the chief source of the depression of mankind[. N]o wise people will trust their defence out of their own hands, or consent to hold their rights at the mercy of armed slaves."[1]

5.11.6 The office of president is treated with levity and intimated to be a machine calculated for state pageantry—Suffer me to view the commander of the fleets and armies of America, with a reverential awe inspired by the contemplation of his great prerogatives, though not dignified with the magic name of King, he will possess more supreme power, than Great Britain allows her hereditary monarchs, who derive ability to support an army from annual supplies, and owe the command of one to an annual mutiny law.[2] The American President may be granted supplies for two years, and his command of a standing army is unrestrained by law or limitation.

5.11.7 As to supplies, the term may be shortened; but such a measure implying want of confidence in the first magistrate, will probably be postponed till the hour of danger arrives and commonwealths be exposed to that hazardous situation, emphatically called deathbed repentance. Expectation from such a source may be deemed visionary, and reflection must expel even hope to confess, a mutiny law must owe existence to a general Convention, as the mode prescribed by article the 5th—for the president being by the people made commander of an army, is not subject in that command to a legislative body. Pause America—suspend a final affirmation, till you contemplate

what may ensue—Do not contemn the declarations of Locke, Sydney, Montesquieu, Raynal, whose writings are legacies to the present and future ages, they unite in asserting that annual supplies and an annual mutiny law, are the chief dykes man's sagacity can raise against that torrent of despotism, which continually attempts to deluge the rights of individuals. You are told impeachment will stem the flood, a legislative body, sixty-five in number, are to march in formidable array, to a tribunal of twenty-six, and summons the commander of an army sworn to obey him—the event can be foreseen without suspicion of second sight, for anticipation may with confidence announce, that the bauble of a mace, hazarded in the mouth of a mortar, would be speedily conveyed, to that "bourn from whence no traveller returns."[3]

Had the Constitution said, the president can do no wrong, nor shall he be re-elected—corruption in the man might be guarded against by that rotation, which inculcates the idea of certain dissolution, and a council answerable to the people for consenting to, or advising measures, would cautiously give their sanction to a ruler whose official shield, must inevitably revert to dust. 5.11.8

Tamony.

Virginia, Dec. 20, 1787.

1. Richard Price, *Observations on the Importance of the American Revolution and the Means of Making it a Benefit to the World* (1784), "Of Peace."

2. Publius denies that the king's prerogative as commander-in-chief derives from an annual mutiny bill, contending on the authority of Blackstone that the prerogative is immemorial. *The Federalist* no. 69, p. 465n.

3. *Hamlet* act 3, sc. 1.

Speeches of Rawlins Lowndes in the South Carolina Legislature

January 1788

In South Carolina, on 16, 17, and 18 January 1788, the House of Representatives debated whether or not to provide for a convention to consider the proposed Constitution. Rawlins Lowndes, the prominent South Carolina lawyer, judge, stateman, and former state president, did not expect his pro-Constitution constituents in Charleston to elect him to the convention and therefore took advantage of the legislative debate to lay out his reasons for opposition. Confronted by a number of able Federalists, Lowndes carried the opposition almost single-handed.[1] His speeches are especially interesting for their thoughtful presentation of the Southern point of view. All that has been preserved of these speeches, except for a couple of brief interventions in debate, is reprinted here, taken from the contemporary publication of the debates, *Debates Which Arose in the House of Representatives of South Carolina on the Constitution Framed for the United States by a Convention of Delegates Assembled at Philadelphia* (Charleston 1788) 15–17, 25–28, 39–41.[2]

It appears that Lowndes was in fact elected to the ratifying convention but declined to serve.[3] "He knew that he had failed, and accepted defeat."[4] He wished, he said in the last speech printed here, "for no other epitaph than to have inscribed on his tomb, here lies the man that opposed the Constitution, because it was ruinous to the liberty of America."

1. Yet in the decisive and very close (76 yes and 75 no) vote on whether to call a convention on 12 May 1788, Lowndes voted yes, thus throwing away, in the words of one commentator, "the only chance offered him of keeping South Carolina out of the Federal Union" (review of Ravenel's *The Life and Times of William Lowndes* in *The South Carolina Historical and Genealogical Magazine* II [1901], 252). It does not seem possible to reconstruct satisfactorily his reasons for this action or for his absence from the convention that finally met (see below, note 3). It may be that Lowndes simply felt that he could not stem the tide and that no practical purpose was to be served by persisting in an unpopular opposition; this is Rutland's view, *The Ordeal of the Constitution* 165.

2. This publication is reprinted in Elliot IV, 253–342. While the text of Lowndes' speeches is taken from the original 1788 edition, references to the debate in the notes that follow will be made to the more accessible Elliot.

3. There is a good deal of confusion about the reason for Lowndes' absence from the convention. George C. Rogers, Jr., has said that Lowndes' constituents "refused to elect him to the ratification convention." ("South Carolina Ratifies the Federal Constitution" *Proceedings of the South Carolina Historical Association*, 1961, p. 58). This seems to be confirmed by Lowndes' letter to General John Lamb of 21 June 1788 (in Leake, *Memoir of the Life and Times of General John Lamb* 308), to the effect that an open avowal of his sentiments did not meet with the concurrence of his "constituents in Charleston, and I was, therefore, rejected in their choice of delegates for the Convention." On the other hand, Aedanus Burke wrote to Lamb on 23 June 1788 "that Mr. Lowndes would not serve in the Convention, declining to take his seat; out of disgust to some leading men in the parish that sent him, he abandoned a Cause, which, I believe, he thought a just one" (John Lamb Papers). And Mrs. St. Julien Ravenel (*Life and Times of William Lowndes of South Carolina* [Boston 1901] 32) says that Lowndes "refused to serve" in the ratifying convention, that "the people of St. Bartholomew's were anxious to send him, but he refused firmly." *The Dictionary of American Biography* (XI, 472–73) also reports, "though he was elected in the constitutional convention he did not serve." The facts seem to be that Lowndes was rejected in Charleston; that he was elected, perhaps without his consent, by his home parish of Saint Bartholomew's (which he had also represented in the South Carolina Legislature), but that he declined to serve. The probability of this explanation is strengthened by a manuscript list of "members of the convention" in South Carolina in May 1788, located in the South Carolinian Library, University of South Carolina, on which, I am informed by Professor Carl Vipperman, Lowndes' name was included among the delegates from Saint Bartholomew but then crossed out and another name added, suggesting that Lowndes was elected but declined to serve, for reasons that remain obscure. See Rutland, *The Ordeal of the Constitution* 166.

4. Ravenel, *Life and Times of William Lowndes of South Carolina* 32.

16 January 1788

Mr. Lowndes desired gentlemen to consider that his antagonists were 5.12.1
mostly gentlemen of the law, who were capable of giving ingenious explanations to such points as they wished to have adopted.[1] He explained his opinion relative to treaties to be, that no treaty concluded contrary to the express laws of the land could be valid. The king of England, when he concluded one, did not think himself warranted to go further than to promise that he would endeavor to induce his parliament to sanction it. The security of a republic is jealousy; for its ruin may be expected from unsuspecting security; let us not therefore receive this proferred system with implicit confidence, as carrying with it the stamp of superior perfection; rather let us compare it with what we already possess with what we are offered for it. We are now under government of a most excellent constitution—one that had stood the test of time, and carried us through difficulties generally supposed to be insurmountable—one that had raised us high in the eyes of all nations, and given to us the enviable blessings of liberty and independence—a constitution sent like a blessing from heaven, yet we were impatient to change it for another, that vested power in a few men to pull down that fabric which we had raised at the expence of our blood.[2] Charters ought to be considered

as sacred things; in England an attempt was made to alter the charter of the East India company, but they invoked heaven and earth in their cause—moved lords, nay even the king in their behalf, and thus averted the ruin with which they were threatened. It had been said, that this new government was to be considered as an experiment;[3] he really was afraid it would prove a fatal one to our peace and happiness—an experiment! what risque the loss of political existence on experiment? No, Sir, if we are to make experiments, rather let them be such as may do good, but which cannot possibly do any injury to us or our posterity.[4] So far from having any expectation of success from such experiments, he sincerely believed that when this new constitution should be adopted, the sun of the southern states would set never to rise again. To prove this, he observed, that six of the eastern states formed a majority in the house of representatives (in the enumeration he passed Rhode Island, and included Pennsylvania.) Now was it consonant with reason—with wisdom—with policy, to suppose that in a legislature where a majority of persons sat whose interests were greatly different from ours, that we had the smallest chance of receiving adequate advantages? certainly not. He believed the gentlemen that went from this state to represent us in the convention, possessed as much integrity, and stood as high in point of character as any gentlemen that could have been selected; and he also believed, that they had done every thing in their power to procure for us a proportionate share in this new government; but the very little which they had gained proved what we might expect in future; and that the interest of the Northern states would so predominate, as to divest us of any pretensions to the title of a republic. In the first place, what cause was there for jealousy of our importing negroes? Why confine us to 20 years, or rather why limit us at all? For his part he thought this trade could be justified on the principles of religion, humanity and justice; for certainly to translate a set of human beings from a bad country to a better, was fulfilling every part of those principles.[5] But they don't like our slaves, because they have none themselves, and therefore want to exclude us from this great advantage; why should the southern states allow of this without the consent of nine states? (Judge Pendleton observed, that only three states, Georgia, South Carolina, and North Carolina, allowed the importation of negroes, Virginia had a clause in her constitution for this purpose, and Maryland, he believed, even before the war, prohibited them.) Mr. Lowndes observed, that we had a law prohibiting the importation of negroes for three years, a law he greatly approved of, but there was no reason offered why the southern states might not find it necessary to alter their conduct, and open their ports.—Without negroes this state would degenerate into one of the most contemptible on the union, and cited an expression that fell from general Pinckney, on a former debate, that whilst there remained one acre of swamp land in South Carolina, he should raise his voice against restricting the importation of negroes. Even in granting the importation for 20 years, care

had been taken to make us pay for this indulgence, each negro being liable on importation to pay a duty not exceeding ten dollars, and in addition to this were liable to a capitation tax. Negroes were our wealth, our only natural resource, yet behold how our kind friends in the North were determined soon to tie up our hands, and drain us of what we had.[6]—The Eastern states drew their means of subsistence in a great measure from their shipping, and on that head they had been particularly careful not to allow of any burthens—they were not to pay tonnage or duties, no not even the form of clearing out—all ports were free and open to them! Why then call this a reciprocal bargain, which took all from one party to bestow it on the other? (Major Butler observed, that they were to pay five per cent. impost) This Mr. Lowndes proved must fall upon the consumer. They are to be the carriers, and we being the consumers, therefore all expences would fall upon us. A great number of gentlemen were captivated with this new constitution, because those who were in debt would be compelled to pay; others pleased themselves with the reflection that no more confiscation laws could be passed; but those were small advantages in proportion to evils that might be apprehended from the laws that might be passed by Congress, whenever there was a majority of representatives from the Eastern states, who were governed by prejudices and ideas extremely different from ours. He was afraid in the present instance that so much partiality prevailed for this new constitution, that opposition from him would be fruitless; however he felt so much the importance of the subject, that he hoped the house would indulge him in a few words to take a view comparatively of the old constitution and the new one, in point of modesty.—Congress, labouring under many difficulties, asked to regulate commerce for 21 years, when the power reverted into the hands of those who originally gave it; but this infallible new constitution eased us of any more trouble, for it was to regulate commerce *ad infinitum;* and thus called upon us to pledge ourselves and posterity forever in support of their measures; so that when our local legislature had dwindled down to the confined powers of a corporation, we should be liable to taxes and excise; not perhaps payable in paper, but in specie. However they need not be uneasy, since every thing would be managed in future by great men, and great men every body knew were incapable of acting under influence of mistake or prejudice—they always were infallible—so that if at any future period we should smart under laws which bore hard upon us, and think proper to remonstrate, the answer would probably be—Go, you are totally incapable of managing for yourselves—go mind your private affairs—trouble not yourselves with public concerns—*mind your business*—the latter expression was already the motto of some coppers in circulation, and he thought it would soon be the style of language held out towards the southern states. The honorable member apologized for going into the merits of this new constitution, when it was ultimately to be decided on by another tribunal, but understanding that he differed in opinion with his constituents,

who were opposed to electing any person as a member of the convention that did not approve of the proposed plan of government; he should not therefore have an opportunity of expressing those sentiments which occurred to him on considering the plan for a new federal government. But if it was sanctioned by the people it would have his hearty concurrence and support. He was very much originally against a declaration of independency—he also opposed the instalment law, but when they received the approbation of the people, it became his duty as a good citizen to promote their due observance.

17 January 1788

5.12.2 Mr. Lowndes declared himself almost willing to give up his post; finding he was opposed by such a phalanx of able antagonists, any one of them possessing sufficient abilities to contend with him, but as a number of respectable members, men of good sense, though not in the habit of speaking in public, had requested that he would state his sentiments, for the purpose of gaining information on such points as seemed to require it, rather in compliance therefore with their wishes than any inclination on his part, he should make a few further observations on the subject. Much had been said from different parts of the house against the old confederation, that it was such a futile, inefficient, impolitic government as to render us the objects of ridicule and contempt in the eyes of other nations; he could not agree to this, because there not did appear any evidence of the fact, and because the names of those gentlemen who had signed the old confederation were eminent for patriotism, virtue and wisdom; as much so as any set of men that could be found in America, and their prudence and wisdom particularly appeared in the care which they had taken sacredly to gaurantee the sovreignty of each state. The treaty of peace expressly agreed to acknowledge us as free, sovereign and independent states,[7] which privileges we lived at present in the exercise of; but this new constitution at once swept those privileges away, being sovereign over all, so that this state will dwindle into a mere skeleton of what it was; its legislative powers would be pared down to little more than those now vested in the corporation; and he should value the honor of a seat in the legislature in no higher estimation than a seat in the city council. Adverting to the powers given to the president, he considered them as enormous, particularly in being allowed to interfere in the election of members in the house of representatives; astonishing that we had not this reserved to us, when the senators were to be chosen from that body—things might be so managed that the different legislatures should be limited to the passing a few laws for regulating ferries and roads. The honorable gentle-

man went into an investigation of the weight of our representation in the proposed government, which he thought would be merely virtual, similar to what we were allowed in England, whilst under the British government; we were then told that we were represented in parliament, and this would in the event prove just such another. The mode of chosing senators was exceedingly exceptionable; it had been the practice formerly to chuse the senate or council for this state from that house, which practice proved so inconvenient and oppressive, that when we framed our present constitution, great care was taken to vest the power of electing the senate originally with the people, as the best plan for securing their rights and privileges. He wished to know in what manner it was proposed to elect the five representatives—was it [to] be done in this city—or would some districts return one member, and others none at all? Still greater difficulties would be found in the choice of a president, because he must have a majority of 91 votes in his favor. For the first president there was one man to whom all America looked up, (General Washington,) and for whom he most heartily should vote; but after that gentleman's administration ceased, where could they point out another so highly respected as to concenter a majority of 91 persons in his favor, and if no gentleman should be fully returned, then the government must stand still.—He went over much of the ground which he had trod the preceding day, relative to the eastern states having been so guarded in what they had conceded to gain the regulation of our commerce, which threw into their hands the carrying trade, and put it in their power to lay us under payment of whatever freightage they thought proper to impose; it was their interest to do so, and no person could doubt but they would promote it by every means in their power. He wished our delegates had sufficiently attended to this point in the convention, had been more attentive to this object; and taken care to have it expressed in this constitution that all our ports were open to all nations; instead of putting us in the power of a set of men who may fritter away the value of our produce to little or nothing, by compelling payment of exorbitant freightage. Neither did he believe it was in the power of the Eastern states to furnish a sufficient number of ships to carry our produce; it was indeed a general way of talking that the Eastern states had a great number of seamen—a vast number of ships, but where were they? Why did not they come here now when ships are greatly wanted? he should always wish to give them a preference, and so no doubt would many other gentlemen, and yet very few ships came here from the Eastern states. Another exceptionable point was, that we were to give up the power of taxing ourselves. During our connexion with Great Britain, she left us the power of raising money in any way most convenient: a certain sum was only required to defray the public wants, but no mode of collecting it ever prescribed. In this new constitution every thing is transferred, not so much power being left us as Lord North offered to guarantee to us in his conciliatory plan. Look at the articles of union ratified between England and Scotland; how

cautiously had the latter taken care of her interest in reserving all the forms of law—her representation in parliament—the right of taxation—the management of her revenue—and all her local and municipal interests.[8] Why take from us the right of paying our delegates, and pay them from the federal treasury? He remembered formerly what a flame was raised in Massachusetts, on account of Great Britain assuming the payment of salaries to judges and other state officers; and that this conduct was considered as originating in a design to destroy the independence of their government. Our local expences had been nearly defrayed by our impost duty, but now that this was given away, and thrown into a general fund, for the use of all the states indiscriminately, we should be obliged to augment our taxes to carry on our local government, notwithstanding we were to pay a poll tax for our negroes. Paper money too was another article of restraint, and a popular point with many; but what evils had we ever experienced by issuing a little paper money to relieve ourselves from any exigency that pressed us? We had now a circulating medium which every body took, we used formerly to issue paper bills every year, and recal them every five, with great convenience and advantage—had not paper money carried us triumphantly through the war—extricated us from difficulties generally supposed to be insurmountable, and fully established us in our independence, and now every thing is so changed that an entire stop must be put to any more paper emissions, however great our distress may be. It was true no article of the constitution declared there should not be jury trials in civil cases, yet this must be implied, because it stated that all crimes, except in cases of impeachment, shall be tried by a jury, but even if trials by jury were allowed, could any person rest satisfied with a mode of trial which prevents the parties from being obliged to bring a cause for discussion before a jury of men chosen from the vicinage, in a manner conformable to the present administration of justice, which had stood the test of time and experience, and ever been highly approved of. Mr. Lowndes expatiated some time on the nature of compacts—the sacred light in which they were held by all nations, and solemnly called on the house to consider whether it would not be better to add strength to the old confederation, instead of hastily adopting another? asking, whether a man could be looked on as wise, who, possessing a magnificent building, upon discovering a flaw, instead of repairing the injury should pull it down, and build another? Indeed he could not understand with what propriety the convention proceeded to change the confederation; for every person with whom he had conversed on this subject concurred in opinion that the sole object of appointing a convention was to enquire what alterations were necessary in the confederation, in order that it might answer those salutary purposes for which it was originally intended.—He recommended, that another convention should be called, and as the general sense of America appeared now to be known, every objection could be met on fair grounds, and adequate remedies applied

where necessary; this mode of proceeding would conciliate all parties because it was candid, and had a more obvious tendency to do away all inconveniencies, than the adoption of a government which perhaps might require the bayonet to enforce it; for it could not be expected that the people, who had disregarded the requisitions of congress, tho' expressed in language the most elegant and forcible that he ever remembered to have read, would be more obedient to the government until an irresistible force compelled them to do so. Mr. Lowndes concluded a long speech with a glowing eulogy on the old confederation, and challenged his opponents, whilst one state objected, to get over the section which said, "the articles of this confederation shall be inviolably observed in every state, and the union shall be perpetual; nor shall any alteration, at any time hereafter be made in any of them, unless such alterations be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state."[9]

18 January 1788

Mr. Lowndes observed, that he had been accused of obstinacy in standing out against such a formidable opposition, but he could sincerely assure the house that he was as open to conviction as any gentleman on that floor; yet he never would allow himself to be drawn into the adoption of specious arguments, for such he considered many of those now opposed against him to be. Indeed some gentlemen had departed from their usual candor in giving an interpretation to his arguments which they did not merit. In one instance it had been stated as if he was of opinion that treaties had not the force of law;[10] this was going too far; he did not recollect that he asserted any more than that the king of Great Britain had not a legal power to ratify any treaty which trenched on the fundamental laws of the country. He supposed a case under the dispensing act of William and Mary, asking, if the king had made a treaty with the Roman Catholics, could that which was excepted by the law ever be considered as paramount. The honorable gentleman again took an ample review of the old confederation, on which he dwelt with fervency for some time, and ridiculed the depraved inconstancy of those who pant for the change. Great stress was laid on the admirable checks which guarded us under the new constitution from the encroachments of tyranny, but too many checks in a political machine must produce the same confusion as in a mechanical one, that of throwing all into confusion. But supposing we considered ourselves so much aggrieved as to reduce us to the necessity of insisting on redress? what probability had we of relief? Very little indeed.—In the revolving on misfortune some little gleams of comfort resulted from an hope of being able to resort to an impartial

5.12.3

tribunal for redress; but pray what reason was there for expectancy that in congress the interests of five southern states would be considered in a preferable point of view to the nine Eastern ones? With respect to migration from the Eastern states to the Northern [Southern?] ones,[11] he did not believe people would ever flock here in such considerable numbers, because our country had generally proved so uncomfortable, from the excessive heats, that our acquaintance during the heats is rather shunned than solicited. The honorable gentleman mentioned that he had sent for a person from Europe, who did not long survive his introduction here, falling a sacrifice to the baneful effects of fogs and swamps, so that from our limitation of importing negroes after the term of twenty years, instead of rising in representation we should gradually degenerate. He treated those fears of our falling a prey to foreigners as one of those arguments tending to precipitate us into measures inimical to our natural interest; for was it to be supposed that the policy of France would ever suffer America to become an appendage of the crown of Great Britain; or that Great Britain, equally jealous of France, would permit her to reduce us to subjection!—Our danger of ruin should rather be apprehended from dissentions amongst ourselves—from our running into debt without any intention to pay; that was the rock on which we might split, rather than foreign enemies; and therefore all those arguments for establishing the necessity of a navy and standing army were nugatory and entitled to very little attention.[12]

5.12.4 It was urged, that until we had a navy powerful enough to protect us, our liberties and property were held only on courtesy; but if gentlemen adverted where this navy, so necessary, was to come from, not from the southern states, but the northern ones, they would easily perceive to whom this country would belong. It was true, the old confederation was a mere paper defence, but then it was a good proof on our behalf if we were overcome by unmerited wrongs. Some had made this a question, will you join or will you be single? for his part he did not think matters had come to such a crisis; rather let us comply with our federal connection, which not yet being broken admits of being strengthened. A gentleman had instanced Vattel, in support of his argument, and laid down from that author an opinion, that where parties engaged in the performance of an obligation, should any one of them fly off from his agreement, that then the original compact was null and void.[13] He had ingeniously applied this to our present continental situation, and contended, that as some of the states acted in a refractory manner towards the continental union, and obstinately refused a compliance on their parts with solemn obligations, that of course the confederation was virtually dissolved; but Vattel merely recited such a case as where only a part of a confederation was broken; whereas ours was totally different, every state in the union having been uniform in refusing a compliance with the requisition of congress. Some gentlemen had advanced a set of assertions to prove that the eastern states had greatly suffered in the war,[14] pray

how had they suffered? did they not draw from the continental treasury large sums of money? was not every expence incurred by them defrayed out of the continental coffers? Another great advantage held out was, that we should be eased in future from the obligation and difficulty of defraying the expences of delegates; had we gained so much by this, when we had given up the very means of furnishing this sort of supply, formerly in our option? As to the taxes, undoubtedly they must be increased under this new government: we paid at present 2 dollars per head upon our negroes, but the expences attending our pompous government might increase this expence into six dollars per head, and this enormous sum collected by a sort of foreign power; for did any man that knew America suppose such tax will be easily paid? But if there was such an universal propensity to set up this golden image, why delay its inauguration? Let us at once go plump into adoration of it—let us at once surrender every right which we at present possess. A material objection of his to the offered plan was that the president would have a power to call both houses at what time and place he thought proper; suppose a political cause for partiality, might he not so arrange things, as to carry a favorite point, by assembling the federal government to the ruin or detriment of those states he meant to crush, and laws be enacted before those in extreme parts of the country knew any thing of their tendency; surely some restrictions as to time of meeting, should have been specified. The president had also the power of adjourning to any day that he thought proper. In our old constitution no such power was given to the chief magistrate to adjourn or dissolve. On the whole this was the best preparatory plan for a monarchical government that he had read; the constitution of Great Britain he considered as the best monarchical one that he ever perused, and this new government came so near to it, that instead of our changing from a republic to a monarchy, it was what every body must naturally expect—How easy the transition, no difficulty occurred in finding a king; the president was the man proper for this appointment. The senate hail him king, constituted according to Mr. Adams's description, from the *well born,*[15] will naturally say to one another, "You see how we are situated, certainly it is for our country's benefit that we shall be all lords, and lords they are."

Mr. Lowndes concluded his speech with thanking the house for their very great indulgence in permitting him to take up so much time. He hoped that the vast importance of the subject would plead his excuse; he also thanked those gentlemen on the other side of the question for the candid, fair manner in which they had answered his arguments. Popularity was what he never courted, but on this point he spoke merely to point out those dangers to which his fellow citizens were exposed; dangers that were so evident, that when he ceased to exist, he wished for no other epitaph than to have inscribed on his tomb, here lies the man that opposed the constitution, because it was ruinous to the liberty of America. 5.12.5

1. Lowndes had objected to the power of the President and a small number of senators (ten, being two-thirds of a quorum of fourteen) to conclude treaties, which would become part of the supreme law of the land, a power not enjoyed by the most despotic prince. He was challenged by several members who contended that treaties were supreme law under the Articles of Confederation and were thus treated by state judges and that the kings of England and France did in fact have the power to conclude binding treaties without parliamentary assent. This subject was discussed at length on the following day by General Charles Cotesworth Pinckney, Elliot IV, 277–81.

2. Henry 5.16.2. Chancellor John Matthews "confessed himself astonished at hearing such encomiums on the Articles of Confederation, as if they had carried us victoriously through the war, when, in fact, they were not ratified until the year 1781; and if the Confederation had been in force in 1776, this country would have inevitably been lost, because, under it, Congress had not authority to give General Washington the powers of a dictator at Valley Forge. Surely the honorable gentleman must be sensible that the success of Congress depended on the explicit confidence of the people; the voice of Congress had the force of law, and was cheerfully and readily obeyed." Elliot IV, 298. See also E. Rutledge, ibid. 274–75, and General Pinckney, ibid. 281–82. On the sacredness of contracts and the dangers of innovation see Republican Federalist 4.13.15 and n. 11.

3. Charles Pinckney, who led off the debate, contended that the question of the limits to which a republic might extend, uniting liberty and safety, was to be tried for the first time by the United States. Elliot IV, 262.

4. Mr. Edward Rutledge replied: "The gentleman would have done well to have defined the kind of power that could do no harm. The very idea of power included a possibility of doing harm; and if the gentleman would show the power that could do no harm, he would at once discover it to be a power which could do no good." Elliot IV, 276.

5. This argument was strikingly rare during the debate over the Constitution, in contrast to later periods. See Martin 2.4.65 n. 24. See Herbert J. Storing, "Slavery and the Moral Foundations of the American Republic," in *The Moral Foundations of the American Republic*, ed. Robert Horwitz (Charlottesville 1977).

6. General Pinckney replied: "I am of the same opinion now as I was two years ago, when I used the expressions the gentleman has quoted—that, while there remained one acre of swamp-land uncleared of South Carolina, I would raise my voice against restricting the importation of negroes. I am as thoroughly convinced as that gentleman is, that the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste. . . . It was alleged, by some of the members who opposed an unlimited importation, that slaves increased the weakness of any state who admitted them; that they were a dangerous species of property, which an invading enemy could easily turn against ourselves and the neighboring states; and that, as we were allowed a representation for them in the House of Representatives, our influence in government would be increased in proportion as we were less able to defend ourselves. 'Show some period,' said the members from the Eastern states, 'when it may be in our power to put a stop, if we please, to the importation of this weakness, and we will endeavor, for your convenience, to restrain the religious and political prejudices of our people on this subject.' . . .

"By this settlement [incorporated into the Constitution] we have secured an unlimited importation of negroes for twenty years. Nor is it declared that the importation shall be then stopped; it may be continued. We have a security that the general government can never emancipate them, for no such authority is granted; and it is

admitted on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made better if we could; but, on the whole, I do not think them bad." Elliot IV, 285–86.

See also the argument by Barnwell that because of the interest of the North in the carrying trade the slave trade will never be abolished unless the Southern states decide to do it. Ibid. 296–97.

7. In the Treaty of Peace of 3 September 1783, "His Britannic Majesty acknowledges the said United States, viz. [naming them] to be free, sovereign, and independent States." William M. Malloy, ed., *Treaties, Conventions [etc.]* (Washington 1910) I, 587. General Pinckney denied what he took to be Lowndes' implication that "our independence had been granted us by the king of Great Britain," maintaining that the treaty does not grant but only acknowledges United States independence. Independence should be dated, Pinckney contended in lyrical terms, from the Declaration of Independence, in which the several states are not named, "as if it was intended to impress this maxim on America, that our freedom and independence arose from our union, and that without it we could neither be free nor independent. Let us, then, consider all attempts to weaken this Union, by maintaining that each state is separately and individually independent, as a species of political heresy, which can never benefit us, but may bring on us the most serious distresses." Elliot IV, 301–2.

8. See Edward Rutledge, Elliot IV, 298–300.

9. Articles of Confederation, Art. XIII. See Republican Federalist 4.13.10 n. 6.

10. This probably refers to remarks of General Pinckney; see Elliot IV, 277–81.

11. Mr. Edward Rutledge responded, "Several of the Northern States were already full of people: it was otherwise with us; the migrations to the south were immense, and we should, in the course of a few years, rise high in our representation, whilst other states would keep their present position." Elliot IV, 276–77.

12. Both General Pinckney and Edward Rutledge argued that a navy would be needed to maintain American independence. Ibid. 283–85, 299.

13. The reference is probably to General Pinckney who, in the speech preceding this one of Lowndes, had said: "The honorable gentleman says, compacts should be binding, and that the Confederation was a compact. It was so; but it was a compact that had been repeatedly broken by every state in the Union; and all the writers on the laws of nations agree that, when the parties to a treaty violate it, it is no longer binding." Ibid. 308. While General Pinckney is not reported as referring specifically to Vattel here, he did so earlier in the debates on the general obligation of compacts. Ibid. 278.

14. Mr. Robert Barnwell had paid eloquent tribute to the aid of the Eastern states to the Union and to the South: "When we stood with the spirit, but weakness, of youth, they supported us with the vigor and prudence of age. . . . He saw not a man who did not know that the shackles of the south were broken asunder by the arms of the north." Ibid. 292. And General Pinckney asked, "who have been the greatest sufferers in the Union, by our obtaining our independence? I answer, the Eastern States. They have lost every thing but their country, and their freedom." Ibid. 284.

15. John Adams, *Defence* I, preface (*Works* IV, 290–91). On the natural aristocracy see Federal Farmer VII, 2.8.97 n. 64.

Essays by Republicus

(LEXINGTON) KENTUCKY GAZETTE
16 February and 1 March 1788

In his first essay, Republicus presents a straightforward but, for the Anti-Federalists, unusually theoretical account of the origin of civil government, the need for limiting constitutions (excluding all idea of prerogative), and the nature of representation. He contends that all of the branches of government, not just the legislature, are representatives of the people (5.13.2). He argues strongly against a bicameral legislature (5.13.7). In his second essay, the author directs his relatively radical views toward the proposed Constitution, reenforcing his argument against two houses of the legislature and his insistence on a strict numerical representation (5.13.12). He objects to the method of electing the President and to his dangerous powers and to the power of Congress to regulate the times, places, and manner of holding elections for the national legislature (5.13.13–14). He concludes with a very strong denunciation of the fugitive slave provision and the dangers of thus sanctioning, in a constitution devoted to liberty, the principle of slavery (5.13.14).

A reply by Mancius appeared, also in the Lexington *Kentucky Gazette*, on 23 February 1788.

16 February 1788

Mr. Bradford

5.13.1 Please to publish the anexed hints, perhaps they may have a tendency to rouse the attention of some judicious person to discuss the subject more at large.

> *pierce my vein,*
> *Take of the crimson stream meandering there,*
> *And chatechize it well, Apply your glass.*
> *Search more and probe it, if it be not blood*
> *Congenial with thine own.*
>
> Cowper[1]

So soon after the close of a bloddy and distressing war, which we have 5.13.2
sustained in defence of the liberties and indefeasible rights of mankind; during which those rights have been investigated with the utmost precision: it may, to some, seem a little extraordinary to resume so trite a subject; but as there is a prospect of an aera near approaching, big with events highly, very highly interesting to these western districts; and as it seems, that some, even of our leading characters, have been too much hurried to have given those subjects so much of their attention as they seem to have merited; or may have forgotten some of the features peculiar to the picture of liberty; I beg leave to hold up to public view, some of the outlines of the charming portrait, in order to attach my fellow citizens to the original form from whence they are taken: and add a few very plain observations on civil government. In this I shall confine myself to civil liberty, and that natural liberty or freedom of mankind, in an unconnected state (or as some say, in a state of nature) from whence it arises: and shall first enquire what this natural freedom is, it is obvious at first sight, that this is neither more nor less than a power of self government, a performance of all our actions agreeable to our own will; or in plainer terms, it is a doing as we please; under the direction of reason, the great, primary, and never-ceasing law of nature. As long as any man does so he has a right to enjoy his person, life, and property, free from all molestation whatsoever; and were he able, even to repel the combined power of the world in any attempt to deprive him of either; and on this is founded a right of *equality:* for as one mans right is limited to the enjoyment, and defence of his own property; so every other mans right extends to the same limits, but no further, for it is inconceivable that an individual can of right, enjoy any possible possession, or happiness any part of which another person or even community of men can have a right to deprive him of: or that any two or more individuals, can at the same time justly claim or possess an exclusive right to any thing whatsoever; for what I wholy and rightfully claim or enjoy, every other man is wholy and rightfully excluded of claiming, or enjoying by this great and primary law of nature, and this it is which establishes a perfect natural equality among mankind, and excludes all right of one man to govern or controul the rightful actions, or property of another in any case whatsoever; and an universal, and unerring observation of, and obedience to this law, is what we call rectitude, or moral virtue: which, where it prevails, necessarily precludes all civil government; which is only substituted in the room of the aforesaid natural law, where its principles are not duly attended to, or its sanctions appear too distant, or feble. It is evident that all men act according to, or depart from this law of nature; in proportion as, on the one hand their reason, or on the other their passions and appetites, preponderate: but as universal observation assures us, that mankind are more generally actuated by their passions and appetites, than by their reason; something is necessary to restrain, controul, or at least to counteract those passions: hence the necessity of civil government; and on that necessity it originates: the lust of

power, or of property, would stimulate the strong, or the artful, to seize[?] the persons, or properties of the weak, or the simple, and appropriate them to their own use, in contempt of the sacred law of nature. Hence, mankind found it necessary to enter into solemn compacts of mutual defence, and security, and in those compacts, to establish certain rules, founded upon, or at least agreeable to, the universal reason of mankind, (the common law of nature) to which they should all be equally subject; as they rightfully, and originally were in their unconnected state, to that original law; and this only to secure to themselves that liberty, and those rights to which they as said above are all naturally, equally, and unalienably entitled. Thus it appears how civil government becomes a substitute for moral virtue: and that instead of infringing the rightful liberties of mankind, it tends to secure them: and by this criterion may every government be tried: that government which tends not to secure the lives, liberties and properties of every individual of the community, as far as the law of reason would have done, is unjust and iniquitious and merits not the name of civil government. I said above that civil government originates in necessity: I now add it originates with the people under that necessity. They form the compact, they prescribe the rules and they also enact them or delegate others to do it for them; who are indiscriminately, and in the proper sense of the word *their servants* and accountable to them and to them only how they execute those trusts; as really so as the man whom I employ for daily wages is accountable to me and to me only how he performs my business; and are therefore to be chosen by them, and that in a way perfectly consistent with the equality of their right; because if they have an equal natural right to legislative and executive power in all their different branches, which takes in all the powers that can exist in a state; none can have a right to exercise any of those powers, but by appointment or delegation: consequently those who are thus chose by them to the executive department are as really their representatives, as those similarly chosen to the legislative: This I think an observation of some consequence; all this power they are justly authorized to exercise and that in their own joint and equal right: for if at the time of entering into such compact, a compleat equality in point of right subsists; it ever ought to subsist as there can be no legitimate superior or even co-ordinate power, to destroy or diminish that equality. But it is not only necessary that government should be formed on principles of equal right; but also that those principles should be precisely delineated and guaranteed by the most solemn sanctions. This if you please we will call a constitution. There should also be woven into the very texture of that constitution certain antidotes or preservatives against corruption or degeneracy, and care should be taken by every member of the community, that those antidotes be duly administered. Otherwise tho they may begin their career on a very fair plain, yet, it may at last terminate in a precipice, which they may never discover till it be too late to retract.

And first the constitution should provide for a fair and equal representation.[2] That is that every member of the union have a freedom of suffrage and that every equal number of people have an equal number of representatives; for if the preceding sentiments are just, no one deprived of suffrage, ought (unless he voluntarily adopt it at least implicitly) to be under the controul or direction of such constitution, or any law made in consequence of it: it is no law to him[,] he is in respect of it, still in a state of nature: and without equality of numbers it would be unjust; for it is incontestable that if every man has an equal natural right to governing power, he has an equal right to every thing that represents it; and if we suppose for instance one district to contain one hundred inhabitants, and another a thousand: each entitled to send two representatives[;] if we suppose the former to be only duly represented, then there will be nine hundred in the latter not represented at all; But this is so plain a case that it is only strange that it should ever have been controverted. 5.13.3

But again it should provide against their holding those trusts for long terms. This would call into public service a greater variety of estimable characters; would beget an emulation who should serve their country the most essentially; and make it perhaps as fashionable a virtue to serve the interest of the public, as it has been formerly a vice to serve the private interest of some favorite family or worthless dependent. Besides, this is a security which the people owe to themselves, for the fidelity of their servants; and perhaps the only good security they can have: add to this temporary intervals of ineligibility, that they may in a private capacity feel all the good and evil effects resulting from their administration; and be prevented from acquiring any influence, dangerous to the liberty of the community. Who ever doubts the utility of this provisionary measure let him just recur to the state of the British government under the triennial and septennial parliaments: and he will soon be satisfied. 5.13.4

But it should also provide for its own stability and permanency: and that no law may ever come into existence the foundation of which is not found in those primary[?] principles: as the constitution comes immediately from the people; so ought the laws to flow immediately from the constitution; it should like a circle circumscribe all legislative power as the legislative ought to circumscribe the executive, and both take their form from the people as the great centre of all; it should with all the authority becoming the majesty of a free people from whence it proceeds command; hitherto shalt thou come but no further; for if it suffers itself to be broken in one instance, why not in a thousand; it become, like a bubble, its existence is no more and the issue may be fatal. 5.13.5

But lastly, and above all it should provide that no man or set of men whatsoever from within or without, should even[?] possess a power of controul, suspension, or negation, either permanent, or temporary, on or over any resolves, acts, procedures, or laws made by the people them- 5.13.6

selves, or their representatives duly chosen as above[,] for whenever this happens, their liberty expires, they are under the direction of a will different from, and superior to their own: and though they may still have the privilege of nominating those who possess that power, it is only the poor and degrading privilege of pointing out, among many tyrannical masters, whose lash they will chose to feel. In short they are slaves.

5.13.7 It has been disputed whether one house, or rather power of legislature be more eligible, or rather to be chosen than two.[3] I shall hazard a few random thoughts on that subject. And first, if an institution answers all the ends designed by the institution, as well as any other institution, or plan could have done, or can do, there remain no possibility of its doing more; it is therefore perfect, if anything is added it becomes a redundancy, consequently an imperfection. I hope twill not be denied, that a single legislative body, is capable of making laws, the perfection of those laws depend on the wisdom, virtue, and integrity of the legislature, but does it appear, that more wisdom, virtue, and integrity, will, or can possibly be found in two houses than in one, provided they consist of the same number, but more particularly of the same identical person? No man will affirm this. But it may be said that a second house or senate, being generally fewer in number, do by their separation acquire an influence which would have been lost, had the whole been incorporated in one house. I answer, perhaps it might not have been lost; it would no doubt sometimes so happen, that they, in conjunction with the minority in the other house would be able to set aside some bills, which for want of their assistance there, have passed, this would have been a shorter, and easier way; and attended besides, with much less expence of time and money; and excepting in some such instances, all such influence ought to be lost; for in no instance ought the minority to govern the majority. Again, it is more simple: and it is a well known maxim that the simpler a machine is, it is the more perfect; the reason on which it is grounded is obvious: viz. because it is the less liable to disorder, the disorder more easily discovered, and when discovered, more easily repaired and in no instance is this maxim more applicable than in the great machine of government.[4] But say they there ought to be two houses because there are two separate interests. I answer by denying that any community can possibly have any but one common public interest, that is, the greatest good of the whole and of every individual as a part of that whole: but if it be private interest that is meant, I confess that there are not only two, but twenty and it may be more private interests in every government, and the same argument would prove that there ought to be twenty or indeed five hundred houses of legislature in each government: and by proving too much falls to the ground. But the grand argument of all, is that by being separate they have a power of checking some bills which would otherwise pass into laws and might be detrimental to society. Had not this argument been produced on the other side, I should certainly have produced it in favour of one house: however I

ask is a minority in one house, properly entitled to over rule a majority in the other? Are they not as likely to check a good bill as a bad one? and has it not[5] in fact often happened? Is it not as probable that the second house lay some[?] of their checks on a good bill which perhaps they had little considered as that the first, should pass a bad one, where it had originated and perhaps[?] thoroughly considered? But let us turn the argument over and take a view of the other side of it. The inconsistencies that attend the idea of two houses are innumerable. Take one, supposing them both our representatives (tho it will be hard to prove them so) it makes their constituents to say in many instances by their representatives in one house, 'this shall be a law,' by their representatives in the other with respect to the same bill; 'This shall not be a law.' It impowers one body of men to enact statutes; and another to forbid their being carried into execution. It resembles a man putting forth his right hand to do some important business and then stretching forth his left hand to prevent it; but supposing them not our representatives at all, they have no business there, and all their mighty power of checking, is a mere farce.

I am now come down to that period, which I proposed at my setting out; 5.13.8
and ought not, it may be trouble the public any farther; however as I consider myself a free agent, and would have every other man not only to believe so of himself but also to use every means to be and continue really so for ever; I intend in some future paper (if I continue in the same humour I am now in) to make some transient observations, on the constitution held out to the united states, by the continental convention, which I sincerely wish might in the mean time be done by some better hand.

In the above hints, I have spoken my sentiments but their authority comes 5.13.9
from their being the sentiments of a Locke[,] a Sidney and of all the great and good names who have favoured the world with observations on this important subject: but what gives them the highest possible dignity with me; I believe them to be the sentiments of reason itself: and while I remain under the conviction should a government arise, flowing from any other source and running in another channel; though I shall always submit to the laws of my country, with as much cheerfulness as I can; yet the voice of the united world shall never persuade me to say it is right.

Republicus

1 March 1788

True Liberty
. . . Always with right reason dwells
Twinn'd, and from her hath no dividual being.
MILTON[6]

5.13.10 There is but one source of political happiness, viz. liberty; our liberty is founded on our reason, which is the gift of heaven: this proves its excellence; but many sources of unhappiness, and slavery: every one of which, owes its existence to the abuse of some passion or appetite of mankind. Ambitious persons, already raised to a pitch of eminence disgraceful to human nature; not contented with the vassalage of thousands, who have given themselves up to the vilest subjection, even to be bought or sold like asses or swine; too often, merely to gratify a wanton lust of domination, employ those very wretches, in the infernal business of subjecting others, before happy and free; this constitutes external slavery; of such an attempt we have had a recent trial; but there is another sort of slavery which from the modesty of its appearance, and gentleness of its approaches, is not so alarming, and therefore the more dangerous; of which we ought continually to beware: viz. internal, that is, when a people already free, implicitly intrust, or permit, any set of men to form constitutions of government or enact laws for them; without inquiring, whether such constitutions, have for their basis, the true principles of liberty, and equal right. Of those principles I have, in a former paper, attempted a very succinct investigation: I shall in this, examine some parts of the federal constitution, (now held out to these states) according to those principles, and leave the public, impartially to judge for themselves.

5.13.11 And here, I am happy in finding myself anticipated, and the work partly done to my hand, by the publication of a letter from a gentleman, whose official situation sets his sentiments in a very conspicuous point of view; and whose well known abilities and integrity make every observation of his, merit the highest degree of attention;[7] I shall therefore pass over those things which he has already done in so masterly a manner, and confine myself to a few points, which he has either slightly touched upon or has been wholy silent.

5.13.12 Article I. Section I. "All legislative power herein granted, shall be vested in a Congress of the united states; which shall consist of a senate and house of representatives.["]

The absurdity of two houses of legislature, has formerly been touched upon on the supposition of their being both our representatives; but that observation becomes here unnecessary: this appears without a mask: they (the senate) are not even the supposed representatives of any body; but distinguished from them, in as express terms as english words can do it; how then is this a Congress [that is a meeting][8] of the united States; when such meeting, does neither consist of the whole people of these states, nor wholly of the representatives of those people?[9] but not to dispute about words let us consider the election, the proportional numbers, and the powers of this senatorial body. And first, they are to be chosen by the legislative bodies of the several states respectively: what numeral proportion these legislative bodies may bear to their constituents, or the people at large, is to me

uncertain; but I will suppose it as one to two hundred; it is plain, that if they represent any body at all, it can be only those who have elected them, viz. one two-hundredth part of the people: bodies, having been chosen only for legislative purposes, and election, and legislation, being powers wholly different, and indeed too important to be both committed to the same set of men, at the same time; that choice can invest them with no right to delegate representatives for any body but themselves; but I confess this argument is superfluous, this constitution having in so many words, separated the very idea or character of a senator from that of a representative. Again, as to their numbers, there are to be two senators from each state; is not this visibly subversive of the great original right to equality? does it not tend to obliterate the very idea? To demonstrate this, requires only that we compare the representation of the state of Rhode-Island and Providence plantations, with that of Virginia; the former from their numbers, are intitled to have only one representative in Congress; the latter, on the same principle, and for the same reason, are to have ten. If Virginia, from her numbers, has a right to ten times the influence of Rhode-Island in the lower house of Congress, why not in the senate? I see no reasonable answer to this, but that the lower house consists of the representatives of the people, consequently are a regular, well proportioned body, the senate an unmeaning and arbitrary [ ] of the different legislatures; and of consequence a body irregular, deformed, and disproportionate.

But again, if we consider this power, it contains a very considerable and 5.13.13
essential share of the elective, legislative, executive, and judiciary department, and in all these, they are independent of the people, not in any instance responsible to them: from whence can their right to such power arise? It was never delegated to them from the people, who alone were justly possessed of it; no exterior power had authority to confer it; it appears therefore a mere non entity; or rather a complicated usurpation of power without right: and therefore to be rejected: and yet, extraordinary as it may seem, this senatorial dignity, is to continue in the same hands *six years,* and even at the end of that term, they are again eligible, and so on a third, a fourth, a seventh time, to perpetuity. But I long to have them off my hands, as I would any other useless or dangerous commodity, and can only consider their institution, as a servile and ill-judg'd imitation of the house of lords in the British parliament, where (though there appears now and then a virtuous character) dissipation, venality, and corruption, are alternately, and incessantly breeding growing, and triumphing; have often distracted the kingdom, and in some degree, inslaved the nation. I go now to Art. 2, Sec. 1 which vest the supreme continental executive power in a president: in order to the choice of whom, the legislative body of each state, is empowered to point out to their constituents, some mode of choice, or (to save trouble) may choose themselves, a certain number of electors, who shall meet in their respective states, and vote by ballot, for two persons, one of whom, at

least shall not be an inhabitant of the same state with themselves. Or in other words, they shall vote for two, one or both of whom they know nothing of. An extraordinary refinement this, on the plain simple business of election; and of which the grand convention have certainly the honour of being the first inventors; and that for an officer too, of so much importance as a president; invested with legislative and executive powers—who is to be commander in chief of the army[,] navy, militia, etc. grant reprieves and pardons, have a temporary negative on all bills and resolves, convene and adjourn both houses of congress, be supreme conservator of laws, commission all officers, make treaties, etc. etc. and who is to continue[10] four years, and is only removable on conviction of treason[?] or bribery and trial be only by the senate, who are to be his own council whose interest in every instance runs parallel with his own; and who are neither the officers of the people, nor accountable to them. Is it then become necessary, that a free people, should first resign their right of suffrage into other hands besides their own, and then, secondly, that they to whom they resign it, should be compelled to choose men, whose persons, characters, manners, or principles they know nothing of; and after all, (excepting some such change as is not likely to happen twice in the same century) to intrust Congress with the final decision at last? Is it necessary, is it rational that the sacred rights of mankind should thus dwindle down to Electors, of electors, and those again electors of other electors; this seems to be degrading them, even below the prophetical curse denounced by the good old patriarch, on the offspring of his degenerate son; ["]servant of servants."[11]

5.13.14 Art. I. Sect. 4. "The times, places and manner of holding elections for senators, and representatives, shall be prescribed in each State, by the legislature thereof; but the Congress may, at any time by law, make or alter such regulations, except as to the place of chusing senators.["][12] Whether this clause gives Congress a power to call the people of Georgia to chuse their representatives in the city of Boston, and on the twentieth of December, and so of every other State, I leave to be determined by better judges of language than myself; however, I believe I shall not be amiss in asserting, that it invests them with power to appoint the time of choosing senators, at the greatest possible distance from the usual, and perhaps constitutionally appointed time of meeting for the purpose of legislation: This latter in large States, or newly settled countries amounts to little less than a peremptory exclusion of all members of legislatures, in extensive districts; who from their situation, are less liable to corruption: the former, if true, would put it into the power of a few, a very few! to appoint representatives for the whole continent: and both together, tend to perpetuate the authority, not only of the same men, but also of their *heirs for ever*. Again, I would ask (considering how prone mankind are to engross power, and then to abuse it) is it not probable, at least possible, that the president who is to be vested with all this demi-omnipotence, who is not chosen by the community, and who

consequently as to them, is irresponsible, and independent; that he, I say, by a few, artful and dependent emissaries in congress, may not only perpetuate his own personal administration, but also make it hereditary: that by the same means, he may render his suspensive power over the law, as operative, and permanent, as that of G. the 3d over the acts of the British parliament: and under the modest title of president, may exercise the combined authority of legislation, and execution, in a latitude yet unthought of: or, that upon his being invested with those powers a second, or third time, he may acquire such enormous influence, as, added to his uncountroulable power over the army, navy, and militia; together with his private interest in the officers, of all these different departments, who are all to be appointed by himself, and so his creatures, in the true political sense of the word; and more especially when added to all this, he has the power of forming treaties and alliances, and calling them to his assistance; that he may, I say, under all these advantages, and almost irresistable temptations, on some pretended pique, haughtily, and contemptously, turn our poor lower house, (the only shadow of liberty we shall have left) out of doors, and give us law at the bayonets point; or may not the senate, who are nearly in the same situation, with respect to the people from similar motives, and by similar means, erect themselves easily into an oligarchy, towards which they have already attempted so large a stride; to one of which channels, or rather to a confluence of both, we seem to be fast gliding away; and the moment we arrive at it—farewell liberty. This leads me to Art. I Sect. 9. "The migration or importation of such persons, as any of the States now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808; (twenty years hence) but a tax, or duty may be imposed on much importation, not exceeding ten dollars for each person.["] An excellent clause this, in an Algerian constitution: but not so well calculated (I hope) for the latitude of America.[13] It is not to be disguised that by "such persons," slaves are principally, if not wholly intended: and shall this be found among the principles of a free people, and making a radical part of the grand base, on which they would erect an edifice sacred to liberty. "Tell it not in Gath!"[14] O that no envious surge might ever roll it to the eastern side of the Atlantic! Unhappy africans! What have they done? Have they murdered our citizens or burnt our settlements? Have they butchered, scalped, and exhausted every device of torture, on our defenceless women, and innocent children; as the savage meserians[?] of our own country have done? No, no! Then, why deprive them of the greatest of all blessings, liberty, "without which," says Dr. Price man is a beast, and life a curse,[15] while coward-like, we court, caress, and cringe to our murderers. Ignorant, and comparatively innocent, till we taught them the diabolical arts of destruction, captivity, and death; and provided them with the infernal means of carrying them into practice: and all this to furnish ourselves with slaves, at the guilty expence oftimes, of the blood of, ten times the number of those thus enslaved, who

lost their lives in the gallant the virtuous defence of themselves, and families. Has this guilt ever been attoned? and do we boast of being advocates for liberty? shocking absurdity! More absurd still that a license for such an execrable trade, should be radically woven into, and become an essential part of our national constitution[,] a constitution, formed by a chosen assembly of our most eminent and respectable citizens: and where a personage presided, second to no individual of the human family.

The boast of America.—The wonder of Europe
O liberty! O virtue! O my country.

Tell us, ye who can that, cooly, reduce the impious principle of slavery, to a constitutional system: ye professed violators of liberties of mankind: where will ye stop? what security can you give, that, when there shall remain no more black people, ye will not enslave others, white as yourselves? when Africa is exhausted, will ye spare America? and is not twenty years (taking into the account the slain with the more unhappy captives, victims to perpetual slavery) sufficient to depopulate her inmost forest? Or is this only an ill boding prelude, sounded in the ears, and designedly introductory to the fate of these (yet unhappy) states, who gave you existence; and who even now, while you are thus ungratefully soaring toward the summit of *Aristocracy,* are honouring you with their confidence? I shudder at the catastrophe? awake my fellow citizens! and let this infamous clause, together with the principle which gave it birth, be not only expunged out of your constitution: but countermanded, eradicated, torn from your heart forever.

5.13.15 To conclude, I can think of but one source of right to government, or any branch of it; and that is *the people.* They, and only they, have a right to determine whether they will make laws, or execute them, or do both in a collective body, or by a delegated authority. Delegation is a positive actual investiture. Therefore if any people are subjected to an authority which they have not thus actually chosen; even though they may have tamely submitted to it, yet it is not their legitimate government: they are wholly passive, and as far as they are so, are in a state of slavery. Thank heaven we are not yet arrived at that state; and while we continue to have sense enough to discover and detect, and virtue enough to detest and oppose every attempt, either of *force* or *fraud,* either from *without* or *within,* to bring us into it, we never will.

5.13.16 Let us therefore continue united in the cause of rational liberty. Let unity and liberty be our mark as well as our motto: for only such an union can secure our freedom; and division will inevitably destroy it. Thus a mountain of sand may peace meal be removed by the feeble hands of a child: but if consolidated to a rock, it mocks the united efforts of mankind, and can only fall in a general wreck of nature.

Republicus

1. William Cowper, *The Task* III, "The Garden," lines 201–5.

2. For references to other Anti-Federalist discussions of representation see Federal Farmer II, 2.8.15 n. 11.

3. For Federalist defenses of bicameralism see McMaster and Stone 97–99 (Pelatiah Webster), 168 (A Federalist); Ford, *Pamphlets* 30 ff. (A Citizen of America).

4. On simple responsible government see Centinel 1, 2.7.1–27 and n. 1.

5. I have not followed the original printer, who shifted at this point to italic type.

6. *Paradise Lost* XII, lines 83–85.

7. Probably the letter of Richard Henry Lee, above 5.6.

8. Brackets in original.

9. See the references collected in Federal Farmer III, 2.8.28 n. 22.

10. Again I have not followed the printer in his shift at this point to italic type.

11. Genesis 9:25. Generally the mode for electing the President was not much criticized by the Anti-Federalists. See Federal Farmer III, 2.8.29 n. 23.

12. On this clause see references in Vox Populi 4.4.3 n. 1.

13. On the slave trade clause see Martin 2.4.65 n. 24.

14. 2 Samuel 1:20.

15. See Richard Price, *Observations on the Nature of Civil Liberty* I, sec. 1, "Of the Nature of Liberty in General."

Essays by The Impartial Examiner

VIRGINIA INDEPENDENT CHRONICLE
February–June 1788

The five essays of the Impartial Examiner appeared in the *Virginia Independent Chronicle*, the first during February and March of 1788, and the remainder in successive weeks in May and June. They constitute another important and interesting Anti-Federal statement reprinted here for the first time. The Impartial Examiner begins the first, long essay with a good statement of the dangers of ill-considered innovation (5.14.1). He makes and elaborates a distinction between arbitrary and free governments, on which the whole argument rests: "in [arbitrary governments] the governors are invested with powers of acting according to their own wills, without any other limits than what they themselves may understand to be necessary for the general good; whereas in [free goverments] they are intrusted with no such unlimited authority, but are restrained in their operations to conform to certain fundamental principles, the preservation whereof is expressly stipulated for in the *civil compact:* and whatever is not so stipulated for is virtually and impliedly given up" (5.14.2). Judged by this criterion, the author finds the proposed Constitution arbitrary: it provides for unlimited supremacy of the federal government, despite the absence among the different parts of the United States of that union of interest that must be the basis of union of counsels (5.14.4, 5, 10). There is no declaration of rights, without which civil liberty cannot exist, there being no standard to appeal to in cases of governmental oppression (5.14.5, 10). The Constitution grants dangerous and unlimited powers in the areas of taxation (5.14.6–7), standing armies (5.14.8), and the judiciary (5.14.9). While respecting the intentions of the framers, the author insists that the people must exercise an independent judgment (5.14.10–12). He contends that a more moderate revision is feasible, and (in a balanced and penetrating statement) he emphasizes the nobility of true confederation (5.14.13). The Impartial Examiner concludes the first essay with a good statement of the dangers of loose and extensive powers that goes well beyond the usual Anti-Federal cautions. The problem is to perpetuate the free republic as "the ardent glow of freedom" evaporates—as the leaders grow restless for exercise of ambition, as the

advantages of the new government "grow stale with use," and as the people grow fat with prosperity. To avoid these dangers the principles of the political order must be firmly fixed in the Constitution (5.14.14–16).

In the remaining essays, the Impartial Examiner mainly elaborates the themes already laid down. He argues in the second essay that arbitrary government is inherently despotic (5.14.17–22). The first question to be raised is whether the system proposed is "coincident with [American] standing maxims of liberty" and the second whether it is "conducive to good policy" (5.14.24). Having shown in the first essay that the system fails with respect to the former, Impartial Examiner argues that no examination of the latter is strictly necessary; but he follows the many writers who proceed to the question of policy, concluding this essay with an argument that the so-called Anti-Federalists are the true Federalists (5.14.25–26).

In essay III the Impartial Examiner takes up the question of representation, contending (in one of the good Anti-Federalist discussions of this matter) that representation must be both ample and complete and that the representation in the House of Representatives is not sufficiently numerous to be either (5.14.28–32). The Senate is elected not by the people but by the state legislatures and is open to even stronger objections (5.14.33–34).

The executive proposed by the new Constitution, discussed in essay IV, ought not to have a negative on legislation, this power being an imitation of the British system, whose circumstances are very different. The executive veto will destroy rather than maintain the balance in the American republican system (5.14.35–40).

In conclusion (essay V) the Impartial Examiner argues that the evils experienced under the Articles of Confederation spring not from vicious principles pervading the whole system (which would admittedly require radical change) but from certain weaknesses in some of the parts. The weaknesses may therefore be remedied by strengthening these parts, in particular by investing Congress with sufficient power to regulate commerce and to procure the necessary revenue for the common defense or general welfare.

I

20 February 1788

To the free people of Virginia.

Countrymen and Fellow-Citizens,

That the subject, which has given rise to the following observations, is of the highest consequence to this country, requires not the aid of logical proof; that it merits the most serious attention of every member of this 5.14.1

community, is a fact not to be controverted. Will not a bare mention of the new Fœderal Constitution justify this remark? To foreigners or such, whose local connections form no permanent interest in America, this may be totally indifferent; and to them it may afford mere matter of speculation and private amusement. When such advert to the high and distinguished characters, who have drawn up, and proposed a set of articles to the people of an extensive continent as a form of their future government, an emotion of curiosity may induce them to examine the contents of those articles: and they may, perhaps, from having contemplated on a former situation of those people—that they had struggled against a potent enemy—that they had by their virtuous and patriotic exertions rescued themselves from impending danger—that they had used the like endeavors to establish for themselves a system of government upon free and liberal principles—that they had in pursuance of those endeavors chosen a system, as conducive to the great ends of human happiness, the preservation of their *natural rights* and *liberties*—that this system has prevailed but a few years; and now already a change, a fundamental change therein is meditated:—strangers, I say, having contemplated on these circumstances, may be led to consider this nation, as a restless and dissatisfied people, whose fickle inconsistent minds suffer them not to abide long in the same situation; who perpetually seeking after new things throw away one blessing in pursuit of another: and while they are thus indulging their caprice—lose all, ere any can ripen into maturity. If the unconcerned part of those among us entertain themselves in this manner, can any good American be content to deserve such reflections? Will not all rather feel an honest indignation, if they once perceive their country stamped with a character like this? And yet, may we not justify such conceptions, if we thus precipitate ourselves into a new government before we have sufficiently tried the virtues of the old?[1] So incident is error to the human mind, that it is not to be wondered at indeed, if our present Constitution is incomplete. The best regulated governments have their defects, and might perhaps admit of improvement: but the great difficulty consists in clearly discovering the most exceptionable parts and judiciously applying the amendments. A wise nation will, therefore, attempt innovations of this kind with much circumspection. They will view the political fabric, which they have once reared, as the sacred *palladium* of their happiness;—they will touch it, as a man of tender sensibility toucheth the apple of his own eye,—they will touch it with a light, with a trembling—with a cautious hand,—lest they injure the whole structure in endeavoring to reform any of its parts. In small and trivial points alterations may be attempted with less danger; but—where the very nature, the essence of the thing is to be changed: when the foundation itself is to be transformed, and the whole plan entirely new modelled;—should you not hesitate, O Americans? Should you not pause—and reflect a while on the the important step, you are about to take? Does it not behove you to examine well into the

nature and tendency of the Constitution now proposed for your adoption? And by comparing it with your present mode of government, endeavor to distinguish which of the two is most eligible? Whether *this* or *that* is best calculated for promoting your happiness? for obtaining and securing those benefits, which are the great object of civil society? Will it be consistent with the duty, which you owe to yourselves, as a nation, or with the affection, which you ought to bear for your posterity, if you rashly or inconsiderately adopt a measure, which is to influence the fate of this country for ages yet to come? How will it accord with your dignity and reputation, as an independent people, if either through an over-weaning fondness for novelty you are suddenly transported on the wings of imagination, and too hastily make up your thoughts on this great subject; or by sinking into a listless inactivity of mind, view it as an indifferent matter unworthy of any deliberate consideration? Will any respect? Will any honor? Will any veneration be due to the memory of yourselves, as ancestors, if millions of beings, who have not yet received their birth, when you are all mouldered into dust, should find themselves fixed in a miserable condition by one injudicious determination of your's at this period? If you see no impropriety in these questions, the suggestions contained in them will not appear altogether unworthy of attention. One moment's reflection, it is humbly presumed, will render it obvious that on this occasion they are not impertinently propounded.

In pursuing this address I beg leave to premise that the only true point of 5.14.2
distinction between arbitrary and free governments seems to be, that in the former the governors are invested with powers of acting according to their own wills, without any other limits than[2] what they themselves may understand to be necessary for the general good; whereas in the latter they are intrusted with no such unlimited authority, but are restrained in their operations to conform to certain fundamental principles, the preservation whereof is expressly stipulated for in the *civil compact:* and whatever is not so stipulated for is virtually and impliedly given up. Societies so constituted invest their supreme governors with ample powers of exerting themselves according to their own judgment in every thing not inconsistent with or derogatory to those principles; and so long as they adhere to such restrictions, their deeds ought not to be rescinded or controuled by any other power whatsoever. Those principles are certain inherent rights pertaining to all mankind in a state of natural liberty, which through the weakness, imperfection, and depravity of human nature cannot be secured in that state. Men, therefore, agree to enter into society, that by the united force of *many* the rights of *each* individual may be protected and secured. These are in all just governments laid down as a foundation to the *civil compact,* which contains a *covenant* between *each* with *all,* that they shall enter into one society to be governed by the same powers; establishes for that purpose the *frame* of government; and consequently creates a *Convention* between

every member, binding those, who shall at any time be intrusted with power, to a faithful administration of their trust according to the form of the *civil policy*, which they have so constituted, and obliging all to a due obedience therein. There can be no other just origin of civil power, but some such mutual contract of all the people: and although their great object in forming society is an intention to secure their natural rights; yet the relations arising from this *political union* create certain duties and obligations to the state, which require a sacrifice of some portion of those rights and of that exuberance of liberty, which obtains in a state of nature.—This, however, being compensated by certain other adventitious rights and privileges, which are acquired by the social connection; it follows that the advantages derived from a government are to be estimated by the *strength* of the *security*, which is attended at once with the *least sacrifice* and the *greatest acquired benefits*. That government, therefore, which is best adapted for promoting these three *great ends*, must certainly be the best constituted scheme of *civil policy*. Here, then, it may not be improper to remark that persons forming a social community cannot take too much precaution when they are about to establish the plan of their government. They ought to construct it in such a manner as to procure the best possible security for their rights;—in doing this they ought to give up no greater share than what is understood to be absolutely necessary:—and they should endeavor so to organize, arrange and connect it's several branches, that when duly exercised it may tend to promote the *common good* of all, and contribute as many advantages, as the civil institution is capable of. It has been before observed that the only just origin of civil power is a contract entered into by all the people for that purpose.—If this position be true (and, I dare presume, it is not controverted, at least in this country) right reason will always suggest the expediency of adhering to the essential requisites in forming that contract upon true principles. A cautious people will consider all the inducements to enter into the *social state*, from the most important object down to the minutest prospect of advantage. Every motive with them will have its due weight. They will not pay a curious attention to trifles and overlook matters of great consequence:—and in pursuing these steps they will provide for the attainment of *each* point in view with a care—with an earnestness proportionate to its dignity, and according as it involves a *greater* or a *lesser* interest. It is evident, therefore that they should attend most diligently to those sacred rights, which they have received with their birth, and which can neither be retained to themselves, nor transmitted to their posterity, unless they are *expressly reserved:* for it is a maxim, I dare say, universally acknowledged, that when men establish a system of government, in granting the powers therein they are always understood to surrender whatever they do not so expressly reserve.[3] This is obvious from the very design of the civil institution, which is adopted in lieu of the state of natural liberty, wherein each individual, being equally intitled to the enjoyment of all natural rights, and

having equally a just authority to exercise full powers of acting, with relation to other individuals, in any manner not injurious to their rights, must, when he enters into society, be presumed to give up all those powers into the hands of the state by submitting his whole conduct to the direction thereof. This being done by every member, it follows, as a regular conclusion, that all such powers, whereof the whole were possessed, so far as they related to each other individually, are of course given up by the mere act of union. If this surrender be made without any reservation, the conclusion is equally plain and regular, that *each* and *all* have given up not only those powers, which relate to others, but likewise every claim, which pertained to themselves, as individuals. For the universality of the grant in this case must necessarily include every *power* of acting, and every *claim* of possessing or obtaining any thing—except according to the regulations of the state. Now a right being properly defined, "a power or claim established by law, to act, or to possess, or to obtain something from others,"[4] every natural right is such *power* or *claim* established by the law of nature. Thus, it is manifest, that in a society constituted after this manner, every right whatsoever will be under the power and controul of the civil jurisdiction. This is the leading characteristic of an arbitrary government, and whenever any people establish a system like this, they subject themselves to one, which has not a single property of a free constitution. Hence results the necessity of an *express stipulation* for all such rights as are intended to be exempted from the civil authority.

Permit me now, my country men, to make a few observations on the proposed Fœderal Constitution. In this attempt the subject, as it is arduous and difficult, naturally impresses the modest mind with diffidence: yet being of the last importance, as involving in it the highest interest, that freemen can have—all that is dear and valuable to the citizens of these United States; a consciousness of the strong claim, which this subject has, to a free and general discussion, has prevailed over that discouraging idea so far as to produce the present address to you. This is done with a reliance on that benevolence and liberality of sentiment, with which you have hitherto been actuated. From these benign qualities, it is hoped, the most favorable indulgence will be granted, and that the zeal, with which this is written, will be allowed in some measure an excuse for its defects. However imperfect, therefore this may be, however inadequate to your own ideas, or to the wishes of him, who offers it to your consideration; you are hereby intreated to let the perusal, with which you may think proper to favor it, be serious, candid, dispassionate—as it relates to a common cause, in which all are alike concerned. 5.14.3

Suffer me, then, in the first place to advert to a part of the sixth article in this constitution. It may, perhaps, appear somewhat irregular, to begin with this article, since it is almost the last proposed: yet, if it be considered that this at once defines the extent of Congressional authority, and indisputably 5.14.4

fixes its supremacy, every idea of impropriety on this head will probably vanish. The clause alluded to contains the following words, "This constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the constitution or laws of any state to the contrary, notwithstanding." If this constitution should be adopted, here the sovereignty of America is ascertained and fixed in the fœderal body at the same time that it abolishes the present independent sovereignty of each state. Because this government being general, and not confined to any particular part of the continent; but pervading every state and establishing its authority equally in all, its superiority will consequently be recognized in each; and all other powers can operate only in a secondary subordinate degree. For the idea of two sovereignties existing within the same community is a perfect solecism. If they be supposed equal, their operation must be commensurate, and like two mechanical powers of equal *momenta* counteracting each other;—there the force of the one will be destroyed by the force of the other: and so there will be no efficiency in either. If one be greater than the other, they will be similar to two unequal bodies in motion with a given degree of velocity, and impinging each other from opposite points;—the motion of the lesser in this case will necessarily be destroyed by that of the greater: and so there will be efficiency only in the greater. But what need is there for a mathematical deduction to shew the impropriety of two such distinct co-existing sovereignties? The natural understanding of all mankind perceives the apparent absurdity arising from such a supposition: since, if the word means any thing at all, it must mean that *supreme power,* which must reside somewhere instate; or, in other terms, it is the united powers of each individual member of the state collected and consolidated into *one body*. This collection, this union, this supremacy of power can, therefore, exist only in one body. This is obvious to every man: and it has been very properly suggested that under the proposed constitution each state will dwindle into "the insignificance of a town corporate."[5] This certainly will be their utmost consequence; and, as such, they will have no authority to make laws, even for their own private government any farther than the permissive indulgence of Congress may grant them leave. This, Virginians, will be your mighty, your enviable situation after all your struggles for independence! and, if you will take the trouble to examine, you will find that the great, the supereminent authority, with which this instrument of union proposes to invest the fœderal body, is to be created without a single check—without a single article of covenant for the preservation of those inestimable rights, which have in all ages been the glory of freemen. It is true, "the United States shall guarantee to every state in this union a republican form of government": yet they do not guarantee to the different states their present forms of government, or the bill of rights

thereto annexed, or any of them; and the expressions are too vague, too indefinite to create such a compact by implication. It is possible that a "republican form" of government may be built upon as absolute principles of despotism as any oriental monarchy ever yet possessed. I presume that the liberty of a nation depends, not on planning the frame of government, which consists merely in fixing and delineating the powers thereof; but on prescribing due limits to those powers, and establishing them upon just principles.

It has been held in a northern state by a zealous advocate for this constitution that there is no necessity for "a bill of rights" in the fœderal government; although at the same time he acknowledges such necessity to have existed when the constitutions of the separate governments were established.[6] He confesses that in these instances the people "invested their representatives with every power and authority, which they did not in explicit terms reserve": but "in delegating fœderal powers," says he, "every thing, which is not given, is reserved." Here is a distinction, I humbly conceive, without a difference, at least in the present enquiry. How far such a discrimination might prevail with respect to the present system of union, it is immaterial to examine: and had the observation been restrained to that alone, perhaps it might be acknowledged to contain some degree of propriety. For under the confederation it is well known that the authority of Congress cannot extend so far as to interfere with, or exercise any kind of coercion on, the powers of legislation in the different states; but the internal police of each is left free, sovereign and independent: so that the liberties of the people being secured as well as the nature of their constitution will admit; and the declaration of rights, which they have laid down as the *basis* of government, having their full force and energy, any farther stipulation on that head might be unnecessary. But, surely, when this doctrine comes to be applied to the *proposed* fœderal constitution, which is framed with such large and extensive powers, as to transfer the individual sovereignty from each state to the *aggregate body*,—a constitution, which delegates to Congress an authority to interfere with, and restrain the legislatures of every state—invests them with supreme powers of legislation throughout all the states—annihilates the separate independency of each; and, in short—swallows up and involves in the plenitude of its jurisdiction all other powers whatsoever:—I shall not be taxed with arrogance in declaring such an argument to be fallacious; and insisting on the necessity of a positive unequivocal declaration in favor of the rights of freemen in this case even more strongly than in the case of their separate governments. For it seems to me that when any civil establishment is formed, the more general its influence, the more extensive the powers, with which it is invested, the greater reason there is to take the necessary precaution for securing a due administration, and guarding against unwarrantable abuses.

5.14.5

(To be continued.)

27 February 1788

(Continued from our last)

5.14.6 Section 8th of the first article gives the Congress a power "to lay and collect, taxes, duties, imposts and excises." If it be a true maxim that those, who are entrusted with the exercise of the higher powers of government, ought to observe two essential rules: first in having no other view than the general good of all without any regard to private interest; and secondly, to take equal care of the whole body of the community, so as not to favor one part more than another: it is apparent that under the proposed constitution, this general confederated society, made up of thirteen different states, will have very little security for obtaining an observance, either of the one, or of the other, rule. For being different societies, though blended together in legislation, and having as different interests; no uniform rule for the whole seems to be practicable; and hence, it is to be feared, that the general good may be lost in a mutual attention to private views. From the same causes we may lament the probability of losing the advantage of the second rule; for it may be expected, in like manner, that the general care of the whole will be lost by the separate endeavors of different legislators to favor their own states. So long as mankind continues to be influenced by interest, the surest means of effecting an union of counsels in any assembly is by an union of interests.[7] Now, if it be considered that it is this concert, that it is this union in promoting the *general good,* which alone can preserve concord in this great republic, and secure it success and glory,—unhappy will be the situation of America, if she once precludes the beneficial effects of such a good understanding. Yet, I apprehend that these evils may result in a great measure from an exercise of that branch of legislative authority, which respects internal direct taxation. For in this, it is scarcely probable that the interest, ease or convenience of the several states can be so well consulted in the fœderal assembly, as in their own respective legislatures. So different are many species of property, so various the productions, so unequal the profits arising, even from the same species of property, in different states, that no general mode of contribution can well be adopted in such a manner as at once to affect all in an equitable degree. Hence may arise disagreeable objects of contention. A diversity of interests will produce a diversity of schemes. Thus each state, as it is natural, will endeavor to raise a revenue by such means, as may appear least injurious to its own interest: a source of dissention manifestly detrimental to that harmony, which is necessary to support the confederation. I cannot conceive it impracticable to reform the fœderal system in such a manner as to ensure a compliance with the necessary requisitions of Congress from the different state legislatures. Then all the several states being left to raise their own share of the revenue, and being the only proper judges of the mode most convenient to themselves, it is highly probable that this important branch of government would be car-

ried on more generally to the satisfaction of each state; and would tend to promote a spirit of concord between all the parts of this great community. Because *each* being thus accomodated, and participating the advantages of the union,—*none* subjected to any inconvenience thereby,—*all* would consequently concur in nourishing an affection for the government, which so cemented them.

I believe, it is acknowledged that the establishment of excises has been 5.14.7
one of the greatest grievances, under which the English nation has labored for almost a century and an half. Although this may seem an œconomical tax, as arising out of manufactures, from which the *industrious* may derive advantages; and whereof the *wealthy* by consuming the greatest share, will of course contribute the largest proportion of the tax: yet the nature of it being such, as requires severe laws for its execution, it has justly become an object of general detestation. This has induced Judge Blackstone to declare that "the rigour and arbitrary proceedings of excise laws seem hardly compatible with the temper of a free nation."[8] While, therefore, you are freemen—while you are unused to feel any other power, but such as can be exercised within the bounds of moderation and decency, it, doubtless, behoves you to consider whether it is an eligible step to subject yourselves to a new species of authority, which may warrant the most flagrant violations of the sacred rights of habitation. If this branch of revenue takes place, all the consequent rigour of excise laws will necessarily be introduced in order to enforce a due collection. On any charges or offence in this instance you will see yourselves deprived of your boasted trial by jury. The much admired common law process will give way to some quick and summary mode, by which the unhappy defendant will find himself reduced, perhaps to ruin, in less time than a charge could be exhibited against him in the usual course.

It has ever been held that standing armies in times of peace are dangerous 5.14.8
to a free country; and no observation seems to contain more reason in it. Besides being useless, as having no object of employment, they are inconvenient and expensive. The soldiery, who are generally composed of the dregs of the people, when disbanded, or unfit for military service, being equally unfit for any other employment, become extremely burthensome. As they are a body of men exempt from the common occupations of social life, having an interest different from the rest of the community, they wanton in the lap of ease and indolence, without feeling the duties, which arise from the political connection, though drawing their subsistence from the bosom of the state. The severity of discipline necessary to be observed reduces them to a degree of slavery; the unconditional submission to the commands of their superiors, to which they are bound, renders them the fit instruments of tyranny and oppression.—Hence they have in all ages afforded striking examples of contributing, more or less, to enslave mankind;—and whoever will take the trouble to examine, will find that by far the greater part of the different nations, who have fallen from the glori-

ous state of liberty, owe their ruin to standing armies. It has been urged that they are necessary to provide against sudden attacks.[9] Would not a well regulated militia, duly trained to discipline, afford ample security? Such, I conceive, to be the best, the surest means of protection, which a free people can have when not actually engaged in war. This kind of defence is attended with two advantages superior to any others; first, when it is necessary to embody an army, they at once form a band of soldiers, whose interests are uniformly the same with those of the whole community, and in whose safety they see involved every thing that is dear to themselves: secondly, if one army is cut off, another may be immediately raised already trained for military service. By a policy, somewhat similar to this, the Roman empire rose to the highest pitch of grandeur and magnificence.

5.14.9 The supreme court is another branch of fœderal authority, which wears the aspect of imperial jurisdiction, clad in a dread array, and spreading its wide domain into all parts of the continent. This is to be co-extensive with the legislature, and, like that, is to swallow up all other courts of judicature.—For what is that judicial power which "shall extend to all cases in law and equity" in some having "original," in all others "appellate jurisdiction," but an establishment universal in its operation? And what is that "appellate jurisdiction both as to law and fact," but an establishment, which may in effect operate as original jurisdiction?[10]—Or what is an appeal to enquire into facts after a solemn adjudication in any court below, but a trial *de novo*? And do not such trials clearly imply an incompetency in the inferior courts to exercise any kind of judicial authority with rectitude? Hence, will not this eventually annihilate their whole jurisdiction? Here is a system of jurisprudence to be erected, no less surprising than it is new and unusual. Here is an innovation, which bears no kind of analogy to any thing, that Englishmen, or Americans, the descendants of Englishmen, have ever yet experienced. Add to all, that this high prerogative court establishes no fundamental rule of proceeding, except that the trial by jury is allowed in some criminal cases. All other cases are left open—and subject "to such regulations as the Congress shall make."—Under these circumstances I beseech you all, as citizens of Virginia, to consider seriously whether you will not endanger the solemn trial by jury, which you have long revered, as a sacred barrier against injustice—which has been established by your ancestors many centuries ago, and transmitted to you, as one of the greatest bulwarks of civil liberty—which you have to this day maintained inviolate:—I beseech you, I say, as members of this commonwealth, to consider whether you will not be in danger of losing this inestimable mode of trial in all those cases, wherein the constitution does not provide for its security.[11] Nay, does not that very provision, which is made, by being confined to a few particular cases, almost imply a total exclusion of the rest? Let it, then, be a reflection deeply impressed on your minds—that if this noble privilege, which by long experience has been found the most exquisite

method of determining controversies according to the scale of equal liberty, should once be taken away, it is unknown what new species of trial may be substituted in its room. Perhaps you may be surprised with some strange piece of judicial polity,—some arbitrary method, perhaps confining all trials to the entire decision of the magistracy, and totally excluding the great body of the people from any share in the administration of public justice.

(To be continued)

5 March 1788

(Concluded from our last.)

After the most deliberate reflections on this important matter, permit me, 5.14.10
my dear countrymen, to declare to you in the most unfeigned manner, that not perceiving any thing in the proposed plan of government, which seems calculated to ensure the happiness of America—I could not, as a fellow-citizen, resist the inclination to impart these sentiments to you. Unmoved by party—rage—unassailed by passion—uninfluenced by any other interest, but the genuine effusion of zeal for this, our common country, I confess to you in the language of sincerity and candor, that after the first reading of this new code, I could not behold it, but with an eye of disapprobation. Unwilling, however, to reject at first sight an object of such high moment, I resolved to distrust the propriety of a construction passed at so early a period.—This led me to peruse it with the utmost diligence I was capable of; and believe me, the foregoing observations have arisen from the fullest conviction that the system involves in it the most dangerous principles; and—so far from exalting the *standard* of American liberty, I fear indeed that, should it be adopted, this glorious *work*, which already has cost the lives of many worthy patriots, will ere long be leveled with the dust. Let it not be conjectured from hence that any illiberal conceptions are formed by the writer hereof respecting the intentions of those gentlemen, who have offered this plan of fœderal government.[12] He knows no circumstance inducing him to suppose they had any other object in view but the good of their country.—When we contemplate the great—the magnanimous HERO, who has conducted our armies through all the trying vicissitudes of danger and difficulty,—there is no man so disingenuous—there is no man so ungrateful, as to impute any transactions of his to sinister motives. Every true American is well assured that steadiness of virtue—that benignity of soul have the chief rule in all his actions.—Yet every American, and every other person, are satisfied also that there is no infallibility in human nature.—To be man is to be subject to error. The best, the greatest, the wisest are liable to commit mistakes.—Let it be remembered, then, that this code of gov-

ernment is solemnly proposed to every freeman in America. For what?—For the purpose of binding them without their approbation? No.—For an implicit acceptance? No.—For their adoption merely in compliment to the general convention? No.—What then?—Every man's duty to his country points out to him the end of this proposition. Every man knows that it is for a free, a candid, and impartial discussion and determination thereon; whether they will approve and adopt it; or whether they will disapprove and reject it. Can any citizen, therefore, be so weak? can any be so timid? so pusillanimous, as to acknowledge that he has no right to exercise his own judgement with regard to this matter? If there should be any haughty spirits among us, who think that this subject ought to be handled by none but a few persons of eminent characters, let such recollect that the dignity, the importance of their country should inspire sentiments more exalted than the highest characters—sentiments, that should correspond with the worth of America, not with the consequence of any mere individuals. Will you, then, Virginians, arrogate too much by boldly asserting the privilege to judge for yourselves in what so nearly concerns the cause of liberty? No, no, my countrymen, you will not arrogate too much; you will not: I avow it by the souls of those brave patriots, who fought for the same cause in the late war. You will in this affair act as becomes you. The rank, you hold amongst the nations of the earth, requires this of you. And you will forfeit that rank: you will forfeit the character of *freemen;* and shew that you deserve to be enslaved, if you decline that privilege. The happiness of a multitude of people is certainly the highest advantage, which can be conferred on any society: and if you will contribute a full share of duty to effect this, so shall you obtain a due share of glory. No pomp of character, no sound of names, no distinction of birth—no pre-eminence of any kind, should dispose you to hoodwink your own understandings; and in that state suffer yourselves to be led at the will of any order of men whatsoever. The part you have acted heretofore,—the brave, the noble efforts, you have made, are proof enough of your fortitude, and totally exclude every idea of pusillanimity. Herein you have evinced the highest sense of public virtue: herein you have manifested to the whole world that the cause of liberty has hitherto had the prevailing influence over your hearts. And shall men possessed of these sentiments? shall those valiant defenders of their country, who have not feared to encounter toil and danger in a thousand shapes, who have not startled, even at the prospect of death itself? Shall you, O Virginians; shall you, I say, after exhibiting such bright examples of true patriotic heroism, suddenly become inconsistent with yourselves; and were [fail?] to maintain a privilege so incontestibly your due?—No, my countrymen;—by no means can I conceive that the laudable vigor, which flamed so high in every breast, can have so far evaporated in the space of five years. I doubt not, but you will in this trying instance acquit yourselves in a manner worthy of your former conduct. It is not to be feared that you need the force of persuasion,

to exercise a proper freedom of enquiry into the merits of this proposed plan of government: or that you will not pay a due attention to the welfare of that country, for which you have already so bravely exerted yourselves. Of this I am well assured; and do not wonder when imagination presents to my view the idea of a numerous and respectable body of men reasoning on the principles of this fœderal constitution. If herein I conceive that you are alarmed at the exceedingly high and extensive authority, which it is intended to establish, I cannot but see the strongest reasons for such apprehensions. For a system, which is to supercede the present different governments of the states, by ordaining that "laws made in pursuance thereof shall be supreme, and shall bind the judges in every state, any thing in the constitution or laws of any state to the contrary notwithstanding," must be alarming indeed! What cannot this omnipotence of power effect? How will your bill of rights avail you any thing? By this authority the Congress can make laws, which shall bind all, repugnant to your present constitution—repugnant to every article of your rights; for they are a part of your constitution,—they are the basis of it. So that if you pass this new constitution, you will have a naked plan of government unlimited in its jurisdiction, which not only expunges your bill of rights by rendering ineffectual, all the state governments; but is proposed without any kind of stipulation for any of those natural rights, the security whereof ought to be the end of all governments. Such a stipulation is so necessary, that it is an absurdity to suppose any civil liberty can exist without it. Because it cannot be alledged in any case whatsoever, that a breach has been committed—that a right has been violated; as there will be no standard to resort to—no criterion to ascertain the breach, or even to find whether there has been any violation at all.[13] Hence it is evident that the most flagrant acts of oppression may be inflicted; yet, still there will be no apparent object injured: there will be no unconstitutional infringement. For instance, if Congress should pass a law that persons charged with capital crimes shall not have a *right to demand the cause or nature of the accusation,* shall not be *confronted with the accusers or witnesses, or call for evidence in their own favor;* and a question should arise respecting their authority therein,—can it be said that they have exceeded the limits of their jurisdiction, when *that* has no limits; when no provision has been made for such a right?—When no responsibility on the part of Congress has been required by the constitution? The same observation may be made on any arbitrary or capricious imprisonments *contrary to the law of the land.* The same may be made, if *excessive bail should be required;* if *excessive fines should be imposed;* if *cruel and unusual punishments should be inflicted;* if *the liberty of the press should be restrained:* in a word—if laws should be made totally derogatory to the whole catalogue of rights, which are now secured under your present form of government.

You will, doubtless, consider whether the inconveniences may not be very disagreeable, and perhaps injurious, to which this country may be 5.14.11

subjected by excise laws,—by direct taxation of every kind,—by the establishment of fœderal courts. You will advert to the dangerous and oppressive consequences, that may ensue from the introduction of standing armies in times of peace; those baneful engines of ambition, against which free nations have always guarded with the greatest degree of caution. You will determine likewise as to the propriety of being excluded from keeping ships of war without the consent of Congress. The situation of these states renders a naval force extremely desirable. Being bounded on one side by the sea, their coasts are accessible to every lawless adventurer: and without ships to guard them, they are subject to continual depredations. The expediency of this species of defence is manifest. The great advantages to be derived from it,—the strength,—the consequence, which it adds to a nation, are such, that every well-wisher to this country would rejoice to see as large a navy established, as the circumstances of the state can at any time admit of. This, therefore, seems to be a very improper restraint upon the states,—a restraint, which may perhaps eventually prove very injurious.

5.14.12 Upon the whole, my fellow-citizens, if you judge this proposed constitution to be eligible or ineligible, you will accordingly instruct your delegates when they are about to meet in convention. The wisdom of the legislature has judged it advisable to fix the time for deciding on this momentous business at the distance of several months, that you may become thoroughly acquainted with a subject, which so nearly concerns your greatest interests.

5.14.13 I know it is a favorite topic with the advocates for the new government—that it will advance the dignity of Congress; and that the energy, which is now wanting in the fœderal system, will be hereby rendered efficient. Nobody doubts, but the government of the union is susceptible of amendment. But can any one think that there is no medium between want of power, and the possession of it in an unlimited degree? Between the imbecility of mere recommendatory propositions, and the sweeping jurisdiction of exercising every branch of government over the United States to the greatest extent? Between the present feeble texture of the confœderation, and the proposed nervous ligaments? Is it not possible to strengthen the hands of Congress so far as to enable them to comply with all the exigencies of the union—to regulate the great commercial concerns of the continent,—to superintend all affairs, which relate to the United States in their aggregate capacity, without devolving upon that body the supreme powers of government in all its branches?[14] The original institution of Congressional business,—the nature, the end of that institution evince the practicability of such a reform; and shew that it is more honorable, more glorious—and will be more happy for each American state to retain its independent sovereignty. For what can be more truly great in any country than a number of different states in the full enjoyment of liberty—exercising distinct powers of government; yet associated by *one general head*, and under the

influence of a mild, just and well-organized confederation duly held in *equilibrio;*—whilst all derive those external advantages, which are the great purposes of the union? This separate independency existing in each—this harmony pervading the whole—this due degree of energy in the fœderal department, all together, will form a beautiful *species* of national grandeur. These will add lustre to every member, and spread a glory all around. These will command the admiration of mankind. These will exhibit a bright *specimen* of real dignity, far superior to that immense devolution of power, under which the sovereignty of each state shall shrink to nothing.

5.14.14 It requires no great degree of knowledge in history to learn what dangerous consequences generally result from large and extensive powers. Every man has a natural propensity to power; and when one degree of it is obtained, *that* seldom fails to excite a thirst for more:—an higher point being gained, still the soul is impelled to a farther pursuit. Thus step by step, in regular progression, she proceeds onward, until the lust of domination becomes the ruling passion, and absorbs all other desires. When any man puts himself under the influence of such a passion, it is natural for him to seek after every opportunity, and to employ every means within reach, for obtaining his purpose. There is something so exceedingly bewitching in the possession of power that hardly a man can enjoy it, and not be affected after an unusual manner. The pomp of superiority carries with it charms, which operate strongly on the imagination. Nay, it is a melancholy reflection that too often the very disposition itself is transformed,—and for the gratification of ambitious views, the mild, the gentle, humane—the virtuous becomes cruel and violent, losing all sense of honor, probity, humanity and gratitude.[15]—Hence, should it not be a *maxim*, never to be forgotten—that a free people ought to intrust no set of men with powers, that may be abused without controul, or afford opportunities to designing men to carry dangerous measures into execution, without being responsible for their conduct? And as no human foresight can penetrate so far into future events, as to guard always against the effects of vice,—as the securest governments are seldom secure enough;—is it not the greatest imprudence to adopt a system, which has an apparent tendency to furnish ambitious men with the means of exerting themselves—perhaps to the destruction of American liberty?

5.14.15 It is next to impossible to enslave a people immediately after a firm struggle against oppression, while the sense of past injury is recent and strong. But after some time this impression naturally wears off;—the ardent glow of freedom gradually evaporates;—the charms of popular equality, which arose from the *republican plan*, insensibly decline;—the pleasures, the advantages derived from the new kind of government grow stale through use.[16] Such declension in all these vigorous springs of action necessarily produces a supineness. The altar of liberty is no longer watched with such attentive assiduity;—a new train of passions succeeds to the empire of the

mind;—different objects of desire take place:—and, if the nation happens to enjoy a series of prosperity, voluptuousness, excessive fondness for riches, and luxury gain admission and establish themselves—these produce venality and corruption of every kind, which open a fatal avenue to bribery. Hence it follows, that in the midst of this general contageon a few men—or one—more powerful than all others, industriously endeavor to obtain all authority; and by means of great wealth—or embezzling the public money,—perhaps totally subvert the government, and erect a system of aristocratical or monarchic tyranny in its room. What ready means for this *work of evil* are numerous standing armies, and the disposition of the great revenue of the United States! Money can purchase soldiers;—soldiers can produce money; and both together can do any thing. It is this depravation of manners, this wicked propensity, my dear countrymen, against which you ought to provide with the utmost degree of prudence and circumspection. All nations pass this *parokism* of vice at some period or other;—and if at that dangerous juncture your government is not secure upon a solid foundation, and well guarded against the machinations of evil men, the liberties of this country will be lost—perhaps forever!

5.14.16 Let us establish a strong fœderal government, which shall render our Congress a great and eminent body, says one. By all means, replies another; and then they will command the attention of all Europe.—Why, pray, what will it avail you in the hour of distress—in the midst of calamity, though all Europe should pay attention to the Congress? What advantage will it be to the citizens of America, should they elevate Congress to the highest degree of grandeur;—should the sound of that grandeur be wafted across the Atlantic, and echoe through every town in Europe? What will the pomp—the splendor of that *dignified body* profit you, I say, if you place yourselves in a situation, which may terminate in wretchedness? Of what consequence will that state of congressional pre-eminence be to you, or to your posterity, if either the one, or the other should thereby be reduced to a mere herd of——? O great GOD, avert that dreadful catastrophe.—Let not the day be permitted to dawn, which shall discover to the world that America remains no longer a free nation!—O let not this last sacred asylum of persecuted *liberty* cease to afford a resting place for that fair goddess!—Re-animate each spirit, that languishes in this glorious cause! Shine in upon us, and illumine all our counsels!—Suffer thy bright ministers of grace to come down and direct us;—and hovering for awhile on the wings of affection, breathe into our souls true sentiments of wisdom!—that in this awful, this important moment we may be conducted safely through the maze of error;—that a firm basis of national happiness may be established, and flourish in undiminished glory through all succeeding ages!

P.P.

December 17,1787.

II
28 May 1788

I have in a former paper endeavored to take a view of the leading principles 5.14.17
of the new *fœderal constitution*. In pursuing the design of that address it was necessary to make some previous remarks on the nature of civil government in general: This led me to premise the material discrimination between arbitrary constitutions and the constitution of free governments.

The arbitrary species, or those, which fix no other limits to the *supreme rulers*, but their *own wills*, are totally incompatible with the spirit of civil liberty, and exclude every idea of free government. These may be described by the harsher epithet of *despotism*.

Some men may perhaps fancy a distinction where in reality none exists. 5.14.18
They may conceive the possibility of a government being constituted, which may with great propriety be denominated *arbitrary;* and yet consider it not as *despotic*. If, however, it be recollected that the term *despotism* is a relative expression arising from the authority of masters over their servants, which authority is founded in the *will* of the masters, it must plainly appear that every degree of *arbitrary* power is *despotic;* and that tyranny in government, whether it be distinguished by the former, or by the latter, appellation, is its regular and natural production. For whenever a power becomes vested in any *agent*, as unrestrained as the *will* of that *agent*, in him are immediately created the properties of a master; and those, over whom he exercises such power, stand *ipso facto* in the relation of servants.

To some the bare mention of *despotic rule* conveys the most alarming 5.14.19
ideas of horror; yet at the same time are they satisfied with [ ] as they imagine, of some [ ].[17] With [ ]vency of zeal they urge the expediency of *a plan*, which has for its basis the extended sphere of *human will*. They contend that it is necessary to establish a system, so unrestrained in its nature, in order to effectuate a *strong* and *energetic* government. This desirable object they seem to consider as unattainable by any other means;—and that all institutions, which convey only a limited authority, are inadequate to the purposes of society.

Such a kind of responsibility, as would form a *check* on the *supreme* 5.14.20
rulers, is deemed a source of continual impediment; and—to secure any degree of natural liberty, however small a *residuum*, is, in contemplation of their minds, laying the foundation of a *weak* government, liable to endless confusions, and productive of nothing better than sedition and anarchy. They conceive a fondness for this species of government, because it is framed in the *republican stile;* and, although fraught with the seeds of *despotism*, the apparent lovliness of its outward garb hides all the *deformity* of its inward corruptions. Whence it is manifest that distinctions are formed, which are preposterous and merely imaginary.

Nothing, perhaps, has contributed more towards interrupting the repose of mankind than a curious attention to the names and shadows of things, whilst the real essence and substantial parts have been disregarded.

5.14.21 That, which in any particular form has once produced much *evil* and *discontent,* generally stamps a lasting impression on the mind, and is not contemplated but with extreme detestation; although evils of the same nature, when inflicted under a different appearance, are frequently submitted to without repining. Thus, after the expulsion of *Tarquin,* and with him the extinction of *regal* authority in Rome, the name of *King* was ever odius to the *Roman people;* yet did they acquiesce in the exercise of *arbitrary* transactions under a different form of government. Such were they frequently subjected to through the various stages of their *republic;* until at last the sovereign power was established in the person of a *single man.* This change produced a system of government, unbounded as the *regal sway,* and no less susceptible of *tyrannical* proceedings. They could then respect the name of emperor, unlimited as he was, and, though exposed to all the rage of oppression, bow down with reverence, and venerate the *imperial scepter.*

5.14.22 The insidious attempts under a British administration to pervert the former government into a baneful system of tyranny had spread a general alarm throughout America. Opposition to *arbitrary* measures manifested itself among all ranks of people. Diligent inquiries were made to [ ][18] the schemes of their enemies; jealousies excited to an unusual degree with respect to their rights and privileges;—whilst exertions were made, which produced the most desirable effects. All these circumstances conspired in exhibiting very favorable prospects, and promised a lasting security to American liberty.

5.14.23 The injuries suffered under a government, which exposed the people of these states to the machinations of wicked and designing ministers, determined them in the choice of a system, which had principally in view the preservation of their *liberty.* Such was its grand object. In pursuit of this plan, as the great means of national happiness, constitutions were formed for the different states upon principles, salutary in their nature; and tending to perpetuate the freedom and independency of each. To these was added a confederation, under which the separate *republics* so constituted might harmonize in all their *general interests.*

5.14.24 Thus were they situated—when a defect was apprehended in this confederation. The ineffectual endeavors to promote some important advantages, and to answer all the exigencies of the *union,* indicated a weakness in the general government. A revision was deemed expedient. When, therefore, a new constitution was proposed, it became the duty of every American diligently to enquire, *first,* whether this system was coincident with their *standing maxims of liberty;* and, if so—whether conducive to *good policy.* If found derogatory to the former—any consideration respecting the latter should be unnecessary. This alone should mark it, as dangerous, and unworthy of approbation. The genius of America [ ][19] that *no fancied*

schemes of policy should compensate for the adoption of a plan discordant to be favorite principles of liberty. This is not a chimerical illusion, but a solid and interesting consideration. A mind thus convicted must act inconsistent with propriety, and contrary to every sentiment of duty, if it would then approve of the plan.

The writer of this address had, therefore, in his first number chiefly intended to take up this matter only so far as related to its principles—and having conceived that these were incompatible with the admired *maxims* of *American liberty,* his objections on that head were there laid down.

Observing, however, that most of the writers in favor of the plan seem in a great measure to have passed over this *important point*—and recommend it merely from *motives of policy;* it is now intended, as the business of some succeeding papers, to state objections to such of the constituent parts of the plan, abstracted of its principles, as appear, in his opinion, improperly constructed, and calculated to produce ill effects in their operation. These writers seem not to regard any fundamentals in government, provided they can procure a plan, in which they fancy some prospects of immediate benefit are to be discovered. In conformity with the stile of the *proposed constitution,* the favorers of it have, with a peculiarity of self-applause, ascribed to themselves the distinction of fœderalists; while those, who oppose the plan are marked with the epithet of anti-fœderal.[20] 5.14.25

The strong desire, which has been manifested, for a union between the American states, since the revolution, affords an opportunity of making the distinction, as they imagine, to their advantage.—*As fœderalists,* in their opinion, they must be deemed friendly to the *union:*—as *anti-fœderal,* the opposers must, in their opinion too, be considered unfriendly. Thus on the sound of names they build their fame. 5.14.26

For those gentlemen, however, let it be observed that the opponents seem to act on the broader scale of true *fœderal principles.* The advocates for the new code with all sovereignty to be lodged in the hands of Congress. This is not to connect thirteen independent states—but to form one extended empire by compounding the whole, and thus destroying the sovereignty of each. The other party desire a continuance of each distinct sovereignty—and are anxious for such a degree of energy in the general government, as will cement the union in the strongest manner. This they consider as one of the greatest blessings, which can attend their country.

III

4 June 1788

Besides those inherent rights, which should be established as fundamental principles, independent of the constitution, there are certain other maxims essential to every free government. These should pervade the whole plan. 5.14.27

They should be interwoven with its very texture. And, as it is necessary that the first should be preserved sacred and inviolate; so ought the last to be regarded as indispensible. These should be the leading properties, the head—the soul of the system; whilst those exist entire, supreme and uncontroled.[21]

5.14.28 It will not be denied, that *all power is originally vested in the people, and that it should be exercised either* immediately *by themselves,* or mediately *by their representatives.* These are *maxims,* without the observance of which the liberty of every nation must expire. When the power is exercised by their representatives, it is expedient that the representation be *ample* and *complete.* It should be *ample,* that amongst the *members* there may be a competent knowledge of the *constituents* their sentiments, connections, views and habits; and that amongst the *constituents,* there may generally be a due degree of knowledge respecting the virtues and abilities of the *members.*[22]

5.14.29 In extensive territories, where the people are widely dispersed, and individuals can have very little communication beyond the circle of their own neighbourhood, the representation should also be extensive. In countries thus situated, unless the legislature be numerous, there cannot be expected amongst the *members* thereof a general knowledge of their constituents: and when the *member* to be elected bears a very small proportion to the *number* of electors, it is utterly improbable that the *majority* should have an adequate knowledge of those, who will be elected. So that a great part of the community must in a manner be obliged to submit their most important concerns into the hands of a few persons unknown to themselves, and of whose wisdom, integrity and patriotism they can form no competent judgment.

5.14.30 Again, the representation should be *complete,* that is, it should be such as to comprehend every species of interest within the society. All orders of men, who have any permanent interest in the government, as far as practicable, ought to be represented. Regarding, then, the great diversity, which pervades most communities, from the highest landed concerns through the various stages of mercantile and mechanic interests, we must discover the necessity of an extensive delegation. When, therefore, the number of *representatives* in a legislature is very small, this affords objections, not only because they are not numerous enough to contain a competent knowledge of their constituents: they are inadequate to, and cannot sufficiently respect, all the complicated,[23] variant and opposite interests, which must necessarily subsist in a commonwealth, whose inhabitants are spread over a wide-extended country. The smallness of their number enhances the dignity of their *seats;* and none can expect to obtain a *seat,* except men of the most elevated station. Thus in the beginning of a government so constituted there will be laid a foundation for the exercise of undue influence, whereby every

branch of supreme power will be in a manner monopolized by one set of men: and thus the delegation will become partial. For, besides the effect of this undue influence in elections, the dispersed situation of the electors, together with that of the candidates, will ever produce much division amongst the suffrages;—and so the select party, who will be distinguished by their superior wealth, being the leading *junto* in this business, will easily procure a competent number to decide for themselves or their favorites.

5.14.31 Thus it will generally happen, that elections will be determined, not by the majority of the people, but perhaps by an inconsiderable part of them; and the persons chosen will be such, whose situation and rank in life had removed them far from a knowledge of the *great body* of the people. They will consequently be unacquainted with the customs, feelings, opinions and wishes of most of their constituents: and as the constituents will be unacquainted with their representatives,—*these* will not possess the confidence of *those*. Doubt and distrust will prevail.—That course of congenial sentiment—that reciprocity of common interest between the *legislature* and *bulk* of the nation, which should be the soul of *republicanism*, and are the chief objects of a free, unbiassed and general representation, will not exist in this kind of government. How, then, can it be expected that a strict regard to the *good* of all will mark the public proceedings? Who can really imagine that a *body*, thus constituted and thus invested with sovereign authority, will regularly devote their labors to promote the happiness, prosperity and freedom of a community, over whom they bear the rule—when they view themselves advanced to this state of exaltation—when this high degree of dignity will tempt them to look down with indifference, perhaps contempt, on the inhabitants of a spacious territory, as the subjects of their government—and when they contemplate these, as generally unconnected with themselves in all their most important concerns?—The uniform experience of ages operates against the idea. It may be dangerous to indulge in such a scheme of policy—lest its fairest prospects should prove visionary indeed!—lest in its exercise the directly contrary effects should be produced.

5.14.32 For the foregoing reasons, the legislative powers proposed to be granted according to the new system appear liable to material objections. For herein the number of representatives being too small to encourage the idea of a *full* or *complete* deputation, there is no prospect of securing a due regard to all the different interests necessarily arising amongst the numerous inhabitants of America, spread over a territory so extensive—so vast—so various in climate, products, habits and connections.

5.14.33 That part of the legislature, which is particularly denominated the *house of representatives*, is indeed the only popular branch; and although these officers are to be chosen by the immediate suffrages of the people, yet their dignity being necessarily great in proportion as their number is small, fair

and unbiassed elections are scarcely probable, if not impracticable.

In the appointment and constitution of the other branch,[24] the *senate*, we have but the shade of a deputation from the people. The state-legislatures, it seems, are to elect this *body*. The objections, which apply to the *house of representatives*, hold more strongly with regard to this, in as much as longer continuance in office will be productive of more danger; and the mode of appointment, by rendering them more independent of the people, will preclude *these* from having any decisive influence on their conduct.

5.14.34 It is no argument in favor of the manner proposed, that it is the same, by which the members of the present Congress are chosen. The nature and end of the one being totally different from those of the other, if they be duly considered, it may, perhaps, be thought not inexpedient to vary the proceedings respecting them. The Congress under the present confederation are the deputies of sovereign states in the full exercise of independent government. These deputies are appointed by the legislatures thereof, not for the purpose of regulating the internal police of the states, but to superintend their general and foreign affairs so far as all the states are concerned in common. When, therefore, the legislature of any state is actually existing and in the exercise of their office, it seems not improper that such deputies should be appointed by them: so in strictness they appear to be the deputies of the legislature; and are to them immediately amenable. The proposed *senate* are to exercise a share of legislation in the general government, and to participate in the sovereignty of America. Thus circumstanced, they will know not any authority superior to that, whereof they themselves possess a part. They are intended, as such, to be a branch of the representation of the people. To the people they ought to be amenable: and by the people they ought to be chosen.

IV

11 June 1788

5.14.35 Although the *senate* and *house of representatives* are to be established, and it seems to be the spirit of the proposed plan of government, that they should be considered as the grand *deputation* of America—the great aggregate *body*, to whom shall be delegated the important trust of *representing* the whole nation—the august, puissant *assembly*, in whom shall reside the full majesty of the people: yet, it seems too, these alone shall not be sufficient to exercise the powers of legislation. It is ordained, as a necessary expedient in the fœderal government, that a *president* of the United States (who is to hold the supreme *executive* power) should also concur in passing every law.

In monarchy, where the established maxim is, that the king should be respected as a great and transcendent personage, who knows no equal—who in his royal political capacity can commit no *wrong*—to whom no evil can be ascribed—in whom exists the height of perfection—who is supreme above all, and accountable to no earthly being, it is consistent with such a maxim, that the *prince* should form a constituent branch of the legislature, and that his power of rejecting whatever has been passed by the other branches should be distinct, and co-extensive with that of either of those branches in rejecting what has been proposed and consented to by the other. It is necessary that the fundamental laws of the realm should ascribe to the king those high and eminent attributes—that he should possess in himself the sovereignty of the nation; and that the regal dignity should distinguish him, as superior to all his subjects, and in his political character endowed with certain inherent qualities, which cannot be supposed to reside in any other individual within the kingdom: otherwise, that constitutional independence, which the laws meant peculiarly to establish in his person, would not be preserved. To this end the king of England is invested with the sole *executive* authority, and a branch of legislative jurisdiction so far as to pass his *negative* on all proceedings of the other two branches, or to confirm them by his *assent*. 5.14.36

This secures to him the intended superiority in the constitution, and gives him the ascendant in government; else his sovereignty would become a shadow—whilst that doctrine, whereby he is declared to be the *head*, the *beginning* and *end* of the great *body politic*, would prove to be nothing more than mere sound. This two-fold jurisdiction established in the British monarch being founded on maxims extremely different from those, which prevail in the American States, the writer hereof is inclined to hope that he will not be thought singular, if he conceives an impropriety in assimilating the component parts of the American government to those of the British: and as the reasons, which to the founders of the British constitution were motives superior to all others to induce them thus to give the *executive* a controul over the *legislative*, are so far from existing in this country, that every principle of that kind is generally, if not universally, exploded; so it should appear that the same *public spirit*, which pervades the nation, would proclaim the doctrine of prerogative and other peculiar properties of the royal character, as incompatible with the view of these states when they are settling the *form of a republican* government.[25] Is it not therefore sufficient that every branch in the proposed system be distinct and independent of each other—that no one branch might receive any accession of power (by taking part of another) which would tend to overturn the balance and thereby endanger the very *being* of the constitution? Whilst the king of England enjoys all the *regalia*, which are annexed to his crown—whilst he exercises a transcendent dominion over his subjects, the existence whereof is coeval with the first rudiments of their constitution—let the free citizens 5.14.37

of America, consulting their true national happiness, wish for no innovation, but what is regulated according to the scale of equal liberty, or which may not destroy that liberty by too great a share of power being lodged in any particular hands;—let this collateral jurisdiction, which constitutes the *royal negative,* be held by kings alone, since with kings it first originated:—Let this remain in its native soil, as most congenial to it; there it will cumber less, and be more productive,—here it will be an exotick, and may poison the *stock,* in which it may be engrafted.

5.14.38 It will be said, perhaps, that the power, granted the president, of *approving* or *disapproving* the proceedings, which have passed the senate and house of representatives, will not be so decisive in its nature as the king's *negative.* True it is, this power of rejecting does not extend so far as primarily to produce an entire overthrow of any law, which has passed those *two houses:* but it may be expected that in many instances this *negative* will amount to a final and conclusive rejection. For as a law, which has been once disapproved by the president, cannot be re-passed without the agreement of *two-thirds* of *both houses,* there can be no doubt, it will frequently happen that this concurrence of *two thirds* cannot be obtained. The law must then fall: and thus the president, although he has not the power of *resolving* originally and *enacting* any laws, independent of those two houses, hath nevertheless in the legislative scale of government a weight almost equal to that of two thirds of the whole Congress. If the system proposed had been calculated to extend his authority a little farther, he would preponderate against all—he alone would possess the sovereignty of America. For if the whole executive authority and an absolute, entire *negative* on the legislature should become united in one person, these must, with regard to *that person,* destroy every idea of a subject. Thus circumstanced he cannot be the object of any laws; he will be above all law: as none can be enacted without his consent—he will be elevated to the height of supremacy.—

5.14.39 How near will the *president* approach to this consummate degree of power! The portion allotted him may, however, be amply sufficient to give him the ascendant in the constitution. He must continually acquire great accessions of weight in every scale of government, as *chief magistrate* and *generalissimo* of the United States—at the same time possessing so great a share in the legislature, as a revision of all *bills* and other proceedings which shall have passed the senate and house of representatives with a discretionary right of rejecting them—united with the senate in making treaties, appointing all public ministers, judges, and a train of other officers, who will be necessary for carrying on the business of government; thus dispensing honor and profit throughout America—whilst copious streams of influence must flow from him, as from a source. Can the different departments be duly balanced when all these high powers concenter in one branch? Is it not

rather probable that this branch will destroy the balance, and eventually rise to the fulness of dominion?

When the *spirit* of America becomes such, as to ascribe to their president all those extraordinary qualities, which the subjects of kingly governments ascribe to their princes: then, it is presumed, and not till then, he may consistently be invested with a power similar to theirs.[26] 5.14.40

It is remarkable how the president and senate mutually participate in the exercise of a two-fold jurisdiction. How, then, can it be surprising to any one, if some citizens, truly jealous of their liberties, are alarmed with the apprehensions of *aristocracy?* Those, who seriously reflect on the properties of human nature, and who possess republican principles, will suppose they conceive grounds for such apprehensions: those, who have different sentiments, will not care whether there are grounds for such apprehensions, or not.

V
18 June 1788

When a change, so momentous in it's nature, as that of new modelling a *plan* of government, becomes the object of any people's meditation, every citizen, whose mind is duly impressed with a regard for the welfare of his country, will consider himself under an indispensible obligation to make some such enquiries, as the following.—Whence flows the necessity of a change?—Does it proceed from certain *vicious properties,* which reside in the old system and form the essential parts of it?[27]—Or will such a measure become eligible, because *evils* have arisen from the feeble texture of the plan, or a loose exercise of government, which could not well be avoided?—What are the *evils* complained of? and what will be their correspondent remedies?—Are the evils *radical,* and not be removed but by a *general* reform throughout the constitution?—Or do they result from a defect in some particular branch only? and may an adequate remedy be effected by introducing a new regulation merely as to *that* branch? 5.14.41

If investigations like these are seriously and dispassionately pursued, and it should be found that the present confederation of the American states contains *vicious properties,* which are inherent, fundamental, and tending to produce a general corruption, the *necessity of a change* must then be manifest. This discovery will lead to another enquiry; and that is—Do such properties pervade the whole system and contaminate all the parts of it? If so—then a *thorough change* will appear to be expedient, and it may be necessary to new model the system. 5.14.42

5.14.43 If, on the other hand, *evils* are found existing, which proceed, not so much from any internal corrupt *qualities*, as from the *feeble texture* of any parts of the system, or a *laxity* in the exercise of it's powers, it should seem adviseable to make alterations so far as to add a due degree of strength to the *weak parts*, and thereby insure *efficacy* in the government.

Should it appear, after a proper enquiry into the nature of the evils, that they are *radical*, and strike at the *vital principles* of the constitution—then to apply a *correspondent remedy*, an institution, which would produce a *general reform*, might with great propriety be deemed requisite.

If the defects are of a trivial nature, and subsist merely in some particular department or branch of the system—then amendments in the *defective branch*, tending to give energy where it had hitherto been wanting, would be amply sufficient for removing the *evils* and forming a competent remedy.

5.14.44 In order to discover how far the present system is vicious, or inadequate to the purposes of *this* great confederated society, for which it was established, a retrospect of the *original design* of the confederacy *itself* may afford no small degree of assistance.—Let it be recollected, then, that the *primary* object was to *form a perfect union*. This is manifested by the very "stile of the confederacy."[28]—That it was intended to promote *justice* equally between all the states cannot be doubted; because it is an institution, calculated to unite a number of *independent republics* under a *firm league* of amity,[29] and to provide that contributions of every kind, which had been, or might be, necessary towards supporting their *general* government, should be furnished in due proportions[30]—whilst it was stipulated that a *mutual intercourse* and *reciprocal privileges* and *immunities* should subsist between the citzens of *all* the several states.[31] Again, to *ensure domestic tranquility* must have been another important object with the framers of this confederation: for union, harmony and justice cannot fail to promote tranquility; and whenever a contract is formed for the purpose of procuring the *three first*, it follows, as a regular consequence, that the *other* should partake of the intention.—This great association is expressly declared to be entered into between the states "for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon, them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever."[32]

5.14.45 The objects herein recited do certainly form the chief design of the present confederation; and the same are declared to be the great *ends* of the *proposed* plan of government. So far then do they agree. A subject of much contention, however, and with which the minds of different citizens are variously agitated, has arose.

5.14.46 It has been said that some of *these advantages*, and of high import too, cannot be obtained under the present system. It is the opinion of some citizens that the constitution proposed to us will secure all *these objects* and

form a complete remedy for every *evil* now subsisting; whilst it is asserted by others that amendments might be introduced in the former, which would be competent to every *good* purpose, and promote *some* of very great consequence, that might be endangered by an adoption of the latter. Thus it is inferred that *this* system extends too far—and, like many human institutions, flits by a rapid progress from *one* extreme to *another*.

Those, who cannot approve of this plan, have very strong objections to it, 5.14.47
because they apprehend that no *security for their liberties* will remain after it's adoption: and although some of the *ends* proposed might be obtained thereby; yet they think the sacrifice will be too great for the benefit to be received. To enjoy a competent degree of *liberty* they consider as the greatest of human blessings—for the loss of which no acquisitions whatsoever can compensate. They esteem this (and deservedly too) as the *soul* of *all* political happiness.

It seems to be agreed on all sides that in the present system of union the 5.14.48
Congress are not invested with sufficient powers for *regulating commerce*, and procuring the *requisite contributions* for all expences, that may be incurred for the *common defence* or *general welfare*. Hence arise the *principal* defects;—and it is presumed that the *evils* resulting from *these weak* branches in the fœderal government might be adequately remedied by making due amendments merely *therein*.

It is thought by some that the powers of making and enforcing the obser- 5.14.49
vance of treaties are not ample enough at present. If so—cannot these be enlarged so as to answer every desirable purpose of *that branch* in the fœderal institution? Thus, while many citizens cannot think that the confederation is *fundamentally vicious*, but that all the *evils* now complained of do rather proceed from a weakness in some of its parts, they apprehend no necessity for an innovation further than strengthening *those parts*. If such measures were effectually established, they conceive that all the great ends of the *general* government might be promoted.—No contention, therefore, subsists about supporting a *union*, but only concerning the *mode;* and as well those, who disapprove of the proposed plan, as those, who approve of it, consider the existence of a *union* as essential to their happiness.[33]

P.P.

May 31, 1788.

1. See Republican Federalist 4.13.15 n. 11.
2. The original reads, "them."
3. See Federal Farmer IV, 2.8.50 n. 40.
4. The source of this quotation has not been found.
5. See Pennsylvania House Minority 3.2.7.
6. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 143–44. See references in Federal Farmer IV, 2.8.50 n. 38; cf. [New Hampshire], Farmer 4.17.14 n. 9. On the general question of the need for a bill of rights see Mason 2.2.1. n. 1.
7. This argument should be contrasted with that of Publius in *The Federalist* no. 10

and with Publius' discussion of the causes of dissention among the states in nos. 6–8; see also Brutus I, 2.9.16.

8. *Commentaries* I, 318.

9. See Brutus VIII, 2.9.97 n. 67.

10. See Democratic Federalist 3.5.6 n. 6.

11. On trial by jury see references in Plebeian 6.11.15 n. 13.

12. See references in Federal Republican 3.6.5 n. 4; Centinel I, 2.7.5 n. 2.

13. See Agrippa VI, 4.6.23 n. 14.

14. On Anti-Federalist opposition to consolidation see Plebeian 6.11.15 n. 9.

15. The Impartial Examiner here reveals both the keen Anti-Federal insight into the problem of perpetuating the free republic and the rather narrow Anti-Federal solution to this problem. See Columbian Patriot 4.28.12–13; Warren 6.14.157. On the Federalist side compare *The Federalist* no. 49 with the views of Fabius (Ford, *Pamphlets* 183, 188, 213–15) and James Wilson's Fourth of July Oration, *Boston Gazette and the Country Journal* 28 July 1788. Cf. Abraham Lincoln, "Address before the Young Men's Lyceum of Springfield Illinois," 27 January 1838, *Collected Works* I, 108–15; and Harry V. Jaffa's interpretation of Lincoln's argument in his *Crisis of the House Divided* 183–232.

16. The original text has a semicolon at this point.

17. The only copy of this day's Virginia *Independent Chronicle* that I have found is obscure at this place.

18. See note 17.

19. See note 17.

20. On the confusion of names see Martin 2.4.43 n. 12.

21. See Federal Farmer XVI, 2.8.196 n. 118.

22. For other Anti-Federal discussions of representation see Federal Farmer II, 2.8.15 n. 11.

23. Semicolon in the original.

24. Semicolon in the original.

25. For comparisons of the British monarch and the United States President see Philadelphiensis XII, 3.9.96 n. 37.

26. Cf. [Maryland] Farmer II, 5.1.30 ff. and n. 24.

27. This is exactly what Publius does argue in *The Federalist* no. 15.

28. Articles of Confederation, Art. I: "The Stile of this Confederacy shall be 'The United States of America.' "

29. Ibid. Art. III.

30. Ibid. Art. VIII.

31. Ibid. Art. IV.

32. Ibid. Art. III.

33. It is not unlikely that this was written with a view to the argument of the first thirty-eight papers of *The Federalist,* all of which had been published and were available in Virginia by the time Impartial Examiner was writing. See *The Federalist* p. xiv. Cf. references in Henry 5.16.6 n. 18.

Reply to Cassius
By
Brutus

VIRGINIA INDEPENDENT CHRONICLE
14 May. 1788

In this short piece, Brutus (unrelated to the famous New York Brutus, 2.9) defends Richard Henry Lee against attacks by Cassius.[1] He deals primarily with the separation of powers (quoting Montesquieu), objecting especially to the combination of the Executive and the Senate in the treaty power and the inadequate provision for Executive impeachment. He stresses the need for greater restrictions on the rulers, (quoting Cato's Letters) and ends with miscellaneous criticisms of the Constitution.

1. See Lee 5.6 intro.

Mr. Davis.

Sir,

In your Chronicle, of April the 2d, you have furnished the public with a piece under the signature of Cassius, which states that "opinions have been *insidiously* disseminated, respecting the *fœderal constitution,* which are entirely devoid of truth," etc.[1] Whether this assertion is true or not remains with Cassius to prove, and to shew the impropriety of—The term *insidiously* may indeed be applied, as Cassius has applied it, abusively, to treat the most decent consideration of a subject, which[,] deeply interesting every freeman of the state[,] requires to be freely and fully discussed—or why was it placed before the public for the consideration of the people? But Cassius will do well to shew by what authority he calls a mere project or proposed plan of government "the Fœderal Constitution"—Were any citizen *insidiously* to disseminate falsehoods against a government established, there would be occasion for censure, but surely no man of sense or modesty, will arrogate to himself and his associates an exclusive right to give opinions upon a submitted question which essentially concerns the dearest rights of humanity. It is certainly to be lamented, that a subject so momentous as government, cannot be temperately and decently agreed upon, without producing 5.15.1

the most illiberal abuse and indecent violation of all good sense and good manners! Mr. Lee had certainly as good a right to give his sentiments to the proposed plan of government, to his friend, as Cassius had to trouble the public with his curious dissertation on parts of Mr. Lee's letter—the first objection to which letter Cassius thinks to be what follows—"It has hitherto been supposed a fundamental maxim that in governments rightly balanced, the different branches of legislation should be unconnected, and the legislative and executive powers separated"[2]—The candid reader may observe here that as an American is giving his opinions to an American concerning American government, the principles which reign in the American, and not in the British form of government, should have occupied his mind. In support of Mr. Lee's opinion, let us, passing over similar declarations in other states, see what is asserted by two of the most considerable states in the union. The Massachusetts bill of rights contains these remarkable words—"In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; the executive shall never exercise the legislative or judicial powers, or either of them; to the end it may be a government of laws and not of men."[3] This sensible republic considers the union of either of these powers as producing a government of *men* and not of *laws*. The bill of rights or constitution of our country declares, "The legislative, executive, and judiciary departments, shall be separate and distinct, so that neither exercise the powers of more than one of them at the same time."[4] The judgment of the learned Montesquieu will be found analogous to these declarations of Virginia and Massachusetts. This able writer says, "whenever the legislative and executive powers are united in the same person or in the same body of magistracy, there can be then no liberty; because apprehensions may arise that the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner. Again, there is no liberty if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative the life and liberty of the subject would be exposed to arbitrary controul, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor. Miserable indeed would be the case, "were the same man or the same body of men, whether of the nobles or the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of judging the crimes and differences of individuals"[5]—I may now be allowed to call upon Cassius in his own *civil* language—"*Cassius what say you? are these quotations just or not? I dare you to speak out. I should not, Sir, have produced them, did I not conceive it necessary to convince the world, that you are either totally ignorant of the subject on which you write, or that you have ungenerously attempted to deceive the people against your better information.*" It is reasonably to be

expected that the good people of America will rather approve of the American ideas of Mr. Lee, than the ill understood British ideas of Cassius. I will not dispute with you Cassius, or with your authority, whether "the negative given to the King (of Great-Britain I suppose you mean) on the proceedings of both houses of parliament, was conceived absolutely necessary to preserve the balance of power, although the King at the same time exercises the whole executive power." But I think Cassius will find in Lord Clarendon's history, that both houses of parliament joined in declaring to the people, "*that the King of England was obliged by his coronation oath to pass such laws as the people should choose by the two houses of parliament, and that since laws have passed by way of bills they did not find that ever the Kings did deny them, otherwise than is expressed in that usual answer* "LeRoy s'avisera," *which signifies rather a suspension than a refusal of the royal assent.*"[6] It will be very difficult I believe, to find three instances in the course of one hundred years back of any such prerogative being exercised by the Kings of England. However let it be granted, that the British Kings have a negative on the bills proposed by the two houses, and that they have also the executive power, does it follow that Mr. Lee did not *reasonably* object to the proposed plan of government which joins the president with the senate in the general discharge of executive powers, when they are both of them branches of the legislature, and in some instances the whole of the legislature, and when at the same time the senate are the sole judges of impeachments, thus rendering responsibility difficult, if not impracticable? Here your favorite constitution of England foresakes you—in that system the King is aided in the exercise of his executive functions by a privy council (not by the house of Lords) the members of which are put in the way of responsibility by being obliged to sign the advice they give in a council book. Doctor Blackstone says that the abuse of the kingly power in making treaties to the detriment of the nation is checked "by the means of parliamentary impeachment for the punishment of such ministers as from criminal motives advise or conclude any treaty, which shall afterwards by judged to derogate from the honor and interest of the nation."[7]—Now let me again apply in the civil words of Cassius—"*stand forth, thou deliberate deceiver of the public and answer*"—if a treaty were made by the president and senate that should be found prejudicial to the interest and honor of the United States, how is punishment to be applied? By impeaching the senate before the senate, who are to judge of their own crimes in this respect, and inflict punishment in themselves? The public will then judge, Cassius, of these your insolent questions proposed to Mr. Lee—"*Do you not sincerely believe that the concurrence of the senate with the president in the execution of this power is a happy innovation (innovation on what Cassius?) in the fœderal constitution? Will it not afford a strong additional security to the people for its faithful performance? Do you not conceive it to be one of the loveliest features of the new constitution?*" I will help you to answer these

handsome questions yourself by a citation from Cato's letters, written by very able defenders of public liberty in the early parts of the present century—"Considering what sort of a creature man is, it is scarce possible to put him under too many restraints, when he is possessed of great power: He may possibly use it well; but they act most prudently, who, supposing that he would use it ill, enclose him within certain bounds, and make it terrible in him to exceed them. Men that are above all fear, soon grow above all shame. *Rupto pudore et metu suo tantum ingenio utebatur*, says Tacitus of Tiberius. Even Nero had lived a great while inoffensively and reigned virtuously. But finding at last that he might do what he would, he let loose his appetite for blood, and committed such mighty, such monstrous, such unnatural slaughters and outrages, as none but a heart bent on the study of cruelty could have devised"[8]—I would advise you Cassius to read Cato's letters, they may perhaps inform your mind, which appears at present to be extremely uninformed, and render you a better citizen of a free government than the principles you now profess seem to promise. Are you sure, Cassius, absolutely certain, that a King of England can make *a valid treaty* that shall contravene the previously established law of the land, whether common or statute, because as you say *the law of nations is part of the law of the land*.—But so is the law of parliament part of the law of the land, and yet either house of parliament that can make this kind of law, cannot by their single determinations repeal or alter an act of parliament, or the common law. Do you think, Cassius, that the King by treaty can alienate the British dominions? Every man acquainted with the subject will, I believe answer NO. That in such case an act of parliament must give validity to the treaty. Yet by the new plan of government, a treaty made by the president and senate shall be "the supreme law of the land, and the judges in every state shall be bound thereby."—That seems to be saying in other words that a part shall be greater than the whole—Or that though three branches must make the law, two may destroy it—I apprehend, Cassius, these strictures will prove, even to yourself, that you are but little fitted to give opinions upon government, to the public; where quackery is more surely to be discovered than in the private prescriptions of other professions, and that you have but lightly considered the proposed constitution for the states which you so rudely (I wish I were not compelled to say weakly) support—If you really understand any thing of this latter subject, so adventurous a champion as yourself may give the public satisfactory reasons why a power is given to the new Congress over the times, places and manner of holding elections for representatives; because such a power is capable of the grossest abuse by ordering all the elections of this country to be held at the most inconvenient places, where few can or will attend to vote? Why so ill an opinion of the justice and judges, of our country should be entertained as that citizens of other states and foreigners should have liberty to carry our citizens into the fœderal courts for the most trifling causes? Perhaps you know that England

and Scotland are united for every good purpose, and yet that an Englishman cannot originally sue a Scotchman in any court erected by an act of parliament of Great-Britain, although in great cases an appeal may go to the house of Lords? I believe you will find that this degrading idea of our courts is truly original, and that nothing similar to it, is to be found in the history of nations. An Englishman will not allow you to carry him out of his own country for debt, but he may carry a citizen of Virginia to Philadelphia, or wherever the new Congress may appoint, upon every frivolous pretext, and there try him without a jury—because the supreme fœderal court in appeal shall have jurisdiction both "as to law and fact." Tell us if you please why no declaration is made in form of a bill of rights to secure the freedom of the press, the trial by jury, common law securities in criminal accusations, and to save from violation the rights of conscience? So *able* an advocate as you for the new constitution may also assign a good reason why Delaware, that pays but a sixty-seventh part of the general expences, should vote on a money bill in the senate equally with Virginia that pays a sixth part of the same expences? Perhaps you may satisfy us that another convention cannot be obtained to remedy the defects that are so apparent in this proposed system. Whether Mr. Lee does or does not, think it worth his while to correct your errors, the government under which we are to live, is too serious a matter to suffer your deceptions and abuse of good characters to pass unnoticed.*—You should remember, Cassius, that there is a great difference between a railer and a reasoner; that good sense and good manners are essential to good writing.

Brutus.

Princess-Anne,
April 18, 1788.

**Will you have the goodness, Cassius, to reconcile this paradox of yours to the public,* that the House of Commons has been found by experience a sufficient counterpoise to the kingly powers in England, *although the* same House of Commons is supposed to be always under the influence of the crown by bribery of different kinds. *It will not do to suggest, as you have done, that it will take less money to bribe one hundred than five hundred, because the same argument should persuade America to put their government into the hands of one man, because less money may do to bribe one, than one hundred men!*

1. Cassius' criticism was directed against Lee's letter to Governor Randolph of 16 October 1787, which is printed above, 5.6. The Cassius essays appeared in the *Virginia Independent Chronicle* of 2, 9, and 23 April 1788.

2. The quotation is from Lee's letter 5.6.1. Cassius drew from Blackstone the same principle that Publius, a month before, had drawn from Montesquieu, "that liberty is *only* endangered when *the whole* of the power of both making and enforcing laws is vested in one man, or in the same body of men." *Virginia Independent Chronicle* 2 April 1788; cf. *The Federalist* no. 47, 325–26. On the separation of powers see Centinel II, 2.7.50 n. 29.

3. Massachusetts Constitution, 1780, part one, section XXX, Thorpe, *Federal and State Constitutions* III, 1893, See *The Federalist* no. 47, 327–28.

4. Virginia Bill of Rights, 1776, section 5, Thorpe *Federal and State Constitutions* VII, 3813. Note the use here of "our country." See *The Federalist* no. 47, 330. Cf. vol. 1 above, chap. 4, n. 4.

5. Montesquieu, *The Spirit of Laws* XI, ch. 6.

6. Edward, Earl of Clarendon, *The History of the Rebellion and Civil War in England* V, vol. 1, part 2, pp. 734, 743.

7. *Commentaries* I, 257.

8. [Thomas Gordon and John Trenchard], *Cato's Letters* (1733), no. 33 (17 June 1721).

Speeches of Patrick Henry in the Virginia State Ratifying Convention

June 1788

Although he wrote no Anti-Federalist pamphlet or essay, Patrick Henry argued mightily against the Constitution in the Virginia Ratifying convention. The Virginia convention contained the most distinguished Anti-Federalist group in the country; yet Henry carried the opposition argument for the first week almost alone, in a series of six speeches covering the whole Anti-Federal ground, an exhibition of stamina, argument, and rhetoric unmatched on either side during the ratification debate. Henry's forensic skill;[1] his exploitation of his popularity with the independent yeomanry, with whom he shared a common origin; the maintenance of a simple, common manner and, some said, even an affected vulgarized pronunciation, contributed to his reputation as a demagogue, a reputation reenforced by his subsequent reentry into politics in 1799 as a Federalist.[2] It is doubtless true, as Nevins said, that he was not a "great constructive statesman,"[3] but that he was a man of substance as well as talent is demonstrated by his performance at the Virginia ratification convention.

Unfortunately Henry left no written record elucidating his political opinions, and his biographies do not so much discuss underlying guiding principles as enumerate specific positions.[4] George Ticknor Curtis, whose judgment is more favorable than that of many historians, described with approval Henry's contemporaries' opinion that, although wise, he lacked comprehensiveness, "and that the mere intensity with which he regarded the ends of public liberty was likely to mislead his judgment as to the means by which it was to be secured and upheld."[5] He was a Union man; indeed, it was he who at the First Continental Congress—his only public service outside Virginia—stated the fundamental principle of the nationalist position, words echoed in 1787 by James Wilson at Philadelphia. "The Distinctions between Virginians, Pennsylvanians, New Yorkers and New Englanders are no more. I am not a Virginian, but an American."[6] It was, however, as a Virginian that he performed most of his public service, as governor of Virginia and member of its House of Delegates, and it was through the eyes of a Virginian that he viewed American concerns. He declined an invitation to

serve as one of Virginia's delegates to the Federal Convention in 1787, to a considerable extent at least because of his opposition to the Jay negotiations with Spain, in which he saw a willingness on the part of the Northern States to barter the United States claim to the Mississippi for commercial advantage.[7]

Henry's brilliant, turbulent, repetitious argument before the Virginia convention is unusually difficult to edit. Printed here in their entirety are his first two speeches (4 and 5 June) and two later, shorter speeches on a bill of rights (16 and 17 June). Other important speeches or statements are given in briefer form (9 and 12 June) or as interpolations, enclosed in braces { }, in the main statements (7 and 14 June). Bracketed (or sometimes parenthetical) interpolations summarizing omitted passages are from the original. It should be noted that Henry's discussions of the Mississippi negotiations and the peculiar interests of the South—for example, in regard to commercial regulations—are largely omitted here. While this great "contest for empire," as Anti-Federalist Grayson called it,[8] was an important concern of the Southern Anti-Federalists, it was subordinate to more general questions of principle and was only discussed at length, after the ground of principle had been covered.

The thread on which Henry's arguments against the Constitution are strung is the spirit of true federalism and Virginia patriotism. The Constitution, speaking the language of "We the People," destroys the confederation and, with it, Virginia (5.16.1–2, 6, 8, 9, 22–23). Although the connection is not always explicitly made, Henry's advocacy of federalism is tied to several further arguments. He contends that the Constitution represents a hankering after glory and riches rather than liberty, the true object of government and the object associated with the individual states and their federal union under the Articles of Confederation (5.16.2, 6). He denies that he favors secession or separate confederacies (5.16.11), insisting that only liberty is dearer to him than Union (5.16.6). Although Henry does not make any extensive use of the small republic argument, he indicates his acceptance of it (5.16.11). He contends that under the new Constitution the representation is grossly inadequate (5.16.2, 8, 19, 29); that, unlike the British system, there are no real checks or true responsibility (5.16.2, 7–8, 17), and that the only reliance is on the virtue of the rulers (5.16.7, 11, 17). The Constitution is not sufficiently hard-headed. "Tell me not of checks on paper; but tell me of checks founded on self-love" (5.16.14, 17).

Henry defends the system of requisitions (5.16.15–19) and sees the power to tax under the Constitution as especially dangerous, as the end of the states in any significant form, and as the source of excessive burdens on the people. Under the Constitution the people give up everything and lose all their capacity to check the government and preserve their liberty (5.16.2, 6, 7).

The advocates for the Constitution pretend external dangers and internal

turbulence where none exist (5.16.1, 2–4). So far as there are dangers, Henry relies on the American spirit to preserve us (5.16.2, 12). It is not new constitutions but industry and economy that are needed to solve America's economic problems (5.16.10). Republican simplicity and the love of freedom are the rocks on which American liberty rests, and American laws must be conducive to and protective of this spirit (5.16.12–13). The absence of a bill of rights, will all its implications, indicates how far the Constitution is from the true American spirit of liberty (5.16.24–25, 34–41).

The text is taken from *Debates and Other Proceedings of the Convention of Virginia, Convened at Richmond, on Monday the 2d day of June, 1788, for the purpose of deliberating on the Constitution recommended by the Grand Federal Convention* (Petersburg 1788–89), 3 vols. Elliot's report of the Virginia debate is taken from this edition; and although Elliot makes frequent minor changes and mistakes (e.g., in his dates), it has been thought more convenient for the reader to give footnote references to Elliot rather than to the inaccessible 1788 edition.

1. "He appeared to me to speak," Jefferson wrote on first hearing Henry, "as Homer wrote." *Autobiography*, in *The Writings of Thomas Jefferson*, ed. P. L. Ford (New York 1892) I, 6.

2. Henry championed unpopular causes, such as the rights of Tories and assimilation of Indians, as well as popular ones, and he presented a solid case for his 1799 Federalism. See Jefferson to Madison, 7 May 1783, *The Writings of Thomas Jefferson* (ed. Ford) III, 318; Nevins, *The American States before and after the Revolution* 324; Moses Coit Tyler, *Patrick Henry* (Boston 1887) 417–19.

3. Nevins, *The American States before and after the Revolution* 135.

4. Among the more prominent biographers of Henry are William Wirt Henry, *Patrick Henry: Life, Correspondence, and Speeches*, 3 vols. (New York 1891); Robert D. Meade, *Patrick Henry: Patriot in the Making* (Philadelphia 1957), volume one of a projected two-volume biography; Tyler, *Patrick Henry* (see note 2 above); William Wirt, *Sketches of the Life and Character of Patrick Henry* (Philadelphia 1818).

5. Curtis, *Constitutional History* I, 663.

6. *Diary and Autobiography of John Adams*, ed. L. H. Butterfield (1961) II, 125 (6 September 1774). See Farrand I, 166 (8 June).

7. See Tyler, *Patrick Henry* 310–11.

8. Elliot III, 365.

4 June 1788

Mr. Chairman.—The public mind, as well as my own, is extremely uneasy 5.16.1
at the proposed change of Government. Give me leave to form one of that number of those who wish to be thoroughly acquainted with the reasons of this perilious and uneasy situation—and why we are brought hither to decide on this great national question. I consider myself as the servant of the people of this Commonwealth, as a centinel over their rights, liberty, and

happiness. I represent their feelings when I say, that they are exceedingly uneasy, being brought from the state of full security, which they enjoyed, to the present delusive appearance of things. A year ago the minds of our citizens were at perfect repose. Before the meeting of the late Federal Convention at Philadelphia, a general peace, and an universal tranquility prevailed in this country;—but since that period they are exceedingly uneasy and disquieted. When I wished for an appointment to this Convention, my mind was extremely agitated for the situation of public affairs. I conceive the republic to be in extreme danger. If our situation be thus uneasy, whence has arisen this fearful jeopardy? It arises from this fatal system—it arises from the proposal to change our government:—A proposal that goes to the utter annihilation of the most solemn engagements of the States. A proposal of establishing 9 States into a confederacy, to the eventual exclusion of 4 States. It goes to the annihilation of those solemn treaties we have formed with foreign nations. The present circumstances of France—the good offices rendered us by that kingdom, require our most faithful and most punctual adherence to our treaty with her. We are in alliance with the Spaniards, the Dutch, the Prussians: Those treaties bound us as thirteen States, confederated together—Yet, here is a proposal to sever this confederacy. Is it possible that we shall abandon all our treaties and national engagements?—And for what? I expected to have heard the reasons of an event so unexpected to my mind, and many others. Was our civil polity, or public justice, endangered or saped? Was the real existence of the country threatened—or was this preceded by a mournful progression of events? This proposal of altering our Federal Government is of a most alarming nature: Make the best of this new Government—say it is composed by any thing but inspiration—you ought to be extremely cautious, watchful, jealous of your liberty; for instead of securing your rights you may lose them forever. If a wrong step be now made, the Republic may be lost forever. If this new Government will not come up to the expectation of the people, and they should be disappointed—their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg Gentlemen to consider, that a wrong step made now will plunge us in misery, and our Republic will be lost. It will be necessary for this Convention to have a faithful historical detail of the facts, that preceded the session of the Federal Convention, and the reasons that actuated its members in proposing an entire alteration of Government—and demonstrate the dangers that awaited us: If they were of such awful magnitude, as to warrant a proposal so extremely perilous as this, I must assert, that this Convention has an absolute right to a thorough discovery of every circumstance relative to this great event. And here I would make this enquiry of those worthy characters who composed a part of the late Federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated Government, instead of a confederation. That this is a consolidated Government is demonstrably clear, and the danger of

such a Government, is, to my mind, very striking. I have the highest veneration of those Gentlemen,—but, Sir, give me leave to demand, what right had they to say, *We, the People*. My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask who authorised them to speak the language of, *We, the People,* instead of *We, the States*? States are the characteristics, and the soul of a confederation.[1] If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States. I have the highest respect for those Gentlemen who formed the Convention, and were some of them not here, I would express some testimonial of my esteem for them. America had on a former occasion put the utmost confidence in them: A confidence which was well placed: And I am sure, Sir, I would give up any thing to them; I would chearfully confide in them as my Representatives. But, Sir, on this great occasion, I would demand the cause of their conduct.—Even from that illustrious man, who saved us by his valor, I would have a reason for his conduct—that liberty which he has given us by his valor, tells me to ask this reason,—and sure I am, were he here, he would give us that reason: But there are other Gentlemen here, who can give us this information. The people gave them no power to use their name. That they exceeded their power is perfectly clear. It is not mere curiosity that actuates me—I wish to hear the real actual existing danger, which should lead us to take those steps so dangerous in my conception. Disorders have arisen in other parts of America, but here, Sir, no dangers, no insurrection or tumult, has happened—every thing has been calm and tranquil. But notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are running we know not whither. Difference in opinion has gone to a degree of inflammatory resentment in different parts of the country—which has been occasioned by this perilous innovation. The Federal Convention ought to have amended the old system—for this purpose they were solely delegated: The object of their mission extended to no other consideration. You must therefore forgive the solicitation of one unworthy member, to know what danger could have arisen under the present confederation, and what are the causes of this proposal to change our Government.

5 June 1788

Mr. Chairman—I am much obliged to the very worthy Gentleman [Henry Lee] for his encomium. I wish I was possessed of talents, or possessed of any thing, that might enable me to elucidate this great subject. I am not free from suspicion: I am apt to entertain doubts: I rose yesterday to ask a question, which arose in my own mind. When I asked the question, I 5.16.2

thought the meaning of my interrogation was obvious: The fate of this question and America may depend on this: Have they said, we the States? Have they made a proposal of a compact between States? If they had, this would be a confederation: It is otherwise most clearly a consolidated government. The question turns, Sir, on that poor little thing—the expression, *We, the people,* instead of the States of America. I need not take much pains to show, that the principles of this system, are extremely pernicious, impolitic, and dangerous. Is this a Monarchy, like England—a compact between Prince and people; with checks on the former, to secure the liberty of the latter? Is this a Confederacy, like Holland—an association of a number of independent States, each of which retain its individual sovereignty? It is not a democracy, wherein the people retain all their rights securely. Had these principles been adhered to, we should not have been brought to this alarming transition, from a Confederacy to a consolidated Government.[2] We have no detail of those great considerations which, in my opinion, ought to have abounded before we should recur to a government of this kind. Here is a revolution as radical as that which separated us from Great Britain. It is as radical, if in this transition our rights and privileges are endangered, and the sovereignty of the States be relinquished: And cannot we plainly see, that this is actually the case? The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost, by this change so loudly talked of by some, and inconsiderately by others. Is this same relinquishment of rights worthy of freemen? Is it worthy of that manly fortitude that ought to characterize republicans: It is said eight States have adopted this plan. I declare that if twelve States and an half had adopted it, I would with manly firmness, and in spite of an erring world, reject it. You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your Government.[3] Having premised these things, I shall, with the aid of my judgment and information, which I confess are not extensive, go into the discussion of this system more minutely. Is it necessary for your liberty, that you should abandon those great rights by the adoption of this system? Is the relinquishment of the trial by jury, and the liberty of the press, necessary for your liberty? Will the abandonment of your most sacred rights tend to the security of your liberty? Liberty the greatest of all earthly blessings—give us that precious jewel, and you may take every thing else: But I am fearful I have lived long enough to become an old fashioned fellow: Perhaps an invincible attachment to the dearest rights of man, may, in these refined enlightened days, be deemed *old fashioned:* If so, I am contended to be so: I say, the time has been, when every pore of my heart beat for American liberty, and which, I believe, had a counterpart in the breast of every true American: But suspicions have gone forth—suspicions of my integrity—publicly reported that my pro-

fessions are not real—23 years ago was I supposed a traitor to my country; I was then said to be a bane of sedition, because I supported the rights of my country: I may be thought suspicious when I say our privileges and rights are in danger: But, Sir, a number of the people of this country are weak enough to think these things are too true: I am happy to find that the Honorable Gentleman on the other side, declares they are groundless: But, Sir, suspicion is a virtue, as long as its object is the preservation of the public good, and as long as it stays within proper bounds: Should it fall on me, I am contented: Conscious rectitude is a powerful consolation: I trust, there are many who think my professions for the public good to be real. Let your suspicion look to both sides: There are many on the other side, who, possibly may have been persuaded of the necessity of these measures, which I conceive to be dangerous to your liberty. Guard with jealous attention the public liberty. Suspect every one who approaches that jewel. Unfortunately, nothing will preserve it, but downright force: Whenever you give up that force, you are inevitably ruined. I am answered by Gentlemen, that though I might speak of terrors, yet the fact was, that we were surrounded by none of the dangers I apprehended. I conceive this new Government to be one of those dangers: It has produced those horrors, which distress many of our best citizens. We are come hither to preserve the poor Commonwealth of Virginia, if it can be possibly done: Something must be done to preserve your liberty and mine: The Confederation; this same despised Government, merits, in my opinion, the highest encomium: It carried us through a long and dangerous war: It rendered us victorious in that bloody conflict with a powerful nation: It has secured us a territory greater than any European Monarch possesses: And shall a Government which has been thus strong and vigorous, be accused of imbecility and abandoned for want of energy?[4] Consider what you are about to do before you part with this Government. Take longer time in reckoning things: Revolutions like this have happened in almost every country in Europe: Similar examples are to be found in ancient Greece and ancient Rome: Instances of the people loosing their liberty by their own carelessness and the ambition of a few. We are cautioned by the Honorable Gentleman who presides, against faction and turbulence: I acknowledge that licentiousness is dangerous, and that it ought to be provided against: I acknowledge also the new form of Government may effectually prevent it: Yet, there is another thing it will as effectually do: it will oppress and ruin the people. There are sufficient guards placed against sedition and licentiousness: For when power is given to this Government to suppress these, or, for any other purpose, the language it assumes is clear, express, and unequivocal, but when this Constitution speaks of privileges, there is an ambiguity, Sir, a fatal ambiguity;—an ambiguity which is very astonishing: In the clause under consideration, there is the strangest that I can conceive. I mean, when it says, that there shall not be more Representatives, than one for every 30,000. Now, Sir, how easy is

it to evade this privilege? "The number shall not exceed one for every 30,000." This may be satisfied by one Representative from each State. Let our numbers be ever so great, this immence continent, may, by this artful expression, be reduced to have but 13 Representatives: I confess this construction is not natural; but the ambiguity of the expression lays a good ground for a quarrel. Why was it not clearly and unequivocally expressed, that they *should* be entitled, to have one for every 30,000? This would have obviated all disputes; and was this difficult to be done? What is the inference? When population increases, and a State shall send Representatives in this proportion, Congress *may* remand them, because the right of having one for every 30,000 is not clearly expressed: This possibility of reducing the number to one for each State, approximates to probability by that other expression, "but each State shall at least have one Representative." Now is it not clear that from the first expression, the number might be reduced so much, that some States should have no Representative at all, were it not for the insertion of this last expression? And as this is the only restriction upon them, we may fairly conclude that they *may* restrain the number to one from each State: Perhaps the same horrors may hang over my mind again. I shall be told I am continually afraid: But, Sir, I have strong cause of apprehension: In some parts of the plan before you, the great rights of freemen are endangered, in other parts absolutely taken away. How does your trial by jury stand? In civil cases gone—not sufficiently secured in criminal—this best privilege is gone: But we are told that we need not fear, because those in power being our Representatives, will not abuse the powers we put in their hands: I am not well versed in history, but I will submit to your recollection, whether liberty has been destroyed most often by the licentiousness of the people, or by the tyranny of rulers? I amagine, Sir, you will find the balance on the side of tyranny:[5] Happy will you be if you miss the fate of those nations, who, omitting to resist their oppressors, or negligently suffering their liberty to be wrested from them, have groaned under intolerable despotism. Most of the human race are now in this deplorable condition: And those nations who have gone in search of grandeur, power and splendor, have also fallen a sacrifice, and been the victims of their own folly: While they acquired those visionary blessings, they lost their freedom. My great objection to this Government is, that it does not leave us the means of defending our rights; or, of waging war against tyrants: It is urged by some Gentlemen, that this new plan will bring us an acquisition of strength, an army, and the militia of the States: This is an idea extremely ridiculous: Gentlemen cannot be in earnest. This acquisition will trample on your fallen liberty: Let my beloved Americans guard against that fatal lethargy that has pervaded the universe: Have we the means of resisting disciplined armies, when our only defence, the militia is put into the hands of Congress? The Honorable Gentleman said, that great danger would ensue if the Convention rose without adopting this system: I ask, where is that danger? I see none:

Other Gentlemen have told us within these walls, that the Union is gone—or, that the Union will be gone: Is not this trifling with the judgment of their fellow-citizens? Till they tell us the ground of their fears, I will consider them as imaginary: I rose to make enquiry where those dangers were; they could make no answer: I believe I never shall have that answer: Is there a disposition in the people of this country to revolt against the dominion of laws? Has there been a single tumult in Virginia? Have not the people of Virginia, when labouring under the severest pressure of accumulated distresses, manifested the most cordial acquiescence in the execution of the laws? What could be more awful than their unamious acquiescence under general distresses? Is there any revolution in Virginia? Whither is the spirit of America gone? Whither is the genius of America fled? It was but yesterday, when our enemies marched in triumph through our country: Yet the people of this country could not be appalled by their pompous armaments: They stopped their career, and victoriously captured them: Where is the peril now compared to that? Some minds are agitated by foreign alarms: Happily for us, there is no real danger from Europe: that country is engaged in more arduous business; from that quarter there is no cause of fear: You may sleep in safety forever for them. Where is the danger? If, Sir, there was any, I would recur to the American spirit to defend us;—that spirit which has enabled us to surmount the greatest difficulties:[6] To that illustrious spirit I address my most fervent prayer, to prevent our adopting a system destructive to liberty. Let not Gentlemen be told, that it is not safe to reject this Government. Wherefore is it not safe? We are told there are dangers; but those dangers are ideal; they cannot be demonstrated: To encourage us to adopt it, they tell us, that there is a plain easy way of getting amendments: When I come to contemplate this part, I suppose that I am mad, or, that my countrymen are so: The way to amendment, is, in my conception, shut. Let us consider this plain easy way: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment which may be made prior to the year 1808, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate." Hence it appears that three-fourths of the States must ultimately agree to any amendments that may be necessary. Let us consider the consequences of this: However uncharitable it may appear, yet I must tell my opinion, that the most unworthy characters may get into power and prevent the introduction of amendments: Let us suppose (for the case is

supposeable, possible, and probable) that you happen to deal these powers to unworthy hands; will they relinquish powers already in their possession, or, agree to amendments? Two-thirds of the Congress, or, of the State Legislatures, are necessary even to propose amendments: If one-third of these be unworthy men, they may prevent the application for amendments; but what is destructive and mischievous is, that three-fourths of the State Legislatures, or of State Conventions, must concur in the amendments when proposed: In such numerous bodies, there must necessarily be some designing bad men: To suppose that so large a number as three-fourths of the States will concur, is to suppose that they will possess genius, intelligence, and integrity, approaching to miraculous. It would indeed be miraculous that they should concur in the same amendments, or, even in such as would bear some likeness to one another. For four of the smallest States, that do not collectively contain one-tenth part of the population of the United States, may obstruct the most salutary and necessary amendments: Nay, in these four States, six tenths of the people may reject these amendments; and suppose, that amendments shall be opposed to amendments (which is highly probable) is it possible, that three-fourths can ever agree to the same amendments? A bare majority in these four small States may hinder the adoption of amendments; so that we may fairly and justly conclude, that one-twentieth part of the American people, may prevent the removal of the most grievous inconveniences and oppression, by refusing to accede to amendments. A trifling minority may reject the most salutary amendments. Is this an easy mode of securing the public liberty? It is, Sir, a most fearful situation, when the most contemptible minority can prevent the alteration of the most oppressive Government; for it may in many respects prove to be such: Is this the spirit of republicanism? What, Sir, is the genius of democracy? Let me read that clause of the Bill of Rights of Virginia, which relates to this: 3d cl. "That Government is or ought to be instituted for the common benefit, protection, and security of the people, nation, or community: Of all the various modes and forms of Government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration, and *that whenever any Government shall be found inadequate, or contrary to these purposes, a majority of the community hath, an undubitable, unalienable and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.*"[7] This, Sir, is the language of democracy; that a majority of the community have a right to alter their Government when found to be oppressive: But how different is the genius of your new Constitution from this? How different from the sentiments of freemen, that a contemptible minority can prevent the good of the majority? If then Gentlemen standing on this ground, are come to that point, that they are willing to bind themselves and their posterity to be oppressed, I am amazed and inexpressibly astonished. If this be the opinion

of the majority, I must submit; but to me, Sir, it appears perilous and destructive: I cannot help thinking so: Perhaps it may be the result of my age; these may be feelings natural to a man of my years, when the American spirit has left him, and his mental powers, like the members of the body, are decayed. If, Sir, amendments are left to the twentieth or the tenth part of the people of America, your liberty is gone forever. We have heard that there is a great deal of bribery practiced in the House of Commons in England; and that many of the members raised themselves to preferments, by selling the rights of the people: But, Sir, the tenth part of that body cannot continue oppressions on the rest of the people. English liberty is in this case, on a firmer foundation than American liberty. It will be easily contrived to procure the opposition of one tenth of the people to any alteration, however judicious. The Honorable Gentleman who presides, told us, that to prevent abuses in our Government, we will assemble in Convention, recall our delegated powers, and punish our servants for abusing the trust reposed in them.[8] Oh, Sir, we should have fine times indeed, if to punish tyrants, it were only sufficient to assemble the people. Your arms wherewith you could defend yourselves, are gone; and have no longer a aristocratical; no longer democratical spirit. Did you ever read of any revolution in any nation, brought about by the punishment of those in power, inflicted by those who had no power at all? You read of a riot act in a country which is called one of the freest in the world, where a few neighbours cannot assemble without the risk of being shot by a hired soldiery, the engines of despotism. We may see such an act in America. A standing army we shall have also, to execute the execrable commands of tyranny: And how are you to punish them? Will you order them to be punished? Who shall obey these orders? Will your Mace-bearer be a match for a disciplined regiment? In what situation are we to be? The clause before you gives a power of direct taxation, unbounded and unlimitted: Exclusive power of Legislation in all cases whatsoever, for ten miles square; and over all places purchased for the erection of forts, magazines, arsenals, dock-yards, &c. What resistance could be made? The attempt would be madness. You will find all the strength of this country in the hands of your enemies: Those garrisons will naturally be the strongest places in the country. Your militia is given up to Congress also in another part of this plan: They will therefore act as they think proper: All power will be in their own possession: You cannot force them to receive their punishment: Of what service would militia be to you, when most probably you will not have a single musket in the State; for as arms are to be provided by Congress, they may or may not furnish them. Let me here call your attention to that part which gives the Congress power, "To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia, according to the discipline pre-

scribed by Congress." By this, Sir, you see that their controul over our last and best defence, is unlimitted. If they neglect or refuse to discipline or arm our militia, they will be useless: The States can do neither, this power being exclusively given to Congress: The power of appointing officers over men not disciplined or armed, is ridiculous: So that this pretended little remains of power left to the States, may, at the pleasure of Congress, be rendered nugatory. Our situation will be deplorable indeed: Nor can we ever expect to get this government amended, since I have already shewn, that a very small minority may prevent it; and that small minority interested in the continuance of the oppression: Will the oppressor let go the oppressed? Was there ever an instance? Can the annals of mankind exhibit one single example, where rulers overcharged with power, willingly let go the oppressed, though solicited and requested most earnestly? The application for amendments will therefore be fruitless. Sometimes the oppressed have got loose by one of those bloody struggles that desolate a country. A willing relinquishment of power is one of those things which human nature never was, nor ever will be capable of: The Honorable Gentleman's observations respecting the people's right of being the agents in the formation of this Government, are not accurate in my humble conception.[9] The distinction between a National Government and a Confederacy is not sufficiently discerned. Had the delegates who were sent to Philadelphia a power to propose a Consolidated Government instead of a Confederacy? Were they not deputed by States, and not by the people? The assent of the people in their collective capacity is not necessary to the formation of a Federal Government. The people have no right to enter into leagues, alliances, or confederations: They are not the proper agents for this purpose: States and sovereign powers are the only proper agents for this kind of Government: Shew me an instance where the people have exercised this business: Has it not always gone through the Legislatures? I refer you to the treaties with France, Holland, and other nations: How were they made? Were they not made by the States? Are the people therefore in their aggregate capacity, the proper persons to form a Confederacy? This, therefore, ought to depend on the consent of the Legislatures; the people having never sent delegates to make any proposition of changing the Government. Yet I must say, at the same time, that it was made on grounds the most pure, and perhaps I might have been brought to consent to it so far as to the change of Government; but there is one thing in it which I never would acquiesce in. I mean the changing it into a Consolidated Government; which is so abhorent to my mind. The Honorable Gentleman then went on to the figure we make with foreign nations; the contemptible one we make in France and Holland; which, according to the system of my notes, he attributes to the present feeble Government.[10] An opinion has gone forth, we find, that we are a contemptible people: The time has been when we were thought otherwise: Under this same despised Government, we commanded the respect of all

Europe: Wherefore are we now reckoned otherwise? The American spirit has fled from hence: It has gone to regions, where it has never been expected: It has gone to the people of France in search of a splendid Government—a strong energetic Government. Shall we imitate the example of those nations who have gone from a simple to a splendid Government. Are those nations more worthy of our imitation? What can make an adequate satisfaction to them for the loss they suffered in attaining such a Government for the loss of their liberty? If we admit this Consolidated Government it will be because we like a great splendid one. Some way or other we must be a great and mighty empire; we must have an army, and a navy, and a number of things: When the American spirit was in its youth, the language of America was different: Liberty, Sir, was then the primary object. We are descended from a people whose Government was founded on liberty: Our glorious forefathers of Great-Britain, made liberty the foundation of every thing. That country is become a great, mighty, and splendid nation; not because their Government is strong and energetic; but, Sir, because liberty is its direct end and foundation: We drew the spirit of liberty from our British ancestors; by that spirit we have triumphed over every difficulty: But now, Sir, the American spirit, assisted by the ropes and chains of consolidation, is about to convert this country to a powerful and mighty empire: If you make the citizens of this country agree to become the subjects of one great consolidated empire of America, your Government will not have sufficent energy to keep them together: Such a Government is incompatible with the genius of republicanism: There will be no checks, no real balances, in this Government: What can avail your specious imaginary balances, your rope-dancing, chain-rattling, ridiculous ideal checks and contrivances? But, Sir, we are not feared by foreigners: we do not make nations tremble: Would this, Sir, constitute happiness, or secure liberty?[11] I trust, Sir, our political hemisphere will ever direct their operations to the security of those objects. Consider our situation, Sir: Go to the poor man, ask him what he does; he will inform you, that he enjoys the fruits of his labour, under his own fig-tree, with his wife and children around him, in peace and security. Go to every other member of the society, you will find the same tranquil ease and content; you will find no alarms or disturbances: Why then tell us of dangers to terrify us into an adoption of this new Government? and yet who knows the dangers that this new system may produce; they are out of the sight of the common people: They cannot foresee latent consequences: I dread the operation of it on the middling and lower class of people: It is for them I fear the adoption of this system. I fear I tire the patience of the Committee, but I beg to be indulged with a few more observations: When I thus profess myself an advocate for the liberty of the people, I shall be told, I am a designing man, that I am to be a great man, that I am to be a demagogue; and many similar illiberal insinuations will be thrown out; but, Sir, conscious rectitude, out-weighs these things with me: I

see great jeopardy in this new Government. I see none from our present one: I hope some Gentleman or other will bring forth, in full array, those dangers, if there be any, that we may see and touch them.

5.16.3 {[7 June] I have thought, and still think, that a full investigation of the actual situation of America, ought to precede any decision on this great and important question. That Government is no more than a choice among evils, is acknowledged by the most intelligent among mankind, and has been a standing maxim for ages. If it be demonstrated that the adoption of the new plan is a little or a trifling evil, then, Sir, I acknowledge that adoption ought to follow: But, Sir, if this be a truth that its adoption may entail misery on the free people of this country, I then insist, that rejection ought to follow. Gentlemen strongly urge its adoption will be a mighty benefit to us: But, Sir, I am made of such incredulous materials that assertions and declarations, do not satisfy me. I must be convinced, Sir. I shall retain my infidelity on that subject, till I see our liberties secured in a manner perfectly satisfactory to my understanding. . . .

5.16.4 { . . . You are told [by Governor Randolph] there is no peace,[12] although you fondly flatter yourselves that all is peace—No peace—a general cry and alarm in the country—Commerce, riches, and wealth vanished—Citizens going to seek comforts in other parts of the world—Laws insulted—Many instances of tyrannical legislation. These things, Sir, are new to me. He has made the discovery—As to the administration of justice, I believe that failures in commerce, &c. cannot be attributed to it. My age enables me to recollect its progress under the old Government. I can justify it by saying, that it continues in the same manner in this State, as it did under former Government. As to other parts of the Continent, I refer that to other Gentlemen. As to the ability of those who administer it, I believe they would not suffer by a comparison with those who administered it under the royal authority. Where is the cause of complaint if the wealthy go away? Is this added to the other circumstances, of such enormity, and does it bring such danger over this Commonwealth as to warrant so important, and so awful a change in so precipitate a manner? As to insults offered to the laws, I know of none. In this respect I believe this Commonwealth would not suffer by a comparison with the former Government. The laws are as well executed, and as patiently acquiesced in, as they were under the royal administration. Compare the situation of the country—Compare that of our citizens to what they were then, and decide whether persons and property are not as safe and secure as they were at that time. Is there a man in this Commonwealth, whose person can be insulted with impunity? Cannot redress be had here for personal insults or injuries, as well as in any part of the world—as well as in those countries where Aristocrats and Monarchs triumph and reign? Is not the protection of property in full operation here? The contrary cannot with truth be charged on this Commonwealth. Those severe charges which are exhibited against it, appear to me totally groundless. On a fair investigation,

we shall be found to be surrounded by no real dangers. We have the animating fortitude and persevering alacrity of republican men, to carry us through misfortunes and calamities. 'Tis the fortune of a republic to be able to withstand the stormy ocean of human vicissitudes. I know of no danger awaiting us. Public and private security are to be found here in the highest degree. Sir, it is the fortune of a free people, not to be intimidated by imaginary dangers. Fear is the passion of slaves. Our political and natural hemisphere are now equally tranquil. Let us recollect the awful magnitude of the subject of our deliberation. Let us consider the latent consequences of an erroneous decision—and let not our minds be led away by unfair misrepresentations and uncandid suggestions. There have been many instances of uncommon lenity and temperance used in the exercise of power in this Commonwealth. I could call your recollection to many that happened during the war and since—But every Gentleman here must be apprized of them.

{The Honorable member has given you an elaborate account of what he judges tyrannical legislation, and an *ex post facto law* (in the case of Josiah Philips.)[13] He has misrepresented the facts. That man was not executed by a tyrannical stroke of power. He was a fugitive murderer and an out-law—a man who commanded an infamous banditti, at a time when the war was at the most perilous stage. He committed the most cruel and shocking barbarities. He was an enemy to the human name.—Those who declare war against the human race, may be struck out of existence as soon as they are apprehended. He was not executed according to those beautiful legal ceremonies which are pointed out by the laws, in criminal cases. The enormity of his crimes did not entitle him to it. I am truly a friend to legal forms and methods; but, Sir, the occasion warranted the measure. A pirate, an outlaw, or a common enemy to all mankind, may be put to death at any time. It is justified by the laws of nature and nations. The Honorable member tells us then, that there are burnings and discontents in the hearts of our citizens in general, and that they are dissatisfied with their Government.[14] I have no doubt the Honorable member believes this to be the case, because he says so. But I have the comfortable assurance, that it is a certain fact, *that it is not so*. The middle and lower ranks of people have not those illumined ideas, which the well-born are so happily possessed of—They cannot so readily perceive latent objects. The microscopic eyes of modern States-men can see abundance of defects in old systems; and their illumined imaginations discover the necessity of change.} 5.16.5

. . . I have said that I thought this a Consolidated Government: I will now prove it. Will the great rights of the people be secured by this Government? Suppose it should prove oppressive, how can it be altered? Our Bill of Rights declares, "That a majority of the community hath an *undubitable, unalienable,* and *indefeasible right* to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."[15] I have just proved that one tenth, or less, of the people of America, a most despicable 5.16.6

minority may prevent this reform or alteration. Suppose the people of Virginia should wish to alter their Government, can a majority of them do it? No, because they are connected with other men; or, in other words, consolidated with other States: When the people of Virginia at a future day shall wish to alter their Government, though they should be unanimous in this desire, yet they may be prevented therefrom by a despicable minority at the extremity of the United States: The founders of your own Constitution made your Government changeable: But the power of changing it is gone from you! Whither is it gone? It is placed in the same hands that hold the rights of twelve other States; and those who hold those rights, have right and power to keep them: It is not the particular Government of Virginia: One of the leading features of that Government is, that a majority can alter it, when necessary for the public good. This Government is not a Virginian but an American Government. Is it not therefore a Consolidated Government? The sixth clause of your Bill of Rights tells you, "That elections of members to serve as Representatives of the people in Assembly, ought to be free, and that all men having sufficient evidence of permanent common interest with, and attachment to the community, have the right of suffrage, and *cannot* be *taxed* or *deprived* of *their property* for public uses, without their own consent, or that of their Representatives so elected, nor bound by any law to which they have not in like manner assented for the public good."[16] But what does this Constitution say? The clause under consideration gives an unlimitted and unbounded power of taxation: Suppose every delegate from Virginia opposes a law laying a tax, what will it avail? They are opposed by a majority: Eleven members can destroy their efforts: Those feeble ten cannot prevent the passing the most oppressive tax law. So that in direct opposition to the spirit and express language of your Declaration of Rights, you are taxed not by your own consent, but by people who have no connection with you. The next clause of the Bill of Rights tells you, "That all power of suspending law, or the execution of laws, by any authority without the consent of the Representatives of the people, is injurious to their rights, and ought not to be exercised."[17] This tells us that there can be no suspension of Government, or laws without our own consent: Yet this Constitution can counteract and suspend any of our laws, that contravene its oppressive operation; for they have the power of direct taxation; which suspends our Bill of Rights; and it is expressly provided, that they can make all laws necessary for carrying their powers into execution; and it is declared paramount to the laws and constitutions of the States. Consider how the only remaining defence we have left is destroyed in this manner: Besides the expences of maintaining the Senate and other House in as much splendor as they please, there is to be a great and mighty President, with very extensive powers; the powers of a King: He is to be supported in extravagant magnificence: So that the whole of our property may be taken by this American Government, by laying what taxes they please, giving themselves

what salaries they please, and suspending our laws at their pleasure: I might be thought too inquisitive, but I believe I should take up but very little of your time in enumerating the little power that is left to the Government of Virginia; for this power is reduced to little or nothing: Their garrisons, magazines, arsenals, and forts, which will be situated in the strongest places within the States: Their ten miles square, with all the fine ornaments of human life, added to their powers, and taken from the States, will reduce the power of the latter to nothing. The voice of tradition, I trust, will inform posterity of our struggles for freedom: If our descendants be worthy the name of Americans, they will preserve and hand down to their latest posterity, the transactions of the present times; and though, I confess, my exclamations are not worthy the hearing, they will see that I have done my utmost to preserve their liberty: For I never will give up the power of direct taxation, but for a scourge: I am willing to give it conditionally; that is, after non-compliance with requisitions: I will do more, Sir, and what I hope will convince the most sceptical man, that I am a lover of the American Union, that in case Virginia shall not make punctual payment, the controul of our custom houses, and the whole regulation of trade, shall be given to Congress, and that Virginia shall depend on Congress even for passports, till Virginia shall have paid the last farthing; and furnished the last soldier: Nay, Sir, there is another alternative to which I would consent: Even that they should strike us out of the Union, and take away from us all federal privileges till we comply with federal requisitions; but let it depend upon our own pleasure to pay our money in the most easy manner for our people. Were all the States, more terrible than the mother country, to join against us, I hope Virginia could defend herself; but, Sir, the dissolution of the Union is most abhorent to my mind: The first thing I have at heart is American *liberty;* the second thing is American Union;[18] and I hope the people of Virginia will endeavor to preserve that Union: The increasing population of the southern States, is far greater than that of New-England: Consequently, in a short time, they will be far more numerous than the people of that country: Consider this, and you will find this State more particularly interested to support American liberty, and not bind our posterity by an improvident relinquishment of our rights. I would give the best security for a punctual compliance with requisitions; but I beseech Gentlemen, at all hazards, not to give up this unlimitted power of taxation: The Honorable Gentleman has told us these powers given to Congress, are accompanied by a Judiciary which will connect all:[19] On examination you will find this very Judiciary oppressively constructed; your jury trial destroyed, and the Judges dependent on Congress. In this scheme of energetic Government, the people will find two sets of tax-gatherers—the State and the Federal Sheriffs. This it seems to me will produce such dreadful oppression, as the people cannot possibly bear: The Federal Sheriff may commit what oppression, make what distresses he pleases, and ruin you with im-

punity: For how are you to tie his hands? Have you any sufficient decided means of preventing him from sucking your blood by speculations, commissions and fees? Thus thousands of your people will be most shamefully robbed: Our State Sheriffs, those unfeeling blood-suckers, have, under the watchful eye of our Legislature, committed the most horrid and barbarous ravages on our people: It has required the most constant vigilance of the Legislature to keep them from totally ruining the people: A repeated succession of laws has been made to suppress their inequitous speculations and cruel extortions; and as often have their nefarious ingenuity devised methods of evading the force of those laws: In the struggle they have generally triumphed over the Legislature. It is fact that lands have sold for five shillings, which were worth one hundred pounds: If Sheriffs thus immediately under the eye of our State Legislature and Judiciary, have dared to commit these outrages, what would they not have done if their masters had been at Philadelphia or New-York? If they perpetrate the most unwarrantable outrage on your persons or property, you cannot get redress on this side of Philadelphia or New-York: And how can you get it there? If your domestic avocations could permit you to go thither, there you must appeal to Judges sworn to support this Constitution, in opposition to that of any State, and who may also be inclined to favor their own officers: When these harpies are aided by excise men, who may search at any time your houses and most secret recesses, will the people bear it? If you think so you differ from me: Where I thought there was a possibility of such mischiefs, I would grant power with a niggardly hand; and here there is strong probability that these oppressions shall actually happen. I may be told, that it is safe to err on that side; because such regulations *may* be made by Congress, as shall restrain these officers, and because laws are made by our Representatives, and judged by righteous Judges: But, Sir, as these regulations may be made, so they may not; and many reasons there are to induce a belief that they will not: I shall therefore be an infidel on that point till the day of my death.

5.16.7 This Constitution is said to have beautiful features; but when I come to examine these features, Sir, they appear to me horridly frightful: Among other deformities, it has an awful squinting; it squints towards monarchy: And does not this raise indignation in the breast of every American? Your President may easily become King: Your Senate is so imperfectly constructed that your dearest rights may be sacrificed by what may be a small minority; and a very small minority may continue forever unchangeably this Government, although horridly defective: Where are your checks in this Government? Your strong holds will be in the hands of your enemies: It is on a supposition that our American Governors shall be honest, that all the good qualities of this Government are founded: But its defective, and imperfect construction, puts it in their power to perpetrate the worst of mischiefs, should they be bad men: And, Sir, would not all the world, from the Eastern to the Western hemisphere, blame our distracted folly in resting our

rights upon the contingency of our rulers being good or bad. Shew me that age and country where the rights and liberties of the people were placed on the sole chance of their rulers being good men, without a consequent loss of liberty? I say that the loss of that dearest privilege has ever followed with absolute certainty, every such mad attempt. If your American chief, be a man of ambition, and abilities, how easy is it for him to render himself absolute: The army is in his hands, and, if he be a man of address, it will be attached to him; and it will be the subject of long meditation with him to seize the first auspicious moment to accomplish his design; and, Sir, will the American spirit solely relieve you when this happens? I would rather infinitely, and I am sure most of this Convention are of the same opinion, have a King, Lords, and Commons, than a Government so replete with such insupportable evils. If we make a King, we may prescribe the rules by which he shall rule his people, and interpose such checks as shall prevent him from infringing them: But the President, in the field, at the head of his army, can prescribe the terms on which he shall reign master, so far that it will puzzle any American ever to get his neck from under the galling yoke. I cannot with patience, think of this idea. If ever he violates the laws, one of two things will happen: He shall come to the head of his army to carry every thing before him; or, he will give bail, or do what Mr. Chief Justice will order him. If he be guilty, will not the recollection of his crimes teach him to make one bold push for the American throne? Will not the immense difference between being master of every thing, and being ignominiously tried and punished, powerfully excite him to make this bold push? But, Sir, where is the existing force to punish him? Can he not at the head of his army beat down every opposition? Away with your President, we shall have a King: The army will salute him Monarch; your militia will leave you and assist in making him King, and fight against you: And what have you to oppose this force? What will then become of you and your rights? Will not absolute despotism ensue? [Here Mr. Henry strongly and pathetically expatiated on the probability of the President's enslaving America and the horrible consequences that must result.]

What[20] can be more defective than the clause concerning the elections?—The controul given to Congress over the time, place, and manner of holding elections, will totally destroy the end of suffrage. The elections may be held at one place, and the most inconvenient in the State; or they may be at remote distances from those who have a right of suffrage: Hence nine out of ten must either not vote at all, or vote for strangers: For the most influential characters will be applied to, to know who are the most proper to be chosen. I repeat that the controul of Congress over the *manner*, &c. of electing, well warrants this idea. The natural consequence will be, that this democratic branch, will possess none of the public confidence: The people will be prejudiced against Representatives chosen in such an injudicious manner. The proceedings in the northern conclave will be hidden from 5.16.8

the yeomanry of this country: We are told that the yeas and nays shall be taken and entered on the journals: This, Sir, will avail nothing: It may be locked up in their chests, and concealed forever from the people; for they are not to publish what parts they think require secrecy: They *may* think, and *will think*, the whole requires it. Another beautiful feature of this Constitution is the publication from time to time of the receipts and expenditures of the public money. This expression, from time to time, is very indefinite and indeterminate: It may extend to a century. Grant that any of them are wicked, they may squander the public money so as to ruin you, and yet this expression will give you no redress. I say, they may ruin you;—for where, Sir, is the responsibility? The yeas and nays will shew you nothing, unless they be fools as well as knaves: For after having wickedly trampled on the rights of the people, they would act like fools indeed, were they to publish and devulge their iniquity, when they have it equally in their power to suppress and conceal it.—Where is the responsibility—that leading principle in the British government? In that government a punishment, certain and inevitable, is provided: But in this, there is no real actual punishment for the grossest maladministration. They may go without punishment, though they commit the most outrageous violation on our immunities. That paper may tell me they will be punished. I ask, by what law? They must make the law—for there is no existing law to do it. What—will they make a law to punish themselves? This, Sir, is my great objection to the Constitution, that there is no true responsibility—and that the preservation of our liberty depends on the single chance of men being virtuous enough to make laws to punish themselves.[21] In the country from which we are descended, they have real, and not imaginary, responsibility—for there, maladministration has cost their heads, to some of the most saucy geniuses that ever were. The Senate, by making treaties may destroy your liberty and laws for want of responsibility. Two-thirds of those that shall happen to be present, can, with the President, make treaties, that shall be the supreme law of the land: They may make the most ruinous treaties; and yet there is no punishment for them. Whoever shews me a punishment provided for them, will oblige me. So, Sir, notwithstanding there are eight pillars, they want another. Where will they make another? I trust, Sir, the exclusion of the evils wherewith this system is replete, in its present form, will be made a condition, precedent to its adoption, by this or any other State. The transition from a general unqualified admission to offices, to a consolidation of government, seems easy; for though the American States are dissimilar in their structure, this will assimilate them: This, Sir, is itself a strong consolidating feature, and is not one of the least dangerous in that system. Nine States are sufficient to establish this government over those nine: Imagine that nine have come into it. Virginia has certain scruples. Suppose she will consequently, refuse to join with those States:—May not they still continue in friendship and union with her? If she sends her annual requisitions in dollars, do you think their

stomachs will be so squeamish that they will refuse her dollars? Will they not accept her regiments? They would intimidate you into an inconsiderate adoption, and frighten you with ideal evils, and that the Union shall be dissolved. 'Tis a bugbear, Sir:—The fact is, Sir, that the eight adopting States can hardly stand on their own legs. Public fame tells us, that the adopting States have already heart-burnings and animosity, and repent their precipitate hurry: This, Sir, may occasion exceeding great mischief. When I reflect on these and many other circumstances, I must think those States will be fond to be in confederacy with us. If we pay our quota of money annually, and furnish our rateable number of men, when necessary, I can see no danger from a rejection. The history of Switzerland clearly proves, we might be in amicable alliance with those States without adopting this Constitution. Switzerland is a Confederacy, consisting of dissimilar Governments. This is an example which proves that Governments of dissimilar structure may be Confederated; that Confederate Republic has stood upwards of 400 years; and although several of the individual republics are democratic, and the rest aristocratic, no evil has resulted from this dissimilarity, for they have braved all the power of France and Germany during that long period. The Swiss spirit, Sir, has kept them together: They have encountered and overcome immense difficulties with patience and fortitude. In this vicinity of powerful and ambitious monarchs, they have retained their independence, republican simplicity and valour. [Here he makes a comparison of the people of that country, and those of France, and makes a quotation from Addison, illustrating the subject.] Look at the peasants of that country and of France, and mark the difference. You will find the condition of the former far more desirable and comfortable. No matter whether a people be great, splendid, and powerful, if they enjoy freedom. The Turkish Grand Seignior, along-side of our President, would put us to disgrace: But we should be abundantly consoled for this disgrace, when our citizen should be put in contrast with the Turkish slave. The most valuable end of government, is the liberty of the inhabitants. No possible advantages can compensate for the loss of this privilege. Shew me the reason why the American Union is to be dissolved. Who are those eight adopting States? Are they averse to give us a little time to consider, before we conclude? Would such a disposition render a junction with them eligible; or is it the genius of that kind of government, to precipitate people hastily into measures of the utmost importance, and grant no indulgence? If it be, Sir, is it for us to accede to such a government? We have a right to have time to consider—We shall therefore insist upon it. Unless the government be amended, we can never accept it. The adopting States will doubtless accept our money and our regiments—And what is to be the consequence, if we are disunited? I believe that it is yet doubtful, whether it is not proper to stand by a while, and see the effect of its adoption in other States. In forming a government, the utmost care should be taken to prevent its becoming op-

pressive; and this government is of such an intricate and complicated nature, that no man on this earth can know its real operation. The other States have no reason to think, from the antecedent conduct of Virginia, that she has any intention of seceding from the Union, or of being less active to support the general welfare: Would they not therefore acquiesce in our taking time to deliberate? Deliberate whether the measure be not perilous, not only for us, but the adopting States. Permit me, Sir, to say, that a great majority of the people even in the adopting States, are averse to this government. I believe I would be right to say, that they have been egregiously misled. Pennsylvania has *perhaps* been tricked into it. If the other States who have adopted it, have not been tricked, still they were too much hurried into its adoption. There were very respectable minorities in several of them; and if reports be true, a clear majority of the people are averse to it. If we also accede, and it should prove grievous, the peace and prosperity of our country, which we all love, will be destroyed. This government has not the affection of the people, at present. Should it be oppressive, their affection will be totally estranged from it—and, Sir, you know that a Government without their affections can neither be durable nor happy. I speak as one poor individual—but when I speak, I speak the language of thousands. But, Sir, I mean not to breath the spirit nor utter the language of secession. I have trespassed so long on your patience, I am really concerned that I have something yet to say. The honorable member has said that we shall be properly represented: Remember, Sir, that the number of our Representatives is but ten, whereof six is a majority. Will these men be possessed of sufficient information? A particular knowledge of particular districts will not suffice. They must be well acquainted with agriculture, commerce, and a great variety of other matters throughout the Continent: They must know not only the actual state of nations in Europe, and America, the situation of their farmers, cottagers, and mechanics, but also the relative situation and intercourse of those nations. Virginia is as large as England. Our proportion of Representatives is but ten men. In England they have 530. The House of Commons in England, numerous as they are, we are told, is bribed, and have bartered away the rights of their constituents: What then shall become of us? Will these few protect our rights? Will they be incorruptible? You say they will be better men than the English Commoners. I say they will be infinitely worse men, because they are to be chosen blindfolded: Their election (the term, as applied to their appointment, is inaccurate) will be an involuntary nomination, and not a choice. I have, I fear, fatigued the Committee, yet I have not said the one hundred thousandeth part of what I have on my mind, and wish to impart. On this occasion I conceived myself bound to attend strictly to the interest of the State; and I thought her dearest rights at stake: Having lived so long—been so much honored—my efforts, though small, are due to my country. I have found my mind hurried on from subject to subject, on this very great occasion. We have been all out of order from

the Gentleman who opened to-day, to myself. I did not come prepared to speak on so multifarious a subject, in so general a manner. I trust you will indulge me another time.—Before you abandon the present system, I hope you will consider not only its defects, most maturely, but likewise those of that which you are to substitute to it. May you be fully apprised of the dangers of the latter, not by fatal experience, but by some abler advocate than me.

9 June 1788

. . . A number of characters of the greatest eminence in this country, object to this Government, for its consolidating tendency. This is not imaginary. It is a formidable reality. If consolidation proves to be as mischievous to this country, as it has been to other countries, what will the poor inhabitants of this country do? This Government will operate like an ambuscade. It will destroy the State Governments, and swallow the liberties of the people, without giving them previous notice. If Gentlemen are willing to run the hazard, let them run it; but I shall exculpate myself by my opposition, and monitory warnings within these walls. But, then comes paper money. We are at peace on this subject. Though this is a thing which that mighty Federal Convention had no business with, yet I acknowledge that paper money would be the bane of this country. I detest it. Nothing can justify a people in resorting to it, but extreme necessity. It is at rest however in this Commonwealth. It is no longer solicited or advocated. Sir, I ask you, and every other Gentleman who hears me, if he can retain his indignation, at a system, which takes from the State Legislatures the care and preservation of the interests of the people; 180 Representatives, the choice of the people of Virginia cannot be trusted with their interests. They are a mobbish suspected *herd*.[22] This country has not virtue enough to manage its own internal interests. These must be referred to the chosen few. If we cannot be trusted with the private contracts of the citizens, we must be depraved indeed. If he can prove that by one uniform system of abandoned principles, the Legislature has betrayed the rights of the people, then let us seek another shelter. So degrading an indignity—so flagrant an out-rage to the States—so vile a suspicion is humiliating to my mind, and many others. 5.16.9

Will the adoption of this new plan pay our debts? This, Sir, is a plain question. It is inferred, that our grievances are to be redressed, and the evils of the existing system to be removed by the new Constitution. Let me inform the Honorable Gentleman, that no nation ever paid its debts by a change of Government, without the aid of industry. You never will pay your debts but by a radical change of domestic œconomy. At present you buy too much, and make too little to pay. Will this new system promote manufac- 5.16.10

tures, industry and frugality? If instead of this, your hopes and designs will be disappointed; you relinquish a great deal, and hazard infinitely more, for nothing. Will it enhance the value of your lands? Will it lessen your burthens? Will your looms and wheels go to work by the act of adoption? If it will in its consequence produce these things, it will consequently produce a reform, and enable you to pay your debts. Gentlemen must prove it. I am a sceptic—an infidel on this point. I cannot conceive that it will have these happy consequences. I cannot confide in assertions and allegations. The evils that attend us, lie in extravagance and want of industry, and can only be removed by assiduity and œconomy. Perhaps we shall be told by Gentlemen, that these things will happen, because the administration is to be taken from us, and placed in the hands of the luminous few, who will pay different attention, and be more studiously careful than we can be supposed to be.[23] . . .

5.16.11 . . . This Government is so new it wants a name. I wish its other novelties were as harmless as this. He told us, we had an American Dictator in the year 1781[24]—We never had an American President. In making a Dictator, we follow the example of the most glorious, magnanimous and skilful nations. In great dangers this power has been given.—Rome had furnished us with an illustrious example.—America found a person worthy of that trust: She looked to Virginia for him. We gave a dictatorial power to hands that used it gloriously; and which were rendered more glorious by surrendering it up. Where is there a breed of such Dictators? Shall we find a set of American Presidents of such a breed? Will the American President come and lay prostrate at the feet of Congress his laurels? I fear there are few men who can be trusted on that head. The glorious republic of Holland has erected monuments of her warlike intrepidity and valor: Yet she is now totally ruined by a Stadtholder—a Dutch President. The destructive wars into which that nation has been plunged, has since involved her in ambition. The glorious triumphs of Blenheim and Ramillies were not so conformable to the genius, nor so much to the true interest of the republic, as those numerous and useful canals and dykes, and other objects at which ambition spurns. That republic has, however, by the industry of its inhabitants, and policy of its magistrates, suppressed the ill effects of ambition.—Notwithstanding two of their provinces have paid nothing, yet I hope the example of Holland will tell us, that we can live happily without changing our present despised Government. Cannot people be as happy under a mild, as under an energetic Government? Cannot content and felicity be enjoyed in a republic, as well as in a monarchy, because there are whips, chains and scourges used in the latter? If I am not as rich as my neighbour, if I give my mite—my all—republican forbearance will say, that it is sufficient—So said the honest confederates of Holland.—*You are poor—We are rich.—We will go on and do better, far better, than be under an oppressive Government.*—For better will it be for us to continue as we are, than go under that tight energetic

Government.—I am persuaded of what the Honorable Gentleman says, that separate confederacies will ruin us.[25] In my judgment, they are evils never to be thought of till a people are driven by necessity.—When he asks my opinion of consolidation—of one power to reign over America, with a strong hand; I will tell him, I am persuaded, of the rectitude of my honorable friend's opinion (Mr. *Mason*) that one Government cannot reign over so extensive a country as this is, without absolute despotism.[26] Compared to such a consolidation, small Confederacies are little evils; though they ought to be recurred to, but in case of necessity.—Virginia and North-Carolina are despised. They could exist separated from the rest of America. Maryland and Vermont were not over-run when out of the Confederacy. Though it is not a desirable object, yet I trust, that on examination it will be found, that Virginia and North-Carolina would not be swallowed up in case it was necessary for them to be joined together.

When we come to the spirit of domestic peace—The humble genius of Virginia has formed a Government, suitable to the genius of her people. I believe the hands that formed the American Constitution triumph in the experiment. It proves, that the man who formed it, and perhaps by accident, did what design could not do in other parts of the world. After all your reforms in Government, unless you consult the genius of the inhabitants, you will never succeed—your system can have no duration. Let me appeal to the candour of the Committee, if the want of money be not the source of all our misfortunes. We cannot be blamed for not making dollars. This want of money cannot be supplied by changes in Government. The only possible remedy, as I *have before* asserted, is industry aided by œconomy.[27] Compare the genius of the people with the Government of this country. Let me remark, that it stood the severest conflict, during the war, to which ever human virtue has been called. I call upon every Gentleman here to declare, whether the King of England had any subjects so attached to his family and Government—so loyal as we were. But the genius of Virginia called us for liberty.—Called us from those beloved endearments, which from long habits we were taught to love and revere. We entertained from our earliest infancy, the most sincere regard and reverence for the mother country. Our partiality extended to a predilection for her customs, habits, manners and laws. Thus inclined, when the deprivation of our liberty was attempted, what did we do? What did the genius of Virginia tell us? *Sell all and purchase liberty*. This was a severe conflict. Republican maxims were then esteemed—Those maxims, and the genius of Virginia, landed you safe on the shore of freedom. On this awful occasion, did you want a Federal Government? Did federal ideas possess your minds? Did federal ideas lead you to the most splendid victories? I must again repeat the favorite idea, that the genius of Virginia did, and will again lead us to happiness. To obtain the most splendid prize, you did not consolidate. You accomplished the most glorious ends, by the assistance of the genius of your country. Men were then taught

5.16.12

by that genius, that they were fighting for what was most dear to them. View the most affectionate father—the most tender mother—operated on by liberty, nobly stimulating their sons—their dearest sons—sometimes their only son, to advance to the defence of his country. We have seen sons of Cincinnatus, without splendid magnificence or parade, going, with the genius of their great progenitor Cincinnatus, to the plough—Men who served their country without ruining it—Men who had served it to the destruction of their private patrimonies—Their country owing them amazing amounts, for the payment of which no adequate provision was then made. We have seen such men, throw prostrate their arms at your feet. They did not call for those emoluments, which ambition presents to some imaginations. The soldiers, who were able to command every thing, instead of trampling on those laws, which they were instituted to defend, most strictly obeyed them. The hands of justice have not been laid on a single American soldier. Bring them into contrast with European veterans. You will see an astonishing superiority over the latter. There has been a strict subordination to the laws. The Honorable Gentleman's office gave him an opportunity of viewing if the laws were administered so as to prevent riots, routs, and unlawful assemblies. From his then situation, he could have furnished us with the instances in which licentiousness trampled on the laws.—Among all our troubles we have paid almost to the last shilling, for the sake of justice. We have paid as well as any State: I will not say better. To support the General Government, our own Legislature, to pay the interest of the public debts, and defray contingencies, we have been heavily taxed. To add to these things, the distresses produced by paper money, and by tobacco contracts, were sufficient to render any people discontented. These, Sir, were great temptations; but in the most severe conflict of misfortunes, this code of laws—this genius of Virginia, call it what you will, triumphed over every thing.

5.16.13 Why did it please the Gentleman (Mr. *Corbin*)[28] to bestow such epithets on our country? Have the worms taken posession of the wood, that our strong vessel—our political vessel, has sprung a-leak? He may know better than me, but I consider such epithets to be the most illiberal and unwarrantable aspersions on our laws. The system of laws under which we have lived, has been tried and found to suit our genius. I trust we shall not change this happy system. I cannot so easily take leave of an old friend. Till I see him following after and pursuing other objects, which can pervert the great objects of human legislation, pardon me if I withhold my assent.

5.16.14 Some here speak of the difficulty in forming a new code of laws. Young as we were, it was not wonderful if there was a difficulty in forming and assimilating one system of laws. I shall be obliged to the Gentleman, if he would point out those glaring, those great faults. The efforts of assimilating our laws to our genius has not been found altogether vain.—I shall pass over some other circumstances which I intended to mention, and endeavor to

come to the capital objection, which my Honorable friend made. My worthy friend said, that a republican form of Government would not suit a very extensive country; but that if a Government were judiciously organized and limits prescribed to it; an attention to these principles might render it possible for it to exist in an extensive territory.[29] Whoever will be bold to say, that a Continent can be governed by that system, contradicts all the experience of the world. It is a work too great for human wisdom. Let me call for an example. Experience has been called the best teacher. I call for an example of a great extent of country, governed by one Government, or Congress, call it what you will. I tell him, that a Government may be trimmed up according to Gentlemen's fancy, but it never can operate—It will be but very short-lived. However disagreeable it may be to lengthen my objections, I cannot help taking notice of what the Honorable Gentleman said. To me it appears that there is no check in that Government. The President, Senators, and Representatives all immediately, or mediately, are the choice of the people. Tell me not of checks on paper; but tell me of checks founded on self-love. The English Government is founded on self-love. This powerful irresistible stimulous of self-love has saved that Government. It has interposed that hereditary nobility between the King and Commons. If the House of Lords assists or permits the King to overturn the liberties of the people, the same tyranny will destroy them; they will therefore keep the balance in the democratic branch. Suppose they see the Commons incroach upon the King; self-love, that great energetic check, will call upon them to interpose: For, if the King be destroyed, their destruction must speedily follow. Here is a consideration which prevails, in my mind, to pronounce the British Government, superior in this respect to any Government that ever was in any country. Compare this with your Congressional checks. I beseech Gentlemen to consider, whether they can say, when trusting power, that a mere patriotic profession will be equally operative and efficatious, as the check of self-love. In considering the experience of ages, is it not seen, that fair disinterested patriotism, and professed attachment to rectitude have never been solely trusted to by an enlightened free people?—If you depend on your President's and Senators patriotism, you are gone. Have you a resting place like the British Government? Where is the rock of your salvation? The real rock of political salvation is *self-love* perpetuated from age to age in every human breast, and manifested in every action. If they can stand the temptations of human nature, you are safe. If you have a good President, Senators and Representatives, there is no danger.—But can this be expected from human nature? Without real checks it will not suffice, that some of them are good. A good President, or Senator, or Representative, will have a natural weakness.—Virtue will slumber. The wicked will be continually watching:[30] Consequently you will be undone. Where are your checks? You have no hereditary Nobility—An order of men, to whom human eyes can be cast up for relief: For, says the Constitu-

tion, there is no title of nobility to be granted; which, by the bye, would not have been so dangerous, as the perilous cession of powers contained in that paper: Because, as Montesquieu says, when you give titles of Nobility, you know what you give; but *when you give power, you know not what you give*.[31]—If you say, that out of this depraved mass, you can collect luminous characters, it will not avail, unless this luminous breed will be propagated from generation to generation; and even then, if the number of vicious characters will preponderate, you are undone. And that this will certainly be the case, is, to my mind, perfectly clear.—In the British Government there are real balances and checks—In this system, there are only ideal balances. Till I am convinced that there are actual efficient checks, I will not give my assent to its establishment. The President and Senators have nothing to lose. They have not that interest in the preservation of the Government, that the King and Lords have in England. They will therefore be regardless of the interests of the people. The Constitution will be as safe with one body, as with two. It will answer every purpose of human legislation. How was the Constitution of England when only the Commons had the power? I need only remark, that it was the most unfortunate æra when that country returned to King, Lords and Commons, without sufficient responsibility in the King. When the Commons of England, in the manly language which became freemen, said to their King, *you are our servant,* then the temple of liberty was complete. From that noble source, have we derived our liberty:—That spirit of patriotic attachment to one's country:—That zeal for liberty, and that enmity to tyranny which signalized the then champions of liberty, we inherit from our British ancestors. And I am free to own, that if you cannot love a Republican Government, you may love the British Monarchy;[32] for, although the King is not sufficiently responsible, the responsibility of his agents, and the efficient checks interposed by the British Constitution, render it less dangerous than other Monarchies, or oppressive tyrannical Aristrocracies. What are their checks of exposing accounts?—Their checks upon paper are inefficient and nugatory.—Can you search your President's closet? Is this a real check? We ought to be exceeding cautious, in giving up this life—this soul—of money—this power of taxation to Congress. What powerful check is there here to prevent the most extravagant and profligate squandering of the public money? What security have we in money matters? Enquiry is precluded by this Constitution. I never wish to see Congress supplicate the States. But it is more abhorent to my mind to give them an unlimited and unbounded command over our souls—our lives—our purses, without any check or restraint. How are you to keep enquiry alive? How discover their conduct? We are told by that paper, that a regular statement and account of the receipts and expenditures of all public money, shall be published from time to time. Here is a beautiful check! What time? Here is the utmost latitude left. If those who are in Congress please to put that construction upon it, the words of the Constitution will be satisfied by

publishing those accounts once in 100 years. They may publish or not as they please. Is this like the present despised system, whereby the accounts are to be published monthly?[33]

I come now to speak something of requisitions, which the Honorable Gentleman thought so truly contemptible and disgraceful.[34] That Honorable Gentleman being a child of the revolution, must recollect with gratitude the glorious effects of requisitions. It is an idea that must be grateful to every American. An English army was sent to compel us to pay money contrary to our consent. To force us by arbitrary and tyrannical coercion to satisfy their unbounded demands. We wished to pay with our own consent.—Rather than pay against our consent, we engaged in that bloody contest, which terminated so gloriously. By requisitions we pay with our own consent; by their means we have triumphed in the most arduous struggle, that ever tried the virtue of man. We fought then, for what we are contending now: To prevent an arbitrary deprivation of our property, contrary to our consent and inclination. 5.16.15

{[7 June 1788] I never will give up that *darling* word requisitions—My country may give it up—A majority may wrest it from me, but I will never give it up till my grave. Requisitions are attended with one singular advantage. They are attended by deliberation.—They secure to the States the benefit of correcting oppressive errors.[35] If our Assembly thought requisitions erroneous—If they thought the demand was too great, they might at least supplicate Congress to reconsider,—that it was a little too much. The power of direct taxation was called by the Honorable Gentlemen the soul of the Government:[36] Another Gentleman, called it the lungs of the Government.[37] We all agree, that it is the most important part of the body politic. If the power of raising money be necessary for the General Government, it is no less so for the States. If money be the vitals of Congress, is it not precious for those individuals from whom it is to be taken? Must I give my soul—my lungs, to Congress? Congress must have our souls. The State must have our souls. This is dishonorable and disgraceful. These two coordinate, interferring unlimited powers of harrassing the community, is unexampled: It is unprecedented in history: They are the visionary projects of modern politicians: Tell me not of imaginary means, but of reality; This political solecism will never tend to the benefit of the community. It will be as oppressive in practice as it is absurd in theory. If you part with this which the Honorable Gentleman tells you is the soul of Congress, you will be inevitably ruined. I tell you, they shall not have the soul of Virginia. They tell us, that one collector may collect the Federal and State taxes. The General Government being paramount to the State Legislatures; if the Sheriff is to collect for both; his right hand for the Congress, his left for the State; his right hand being paramount over the left, his collections will go to Congress. We will have the rest. Defficiencies in collections will always operate against the States. Congress being the paramount supreme power, 5.16.16

must not be disappointed. Thus Congress will have an unlimited, unbounded command over the soul of this Commonwealth. After satisfying their uncontrouled demands, what can be left for the States? Not a sufficiency even to defray the expence of their internal administration. They must therefore glide imperceptibly and gradually out of existence. This, Sir, must naturally terminate in a consolidation. If this will do for other people, it never will do for me.}

5.16.17 . . . I shall be told in this place, that those who are to tax us are our Representatives. To this I answer, that there is no real check to prevent their ruining us. There is no actual responsibility. The only semblance of a check is the negative power of not re-electing them. This, Sir, is but a feeble barrier when their personal interest, their ambition and avarice come to be put in contrast with the happiness of the people. All checks founded on any thing but self-love, will not avail. This constitution reflects in the most degrading and mortifying manner on the virtue, integrity, and wisdom of the State Legislatures: It presupposes that the chosen few who go to Congress will have more upright hearts, and more enlightened minds, than those who are members of the individual Legislatures. To suppose that ten Gentlemen shall have more real substantial merit, than 170 is humiliating to the last degree.[38] If, Sir, the diminution of numbers be an augmentation of merit, perfection must centre in one. If you have the faculty of discerning spirits, it is better to point out at once the man who has the most illumined qualities. If 10 men be better than 170, it follows of necessity, that one is better than 10—The choice is more refined. . . .

5.16.18 Congress by the power of taxation—by that of raising an army, and by their controul over the militia, have the sword in one hand, and the purse in the other. Shall we be safe without either? Congress have an unlimited power over both: They are entirely given up by us. Let him candidly tell me, where and when did freedom exist, when the sword and purse were given up from the people? Unless a miracle in human affairs interposed, no nation ever retained its liberty after the loss of the sword and purse. Can you prove by any argumentative deduction, that it is possible to be safe without retaining one of these? If you give them up you are gone.

5.16.19 {[14 June] The means, says the Gentleman, must be commensurate to the end. How does this apply?[39]—All things in common are left with this Government. There being an infinitude in the Government, there must be an infinitude of means to carry it on. This is a sort of mathematical Government that may appear well on paper, but cannot sustain examination, or be safely reduced to practice. The delegation of power to an adequate number of Representatives; and an unimpeded reversion of it back to the people at short periods, form the principal traits of a Republican Government. The idea of a Republican Government in that paper, is something superior to the poor people. The governing persons are the servants of the people. There the servants are greater than their masters; because it includes infinitude,

and infinitude excludes every idea of subordination. In this the creature has destroyed, and soared above the creator. For if its powers be infinite, what rights have the people remaining? By that very argument despotism has made way in all countries, where the people unfortunately have been enslaved by it. We are told the sword and purse are necessary for the national defence. The junction of these without limitation in the same hands, is, by logical and mathematical conclusions, the description of despotism.}

. . . Give us at least a plausible apology why Congress should keep their 5.16.20
proceedings in secret. They have the power of keeping them secret as long as they please; for the provision for a periodical publication is too inexplicit and ambiguous to avail any thing. The expression *from time to time* as I have more than once observed, admits of any extension. They may carry on the most wicked and pernicious of schemes, under the dark veil of secrecy. The liberties of a people never were nor ever will be secure, when the transactions of their rulers may be concealed from them. The most iniquitous plots may be carried on against their liberty and happiness. I am not an advocate for divulging indiscriminately all the operations of Government, though the practice of our ancestors in some degree justifies it. Such transactions as relate to military operations, or affairs of great consequence, the immediate promulgation of which might defeat the interests of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But to cover with the veil of secrecy, the common rotine of business, is an abomination in the eyes of every intelligent man, and every friend to his country.

[Mr. *Henry* then, in a very animated manner, expatiated on the evil and 5.16.21
pernicious tendency of keeping secret the common proceedings of Government; and said that it was contrary to the practice of other free nations. The people of England, he asserted, had gained immortal honor by the manly boldness wherewith they divulged to all the world, their political disquisitions and operations; and that such a conduct inspired other nations with respect. He illustrated his argument by several quotations.]—He then continued,—I appeal to this Convention if it would not be better for America to take off the veil of secrecy. *Look at us—hear our transactions.* If this had been the language of the Federal Convention, what would have been the result? Such a Constitution would not have come out to your utter astonishment, conceding such dangerous powers, and recommending secrecy in the future transactions of Government. I believe it would have given more general satisfaction, if the proceedings of that Convention had not been concealed from the public eye. This Constitution authorizes the same conduct. There is not an English feature in it. The transactions of Congress may be concealed a century from the public, consistently with the Constitution. This, Sir, is a laudable imitation of the transactions of the Spanish treaty. We have not forgotten with what a thick veil of secrecy those transactions were covered.

5.16.22 We are told that this Government collectively taken, is without an example—That it is national in this part, and federal in that part, &c.[40] We may be amused if we please, by a treatise of political anatomy. In the brain it is national: The stamina are federal—some limbs are federal—others national. The Senators are voted for by the State Legislatures, so far it is federal.—Individuals choose the members of the first branch; here it is national. It is federal in conferring general powers; but national in retaining them. It is not to be supported by the States—The pockets of individuals are to be searched for its maintenance. What signifies it to me, that you have the most curious anatomical description of it in its creation? To all the common purposes of Legislation it is a great consolidation of Government. You are not to have a right to legislate in any but trivial cases: You are not to touch private contracts: You are not to have the right of having arms in your own defence: You cannot be trusted with dealing out justice between man and man. What shall the States have to do? Take care of the poor—repair and make high-ways—erect bridges, and so on, and so on. Abolish the State Legislatures at once. What purposes should they be continued for? Our Legislature will indeed be a ludicrous spectacle—180 men marching in solemn farcical procession, exhibiting a mournful proof of the lost liberty of their country—without the power of restoring it. But, Sir, we have the consolation that it is a mixed Government: That is, it may work sorely on your neck; but you will have some comfort by saying, that it was a Federal Government in its origin.

5.16.23 I beg Gentlemen to consider—lay aside your prejudices—Is this a Federal Government? Is it not a Consolidated Government for every purpose almost? Is the Government of Virginia a State Government after this Government is adopted? I grant that it is a Republican Government—but for what purposes? For such trivial domestic considerations, as render it unworthy the name of a Legislature. I shall take leave of this political anatomy, by observing that it is the most extraordinary that ever entered into the imagination of man. If our political diseases demand a cure—this is an unheard of medicine. The Honorable member, I am convinced, wanted a name for it.[41] Were your health in danger, would you take new medicine? I need not make use of these exclamations; for every member in this Committee must be alarmed at making new and unusual experiments in Government. Let us have national credit and a national treasury in case of war. You never can want national resources in time of war; if the war be a national one; if it be necessary, and this necessity obvious to the meanest capacity. The utmost exertions will be used by the people of America in that case. A republic has this advantage over a monarchy, that its wars are generally founded on more just grounds. A republic can never enter into a war, unless it be a national war—unless it be approved of, or desired by the whole community. Did ever a republic fail to use the utmost resources of the community when a war was necessary? I call for an example. I call also for

an example, when a republic has been engaged in a war contrary to the wishes of its people. There are thousands of examples, where the ambition of its Prince precipitated a nation into the most destructive war. No nation ever withheld power when its object was just and right. I will hazard an observation; I find fault with the paper before you, because the same power that declares war, has the power to carry it on. Is it so in England? The King declares war: The House of Commons gives the means of carrying it on. This is a strong check on the King. He will enter into no war that is unnecessary; for the Commons having the power of withholding the means, will exercise that power, unless the object of the war be for the interest of the nation. How is it here? The Congress can both declare war, and carry it on; and levy your money, as long as you have a shilling to pay. . . .

12 June 1788

. . . We are told that all powers not given are reserved.[42] I am sorry to bring forth hackneyed observations. But, Sir, important truths lose nothing of their validity or weight, by frequency of repetition. The English history is frequently recurred to by Gentlemen. Let us advert to the conduct of the people of that country. The people of England lived without a declaration of rights, till the war in the time of Charles Ist. That King made usurpations upon the rights of the people. Those rights were in a great measure before that time undefined. Power and privilege then depended on implication and logical discussion. Though the declaration of rights was obtained from that King, his usurpations cost him his life. The limits between the liberty of the people, and the prerogative of the King, were still not clearly defined. The rights of the people continued to be violated till the Steward family was banished in the year 1688. The people of England magnanimously defended their rights, banished the tyrant, and prescribed to William Prince of Orange, *by the Bill of Rights*, on what terms he should reign. And this Bill of Rights put an end to all construction and implication. Before this, Sir, the situation of the public liberty of England was dreadful. For upwards of a century the nation was involved in every kind of calamity, till the Bill of Rights put an end to all, by defining the rights of the people, and limiting the King's prerogative. Give me leave to add (if I can add any thing to so splendid an example) the conduct of the American people. They Sir, thought *a Bill of Rights* necessary. It is alledged that several States, in the formation of their governments, omitted a Bill of Rights. To this I answer, that they had the substance of a Bill of Rights contained in their Constitutions, which is the same thing. I believe that Connecticut has preserved by her Constitution her royal charter, which clearly defines and secures the great rights of mankind—Secure to us the great important rights of humanity, and I care

5.16.24

not in what form it is done. Of what advantage is it to the American Congress to take away this great and general security? I ask of what advantage is it to the public or to Congress to drag an unhappy debtor, not for the sake of justice; but to gratify the malice of the plaintiff, with his witnesses to the Federal Court, from a great distance? What was the principle that actuated the Convention in proposing to put such dangerous powers in the hands of any one? Why is the trial by jury taken away? All the learned arguments that have been used on this occasion do not prove that it is secured. Even the advocates for the plan do not all concur in the certainty of its security. Wherefore is religious liberty not secured? One Honorable Gentleman who favors adoption, said that he had had his fears on the subject.[43] If I can well recollect, he informed us that he was perfectly satisfied by the powers of reasoning (with which he is so happily endowed) that those fears were not well grounded. There is many a religious man who knows nothing of argumentative reasoning;—there are many of our most worthy citizens, who cannot go through all the labyrinths of syllogistic argumentative deductions, when they think that the rights of conscience are invaded. This sacred right ought not to depend on constructive logical reasoning. When we see men of such talents and learning, compelled to use their utmost abilities to convince themselves that there is no danger, is it not sufficient to make us tremble? Is it not sufficient to fill the minds of the ignorant part of men with fear? If Gentlemen believe that the apprehensions of men will be quieted, they are mistaken; since our best informed men are in doubt with respect to the security of our rights. Those who are not so well informed will spurn at the Government. When our common citizens, who are not possessed with such extensive knowledge and abilities, are called upon to change their Bill of Rights, (which in plain unequivocal terms, secures their most valuable rights and privileges) for construction and implication, will they implicitly acquiesce? Our Declaration of Rights tells us, "That all men are by nature free and independent, &c." (Here Mr. *Henry* read the Declaration of Rights.)[44] Will they exchange these Rights for logical reasons? If you had a thousand acres of land, dependent on this, would you be satisfied with logical construction? Would you depend upon a title of so disputable a nature? The present opinions of individuals will be buried in entire oblivion when those rights will be thought of. That sacred and lovely thing Religion, ought not to rest on the ingenuity of logical deduction. Holy Religion, Sir, will be prostituted to the lowest purposes of human policy. What has been more productive of mischief among mankind than Religious disputes. Then here, Sir, is the foundation for such disputes, when it requires learning and logical deduction to perceive that religious liberty is secure. The Honorable member told us that he had doubts with respect to the judiciary department. I hope those doubts will be explained.—He told us that his object was Union. I admit that the reality of Union and not the name, is the object which most merits the attention of every friend to his country. He told you

that you should hear many great *sounding words* on our side of the question. We have heard the *word Union* from him. I have heard no word so often pronounced in this House as he did this. I admit that the American Union is dear to every man—I admit that every man who has three grains of information, must know and think that Union is the best of all things. But as I said before, we must not mistake the end for the means. If he can shew that the rights of the Union are secure, we will consent. It has been sufficiently demonstrated that they are not secured. It sounds mighty prettily to Gentlemen to curse paper money and honestly pay debts. But apply to the situation of America, and you will find there are thousands and thousands of contracts, whereof equity forbids an exact literal performance. Pass that government, and you will be bound hand and foot. There was an immense quantity of depreciated continental paper money in circulation at the conclusion of the war. This money is in the hands of individuals to this day. The holders of this money may call for the nominal value, if this government be adopted. This State may be compelled to pay her proportion of that currency pound for pound. Pass this government and you will be carried to the Federal Court (if I understand that paper right) and you will be compelled to pay shilling for shilling. I doubt on the subject, at least as a public man, I ought to have doubts. A State may be sued in the Federal Court by the paper on your table. It appears to me then, that the holder of the paper money may require shilling for shilling. If there be any latent remedy to prevent this, I hope it will be discovered.

The precedent, with respect to the Union between England and Scotland, 5.16.25
does not hold. The Union of Scotland speaks in plain and direct terms. Their privileges were particularly secured. It was expressly provided, that they should retain their own particular laws. Their nobles have a right to choose Representatives to the number of sixteen.—I might thus go on and specify particulars, but it will suffice to observe generally, that their rights and privileges were expressly and unequivocally reserved.—The power of direct taxation was not given up by the Scotch people. There is no trait in that Union which will maintain their arguments. In order to do this, they ought to have proved that Scotland united without securing their rights, and afterwards got that security by subsequent amendments. Did the people of Scotland do this? No, Sir, like a sensible people, they trusted nothing to hazard. If they have but 45 members, and those be often corrupted, these defects will be greater here. The number will be smaller, and they will be consequently the more easily corrupted. Another Honorable Gentleman advises us to give this power, in order to exclude the necessity of going to war.[45] He wishes to establish national credit I presume—and imagines that if a nation has public faith and shews a disposition to comply with her engagements, she is safe among ten thousand dangers. If the Honorable Gentleman can prove that this paper is calculated to give us public faith, I will be satisfied. But if you be in constant preparation for war, on such airy

and imaginary grounds, as the mere possibility of danger, your government must be military, which will be inconsistent with the enjoyment of liberty. But, Sir, we must become formidable, and have a strong government to protect us from the British nation. Will the paper on the table prevent the attacks of the British navy, or enable us to raise a fleet equal to the British fleet? The British have the strongest fleet in Europe, and can strike any where. It is the utmost folly to conceive, that that paper can have such an operation. It will be no less so to attempt to raise a powerful fleet. With respect to requisitions, I beseech Gentlemen to consider the importance of the subject. We who are for amendments propose, (as has been frequently mentioned) that a requisition shall be made for £200,000 for instance, instead of direct taxation, and that if it be not complied with, then it shall be raised by direct taxes. We do not wish to have strength to refuse to pay them, but to possess the power of raising the taxes in the most easy mode for the people. But says he, you may delay us by this mode.—Let us see if there be not sufficient to counterbalance this evil. The oppression arising from taxation, is not from the amount but, from the mode—a thorough acquaintance with the condition of the people, is necessary to a just distribution of taxes. The whole wisdom of the science of Government, with respect to taxation, consists in selecting that mode of collection which will best accommodate the convenience of the people. When you come to tax a great country, you will find that ten men are too few to settle the manner of collection. One capital advantage which will result from the proposed alternative is this, that there will be necessary communications between your ten members in Congress, and your 170 Representatives here. If it goes through the hands of the latter, they will know how much the citizens *can* pay, and by looking at the paper on your table, they will know how much they *ought* to pay. No man is possessed of sufficient information to know how much we can or ought to pay.

5.16.26 We might also remonstrate, if by mistake or design, they should call for a greater sum than our proportion. After a remonstrance, and a free investigation between our Representatives here, and those in Congress, the error would be removed.

5.16.27 Another valuable thing which it will produce is, that the people will pay the taxes chearfully. It is supposed, that this would occasion a waste of time, and be an injury to public credit. This would only happen if requisitions should not be complied with. In this case the delay would be compensated by the payment of interest, which with the addition of the credit of the State to that of the General Government, would in a great measure obviate this objection. But if it had all the force which it is supposed to have, it would not be adequate to the evil of direct taxation. But there is every probability that requisitions would be then complied with. Would it not then be our interest, as well as duty, to comply? After non-

compliance, there would be a general acquiescence in the exercise of this power. We are fond of giving power, at least power which is constitutional. Here is an option to pay according to your own mode, or otherwise. If you give probability fair play, you must conclude, that they would be complied with. Would the Assembly of Virginia by refusal, destroy the country and plunge the people into miseries and distress? If you give your reasoning faculty fair play, you cannot but know, that payment must be made when the consequence of a refusal would be an accumulation of inconveniences to the people. Then they say, that if requisitions be not complied with, in case of a war, that the destruction of the country may be the consequence; that therefore, we ought to give the power of taxation to the Government to enable it to protect us. Would not this be another reason for complying with requisitions, to prevent the country from being destroyed? You tell us, that unless requisitions be complied with, your commerce is gone. The prevention of this also, will be an additional reason to comply.

He tells us, that responsibility is secured by direct taxation. Responsibility instead of being increased, will be lost for ever by it. In our State Government, our Representatives may be severally instructed by their constituents. There are no persons to counteract their operations. They can have no excuse for deviating from our instructions. In the General Government other men have power over the business. When oppressions may take place, our Representatives may tell us, *We contended for your interest, but we could not carry our point, because the Representatives from Massachusetts, New Hampshire, Connecticut, &c. were against us.* Thus, Sir, you may see, that there is no real responsibility. He further said, that there was such a contrariety of interests, as to hinder a consolidation. I will only make one remark—There is a variety of interests—Some of the States owe a great deal on account of paper money—Others very little—Some of the Northern States have collected and barrelled up paper money. Virginia has sent thither her cash long ago. There is little or none of the Continental paper money retained in this State. Is it not their business to appreciate this money? Yes,—and it will be your business to prevent it. But there will be a majority against you, and you will be obliged to pay your share of this money in its nominal value. It has been said by several Gentlemen, that the freeness of elections would be promoted by throwing the country into large districts.[46] I contend, Sir, that it will have a contrary effect. It will destroy that connection that ought to subsist between the electors and the elected. If your elections be by districts instead of counties, the people will not be acquainted with the candidates. They must therefore be directed in the elections by those who know them. So that instead of a confidential connection between the electors and the elected, they will be absolutely unacquainted with each other. A common man must ask a man of influence how he is to proceed, and for whom he must vote. The elected, therefore,

will be careless of the interest of the electors. It will be a common job to extort the suffrages of the common people for the most influential characters. The same men may be repeatedly elected by these means. This, Sir, instead of promoting the freedom of elections, leads us to an Aristocracy. Consider the mode of elections in England. Behold the progress of an election in an English shire. A man of enormous fortune will spend 30,000 l. or 40,000 l. to get himself elected. This is frequently the case. Will the Honorable Gentleman say, that a poor man, as enlightened as any man in the island, has an equal chance with a rich man, to be elected? He will stand no chance though he may have the finest understanding of any man in the shire. It will be so here. Where is the chance that a poor man can come forward with the rich? The Honorable Gentleman will find instead of supporting Democratical principles, it goes absolutely to destroy them. The State Governments, says he, will possess greater advantages than the General Government, and will consequently prevail. His opinion and mine are diametrically opposite. Bring forth the Federal allurements, and compare them with the poor contemptible things that the State Legislatures can bring forth. On the part of the State Legislatures, there are Justices of Peace and militia officers—And even these Justices and officers, are bound by oath in favour of the Constitution. A constable is the only man who is not obliged to swear paramount allegiance to this beloved Congress. On the other hand, there are rich, fat Federal emoluments—your rich, snug, fine, fat Federal offices—The number of collectors of taxes and excises will outnumber any thing from the States. Who can cope with the excisemen and taxmen? There are none in this country, that can cope with this class of men alone. But, Sir, is this the only danger? Would to Heaven that it were. If we are to ask which will last the longest—the State or the General Government, you must take an army and a navy into the account. Lay these things together, and add to the enumeration the superior abilities of those who manage the General Government.[47] Can then the State Governments look it in the face? You dare not look it in the face now, when it is but an *embryo*. The influence of this Government will be such, that you never can get amendments; for if you propose alterations, you will affront them. Let the Honorable Gentleman consider all these things and say, whether the State Governments will last as long as the Federal Government. With respect to excises, I can never endure them. They have been productive of the most intolerable oppressions every where. Make a probable calculation of the expence attending the Legislative, Executive, and Judiciary. You will find that there must be an immense increase of taxes. We are the same mass of people we were before.—In the same circumstances—The same pockets are to pay—The expences are to be increased—What will enable us to bear this augmentation of taxes? The mere form of the Government will not do it. A plain understanding cannot conceive how the taxes can be diminished, when our expences are augmented, and the means of paying them not increased.

With respect to our tax-laws, we have purchased a little knowledge by sad experience upon the subject. Reiterated experiments have taught us what can alleviate the distresses and suit the convenience of the people. But we are now to throw away that system, by which we have acquired this knowledge, and send ten men to legislate for us. 5.16.28

The Honorable Gentleman was pleased to say, that the representation of the people was the vital principle of this Government. I will readily agree that it ought to be so.—But I contend that this principle is only nominally, and not substantially to be found there. We contended with the British about representation; they offered us such a representation as Congress now does. They called it a virtual representation. If you look at that paper you will find it so there. Is there but a virtual representation in the upper House? The States are represented *as States,* by two Senators each. This is virtual, not actual. They encounter you with Rhode-Island and Delaware. This is not an actual representation. What does the term representation signify? It means that a certain district—a certain association of men should be represented in the Government for *certain ends.* These ends ought not to be impeded or obstructed in any manner. Here, Sir, this populous State has not an adequate share of legislative influence. The two petty States of Rhode-Island and Delaware, which together are infinitely inferior to this State, in extent and population, have double her weight, and can counteract her interest. I say, that the representation in the Senate, as applicable to States, is not actual. Representation is not therefore the vital principle of this Government—So far it is wrong. 5.16.29

Rulers are the servants and agents of the people—The people are their masters—Does the new Constitution acknowledge this principle? Trial by jury is the best appendage of freedom—Does it secure this? Does it secure the other great rights of mankind? Our own Constitution preserves these principles. The Honorable Gentleman contributed to form that Constitution: The applauses so justly due to it, should, in my opinion, go to the condemnation of that paper. 5.16.30

With respect to the failures and errors of our Government, they might have happened in any Government.—I do not justify what merits censure, but I shall not degrade my country. As to deviations from justice, I hope they will be attributed to the errors of the head, and not to those of the heart.

The Honorable Gentleman did our Judiciary honour in saying, that they had firmness to counteract the Legislature in some cases. Yes, Sir, our Judges opposed the acts of the Legislature.[48] We have this land mark to guide us.—They had fortitude to declare that they were the Judiciary and would oppose unconstitutional acts. Are you sure that your Federal Judiciary will act thus? Is that Judiciary so well constructed and so independent of the other branches, as our State Judiciary? Where are your land-marks in this Government? I will be bold to say you cannot find any in it. I take it as the highest encomium on this country, that the acts of the 5.16.31

Legislature, if unconstitutional, are liable to be opposed by the Judiciary.

5.16.32 Then the Honorable Gentleman said, that the two Judiciaries and Legislatures, would go in a parallel line and never interfere—That as long as each was confined to its proper objects, that there would be no danger of interference—That like two parallel lines as long as they continued in their parallel direction they never would meet. With submission to the Honorable Gentleman's opinion, I assert, that there is danger of interference, because no line is drawn between the powers of the two Governments in many instances; and, where there is a line, there is no check to prevent the one from encroaching upon the powers of the other. I therefore contend that they must interfere, and that this interference must subvert the State Government, as being less powerful. Unless your Government have checks, it must inevitably terminate in the destruction of your privileges. I will be bold to say, that the British Government has real checks. I was attacked by Gentlemen, as if I had said that I loved the British Government better than our own.[49] I never said so. I said that if I were obliged to relinquish a Republican Government, I would chuse the British Monarchy. I never gave the preference to the British or any other Government, when compared to *that* which the Honorable Gentleman assisted to form. I was constrained to say what I said. When two disagreeable objects present themselves to the mind, we choose that which has the least deformity.

16 June 1788[50]

5.16.33 Mr. Chairman.—The necessity of a Bill of Rights appear to me to be greater in this Government, than ever it was in any Government before.

5.16.34 {[7 *June 1788*] There are certain maxims by which every wise and enlightened people will regulate their conduct. There are certain political maxims, which no free people ought ever to abandon. Maxims of which the observance is essential to the security of happiness. It is impiously irritating the avenging hand of Heaven, when a people who are in the full enjoyment of freedom, launch out into the wide ocean of human affairs, and desert those maxims which alone can preserve liberty. Such maxims, humble as they are, are those only which can render a nation safe or formidable. Poor little humble republican maxims have attracted the admiration and engaged the attention of the virtuous and wise in all nations, and have stood the shock of ages. We do not now admit the validity of maxims, which we once delighted in. We have since adopted maxims of a different but more *refined nature:* New maxims which tend to the prostration of republicanism.

5.16.35 We have one, Sir, *That all men are by nature free and independent, and have certain inherent rights, of which, when they enter into society, they*

cannot by any compact deprive or divest their posterity.[51] We have a set of maxims of the same spirit, which must be beloved by every friend to liberty, to virtue, to mankind. Our Bill of Rights contains those admirable maxims.}

. . . I observed already, that the sense of the European nations, and particularly Great-Britain, is against the construction of rights being retained, which are not *expressly* relinquished.[52] I repeat, that all nations have adopted this construction—That all rights not expressly and unequivocally reserved to the people, are impliedly and incidentally relinquished to rulers; as necessarily inseparable from the delegated powers. It is so in Great-Britain: For every possible right which is not reserved to the people by some express provision or compact, is within the King's prerogative. It is so in that country which is said to be in such full possession of freedom. It is so in Spain, Germany, and other parts of the world. Let us consider the sentiments which have been entertained by the people of America on this subject. At the revolution, it must be admitted, that it was their sense to put down those great rights which ought in all countries to be held inviolable and sacred. Virginia did so we all remember. She made a compact to reserve, expressly, certain rights. When fortified with full, adequate, and abundant representation, was she satisfied with that representation? No.—She most cautiously and guardedly reserved and secured those invaluable, inestimable rights and privileges, which no people, inspired with the least glow of the patriotic love of liberty, ever did, or ever can, abandon. She is called upon now to abandon them, and dissolve that compact which secured them to her. She is called upon to accede to another compact which most infallibly supercedes and annihilates her present one. Will she do it?—This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation. For if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up. How were the Congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great-Britain? The States were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the States respectively, which was not given up to the Government of the United States.[53] But there is no such thing here. You therefore by a natural and unavoidable implication, give up your rights to the General Government. Your own example furnishes an argument against it. If you give up these powers, without a Bill of Rights, you will exhibit the most absurd thing to mankind that ever the world saw—A Government that has abandoned all its powers—The powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a Bill of Rights—without check, limitation, or controul. And still you have checks and guards—still you keep barriers—pointed where? Pointed against your weakened, prostrated, enervated State Government! You have a Bill of Rights to defend you against the

5.16.36

State Government, which is bereaved of all power; and yet you have none against Congress, though in full and exclusive possession of all power! You arm yourselves against the weak and defenceless, and expose yourselves naked to the armed and powerful. Is not this a conduct of unexampled absurdity? What barriers have you to oppose to this most strong energetic Government? To that Government you have nothing to oppose. All your defence is given up. This is a real actual defect.—It must strike the mind of every Gentleman. When our Government was first instituted in Virginia, we declared the common law of England to be in force.—That system of law which has been admired, and has protected us and our ancestors, is excluded by that system.—Added to this, we adopted a Bill of Rights. By this Constitution, some of the best barriers of human rights are thrown away. Is there not an additional reason to have a Bill of Rights? By the ancient common law, the trial of all facts is decided by a jury of impartial men from the immediate vicinage. This paper speaks of different juries from the common law, in criminal cases; and in civil controversies excludes trial by jury altogether. There is therefore more occasion for the supplementary check of a Bill of Rights now, than then. Congress from their general powers may fully go into the business of human legislation. They may legislate in criminal cases from treason to the lowest offence, petty larceny. They may define crimes and prescribe punishments. In the definition of crimes, I trust they will be directed by what wise Representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtue of Representatives. What says our Bill of Rights? "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[54] Are you not therefore now calling on those Gentlemen who are to compose Congress, to prescribe trials and define punishments without this controul? Will they find sentiments there similar to this Bill of Rights? You let them loose— you do more—you depart from the genius of your country. That paper tells you, that the trial of crimes shall be by jury, and held in the State where the crime shall have been committed.—Under this extensive provision, they may proceed in a manner extremely dangerous to liberty.—Persons accused may be carried from one extremity of the State to another, and be tried not by an impartial jury of the vicinage, acquainted with his character, and the circumstances of the fact; but by a jury unacquainted with both, and who may be biassed against him.—Is not this sufficient to alarm men?—How different is this from the immemoral practice of your British ancestors, and your own? I need not tell you, that by the common law a number of hundredors were required to be on a jury, and that afterwards it was sufficient if the jurors came from the same county. With less than this the people of England have never been satisfied. That paper ought to have declared the common law in force.

In this business of legislation, your Members of Congress will lose the restriction of not imposing excessive fines, demanding excessive bail, and inflicting cruel and unusual punishments.—These are prohibited by your Declaration of Rights. What has distinguished our ancestors?—That they would not admit of tortures, or cruel and barbarous punishments. But Congress may introduce the practice of the civil law, in preference to that of the common law.—They may introduce the practice of France, Spain, and Germany—Of torturing to extort a confession of the crime. They will say that they might as well draw examples from those countries as from Great-Britain; and they will tell you, that there is such a necessity of strengthening the arm of Government that they must have a criminal equity, and extort confession by torture, in order to punish with still more relentless severity. We are then lost and undone.—And can any man think it troublesome, when we can by a small interference prevent our rights from being lost?—If you will, like the Virginian Government, give them knowledge of the extent of the rights retained by the people, and the powers themselves, they will, if they be honest men, thank you for it.—Will they not wish to go on sure grounds?—But if you leave them otherwise, they will not know how to proceed; and being in a state of uncertainty, they will assume rather than give up powers by implication. A Bill of Rights may be summed up in a few words. What do they tell us?—That our rights are reserved.—Why not say so? Is it because it will consume too much paper? Gentlemen's reasonings against a Bill of Rights, do not satisfy me. Without saying which has the right side, it remains doubtful. A Bill of Rights is a favourite thing with the Virginians, and the people of the other States likewise. It may be their prejudice, but the Government ought to suit their geniuses, otherwise its operation will be unhappy. A Bill of Rights, even if its necessity be doubtful, will exclude the possibility of dispute, and with great submission, I think the best way is to have no dispute. In the present Constitution, they are restrained from issuing general warrants to search suspected places, or seize persons not named, without evidence of the commission of the fact, &c. There was certainly some celestial influence governing those who deliberated on that Constitution:—For they have with the most cautious and enlightened circumspection, guarded those indefeasible rights, which ought ever to be held sacred. The officers of Congress may come upon you, fortified with all the terrors of paramount federal authority.—Excisemen may come in multitudes:—For the limitation of their numbers no man knows.—They may, unless the General Government be restrained by a Bill of Rights, or some similar restriction, go into your cellars and rooms, and search, ransack and measure, every thing you eat, drink and wear. They ought to be restrained within proper bounds. With respect to the freedom of the press, I need say nothing; for it is hoped that the Gentlemen who shall compose Congress, will take care as little as possible, to infringe the rights

5.16.37

of human nature.—This will result from their integrity. They should from prudence, abstain from violating the rights of their constituents. They are not however expressly restrained.—But whether they will intermeddle with that palladium of our liberties or not, I leave you to determine.

17 June 1788

[*The 7th clause read.*]

5.16.38 Mr. Chairman.—We have now come to the ninth section, and I consider myself at liberty to take a short view of the whole. I wish to do it very briefly. Give me leave to remark, that there is a Bill of Rights in that Government. There are express restrictions which are in the shape of a Bill of Rights: But they bear the name of the ninth section. The design of the negative expressions in this section is to prescribe limits, beyond which the powers of Congress shall not go. These are the sole bounds intended by the American Government. Where abouts do we stand with respect to a Bill of Rights? Examine it, and compare it to the idea manifested by the Virginian Bill of Rights, or that of the other States. The restraints in this Congressional Bill of Rights, are so feeble and few, that it would have been infinitely better to have said nothing about it. The fair implication is, that they can do every thing they are not forbidden to do. What will be the result if Congress, in the course of their legislation, should do a thing not restrained by this ninth section? It will fall as an incidental power to Congress, not being prohibited expressly in the Constitution. The first prohibition is, that the privilege of the writ of *habeas corpus* shall not be suspended, but when in cases of rebellion, or invasion, the public safety may require it. It results clearly, that if it had not said so, they could suspend it in all cases whatsoever. It reverses the position of the friends of this Constitution, that every thing is retained which is not given up. For instead of this, every thing is given up, which is not expressly reserved.[55]—It does not speak affirmatively, and say that it shall be suspended in those cases. But that it shall not be suspended but in certain cases; going on a supposition that every thing which is not negatived, shall remain with Congress. If the power remains with the people, how can Congress supply the want of an affirmative grant? They cannot do it but by implication, which destroys their doctrine. The Virginia Bill of Rights interdicts the relinquishment of the sword and purse without controul. That Bill of Rights secures the great and principal rights of mankind. But this Bill of Rights extends to but very few cases, and is destructive of the doctrine advanced by the friends of that paper.

5.16.39 If *ex post facto* laws had not been interdicted, they might also have been extended by implication at pleasure. Let us consider whether this restriction be founded in wisdom or good policy. If no *ex post facto* laws be made, what

is to become the old continental paper dollars? Will not this country be forced to pay it in gold and silver, shilling for shilling? Gentlemen may think that this does not deserve an answer: But it is an all important question. Because the property of this country is not commensurate to the enormous demand. Our own Government triumphs with infinite superiority when put in contrast with that paper.—The want of a Bill of Rights will render all their laws, however oppressive, constitutional.

If the Government of Virginia passes a law in contradiction to our Bill of Rights, it is nugatory. By that paper the national wealth is to be disposed of under the veil of secrecy: For the publication from time to time, will amount to nothing; and they may conceal what they may think requires secrecy. How different is it in your own Government?—Have not the people seen the journals of our Legislature every day during every session? Is not the lobby full of people every day? Yet, Gentlemen say, that the publication from time to time is a security unknown in our State Government! Such a regulation would be nugatory and vain, or at least needless, as the people see the journals of our Legislature, and hear their debates every day. If this be not more secure than what is in that paper, I will give up that I have totally misconceived the principles of the Government. You are told, that your rights are secured in this new Government. They are guarded in no other part but this ninth section. The few restrictions in that section are your only safeguards. They may controul your actions, and your very words, without being repugnant to that paper. The existence of your dearest privileges will depend on the consent of Congress: For these are not within the restrictions of the ninth section. 5.16.40

If Gentlemen think that securing the slave trade is a capital object; that the privilege of the *habeas corpus* is sufficiently secured; that the exclusion of *ex post facto* laws will produce no inconvenience; that the publication from time to time will secure their property; in one word, that this section alone will sufficiently secure their liberties, I have spoken in vain.—Every word of mine, and of my worthy coadjutor [George Mason], is lost. I trust that Gentlemen, on this occasion, will see the great objects of religion, liberty of the press, trial by jury, interdiction of cruel punishments, and every other sacred right secured, before they agree to that paper. These most important human rights are not protected by that section, which is the only safeguard in the Constitution.—My mind will not be quieted till I see something substantial come forth in the shape of a Bill of Rights. 5.16.41

1. Cf. *The Federalist* no. 15, 92–98; Pennsylvania Convention Minority 3.11.30 n. 15.

2. See 5.16.1. On consolidation see Plebeian 6.11.15 n. 9.

3. See 5.16.2. Cf. Brutus VII, 2.9.86.

4. See Lowndes 5.12.1–2 and n. 7.

5. James Madison replied that "on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions, which, in republics, have,

more frequently than any other cause, produced despotism." The United States is not immune from this danger, which must be guarded against. "Perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism will be found in that very system which is now exclaimed against as the parent of oppression." Elliot III, 87–88. See *The Federalist* no. 10 and Madison's speeches in the Constitutional Convention on 6 June and 26 June. Farrand I, 134–36, 421–23. See references in Brutus IV, 2.9.45 n.31

6. Cf. George Mason's speech on the Executive in the Constitutional Convention, Farrand I, 101–2, 110–14 (4 June); Brutus VII, 2.9.86 and n.58.

7. Thorpe, *Federal and State Constitutions* VII, 3813.

8. Edmund Pendleton, Elliot III, 37. Mr. Pendleton was elected president of the convention, but most of the debate took place in the committee of the whole, with George Wyth in the chair.

9. Elliot III, 37.

10. Elliot regards this sentence as an interpolation of the compiler of the debates; but there is no such indication in the original edition. It is more likely that Henry is referring to a part of Pendleton's discussion that was only partly reported. Elliot III, 53, 38–39.

11. Edmund Randolph replied: "But it is insinuated by the honorable gentleman, that we want to be a grand, splendid, and magnificent people: we wish not to become so: the magnificence of a royal court is not our object. We want a government, sir—a government that will have stability, and give us security; for our present government is destitute of the one and incapable of producing the other. It cannot, perhaps, with propriety, be denominated a government, being void of that energy requisite to enforce sanctions. I wish my country not to be contemptible in the eyes of foreign nations. A well-regulated community is always respected. It is the internal situation, the defects of government, that attract foreign contempt; that contempt, sir, is too often followed by subjugation." Elliot III, 81. Not all of the Federalists were so modest, and Henry was right in thinking that some friends of the Constitution had visions of glory. See McMaster and Stone 127–29 (A Pennsylvania Farmer); Northampton, Massachusetts *Hampshire Gazette* 17 October 1787 (Anon. "Observe . . ."); *Virginia Independent Chronicle* 28 November 1787 ("Extract of a letter from a well informed correspondent . . ."); New Hampshire *Freeman's Oracle* 6 June 1788 (A Patriotic Citizen); Herbert J. Storing, "The 'Other' Federalist Papers: A Preliminary Sketch," *Political Science Reviewer* VI (1976), 215–47.

12. Elliot III, 65–66. For Anti-Federalist views of the circumstances of the United States see Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

13. Randolph charged that the Virginia legislature had frequently violated the constitution, giving as an example the following: "A man, who was then a citizen, was deprived of his life thus: from a mere reliance on general reports, a gentleman in the House of Delegates informed the house, that a certain man (Josiah Philips) had committed several crimes, and was running at large, perpetrating other crimes. He therefore moved for leave to attaint him; he obtained that leave instantly; no sooner did he obtain it, than he drew from his pocket a bill ready written for that effect; it was read three times in one day, and carried to the Senate. I will not say that it passed the same day through the Senate; but he was attainted very speedily and precipitately, without any proof better than vague reports. Without being confronted with his accusers and witnesses, without the privilege of calling for evidence in his behalf, he was sentenced to death, and was afterwards actually executed." Elliot III, 66–67. Henry's reply here left him open to severe criticism, which was administered by John Marshall. Elliot III, 223. It appears, however, that Henry's conduct was open to a better defense than he provided himself. See Wirt, *Sketches of Patrick Henry* 234–41; and the full discussion by William W. Crosskey, *Politics and the Constitution* II, 944 ff. Philips was executed not under the attainder but on trial for highway robbery—the indictment having been brought by the attorney general, Edmund Randolph.

14. Elliot III, 66–67.

15. Thorpe, *Federal and State Constitutions* VII, 3813.

16. Ibid.

17. Ibid.

18. Cf. below Mason (Virginia) 5.17.1; Smith 6.12.2. The Federalist contention was that rejection of the Constitution meant destruction of the Union. See, for example, Ford, *Pamphlets* 46 (A Citizen of America), 122 (A Citizen of Philadelphia); McMaster and Stone 386 (Wilson). On claims that the Anti-Federalists preferred separate confederacies, see below, n. 25; Centinel XI, 2.7.142 n. 75; Henry 5.16.11 n.25. It was a concern for Union that finally reconciled many Anti-Federalists to the Constitution. See, for example, Randolph 2.5, Turner 4.18.

19. The reference is probably to Pendleton, Elliot III, 39. Elliot, incidentally, changes Henry's remarks here to "a judiciary which will correct all . . ."

20. The original text does not begin a new paragraph at this point.

21. See Federal Farmer X, 2.8.110 n. 72. On responsibility see Centinel I, 2.7.7 n. 4.

22. Randolph used this term, but upon being criticized by Henry, he explained (according to the reporter) "that he did not use that word to excite any odium, but merely to convey an idea of a multitude." Elliot III, 148.

23. To this argument John Marshall replied: "That economy and industry are essential to our happiness, will be denied by no man. But the present government will not add to our industry. It takes away the incitements to industry, by rendering property insecure and unprotected. It is the paper on your table that will promote and encourage industry." Elliot III, 231. See Candidus 4.9.18 and n. 6.

24. Randolph, Elliot III, 79.

25. Ibid. 79–80; see Randolph 2.5.26 Henry was thought by some Federalists to favor separate confederacies. See *Virginia Independent Chronicle,* 6 February 1788 (An Old State Soldier) 9 April 1788 (A Freeholder); C. Griffin to Thomas Fitzsimons, 15 February 1788, Bancroft, *History of the Formation of the Constitution* II, 461; Edward Carrington to Thomas Jefferson, 24 April 1788, *Proceedings of the Massachusetts Historical Society,* 2d ser. 17 (1903): 497; James McClurg to James Madison, 5 August 1787, ibid. 471. See Centinel XI, 2.7.142 n. 75; James Madison to Thomas Jefferson, 6 June 1787, *Documentary History of the Constitution* IV, 184. On the general question of separate confederacies, see above, vol. 1, ch. 4 n. 2.

26. See Mason on the small republic, (5.17.1) and Randolph's reply, Elliot III, 84–85.

27. Above, 5.16.10.

28. Elliot III, 104–6.

29. Randolph, Elliot III, 84–85; cf. Corbin, ibid. 107; see references in Agrippa IV, 4.6.16 n. 10.

30. For other expressions of this theme see Federal Farmer IV, 2.8.58 n. 44.

31. Montesquieu, *Considerations on the Greatness of the Romans and Their Decline* XI.

32. For other comparisons of the British king and the proposed presidency, see Philadelphiensis XII, 3.9.96 n. 37.

33. Articles of Confederation, Art. 9, para. 7: "The Congress of the United States . . . shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances or military operations, as in their judgment, require secrecy . . ." See 5.16.20.

34. Randolph, Elliot III, 114–20.

35. Cf. Alexander Hamilton's remarks to the same effect: Farrand I, 286 (18 June); *The Federalist* no. 15, 93, 97–98; Elliot II, 231. Cf. Brutus X, 2.9.128 and n. 84.

36. Randolph: "Money is the nerve—the life and soul of a government." Elliot III 115. Cf. *The Federalist* no. 30, p. 188: "Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion and enables it to perform its most essential functions."

37. Corbin, Elliot III, 110.

38. See Corbin, Elliot III, 107–8; Randolph, ibid. 125–26.

39. Regarding military and taxing powers, Madison argued: "The means ought to be commensurate to the end. The end is general protection. This cannot be effected

without a general power to use the strength of the Union." Elliot III, 394. Cf. Madison at ibid. 96 (". . . no government can exist unless its powers extend to make provisions for every contingency") and *The Federalist* nos. 23, 31. See Brutus VII, 2.9.88–90.

40. Madison: "In order to judge properly of the question before us, we must consider it minutely in its principal parts. I conceive myself that it is of a mixed nature; it is in a manner unprecedented; we cannot find one express example in the experience of the world. It stands by itself. In some respects it is a government of a federal nature; in others, it is of a consolidated nature. Even if we attend to the manner in which the Constitution is investigated, ratified, and made the act of the people of America, I can say, notwithstanding what the honorable gentleman has alleged, that this government is not completely consolidated, nor is it entirely federal." Elliot III, 94. Cf. *The Federalist* no. 39, 253–57.

41. Madison did not give it a name. Corbin suggested "a representative federal republic, as contradistinguished from a confederacy." Elliot III, 107. On the question of names see above Martin 2.4.43 n. 12. Federal Farmer I, 2.8.10 n. 9.

42. Here and in the remarks following, Henry is replying to arguments made by Randolph on 9 and 10 June. Elliot III, 187–207. Cf. references in Federal Farmer IV, 2.8.50 nn. 38–40.

43. Randolph, Elliot III, 204–5.

44. Thorpe, *Federal and State Constitutions* VII, 3812–14.

45. Here Henry turns to Madison's speech on 11 June, Elliot III, 247–61.

46. See Corbin, Elliot III, 112; Randolph, ibid. 125; Madison, ibid. 256–57. Cf. *The Federalist* no. 17, 106–7; no. 27, 171–74; and Wilson, McMaster and Stone, 336. For other Anti-Federal discussions of representation see Federal Farmer II, 2.8.15 n. 11.

47. See above Brutus XI, 2.9.137 n. 89.

48. Henry replies here to arguments made by Pendleton on 12 June, Elliot III, 298–99. On judicial review see Brutus XI, 2.9.147–48 and n. 97.

49. See Randolph, Elliot III, 201; Marshall, ibid. 232–34; Pendleton, ibid. 297.

50. Elliot misdates this as 14 June.

51. Virginia Bill of Rights, 1776, sec. 1, Thorpe, *Federal and State Constitutions* VII, 3813. On the bill of rights as civic education see references in Federal Farmer XVI, 2.8.196 n. 118.

52. See 5.16.24.

53. Articles of Confederation, Art. 2: "Each state retains its sovereignty, freedom, and independence and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

54. Virginia Bill of Rights, 1776, sec. 9, Thorpe, *Federal and State Constitutions* VII, 3813.

55. Following Henry, Randolph attempted to reply to this criticism and was one of the few Federalists who did so. Randolph's general argument was "that every exception here mentioned is an exception, not from general powers, but from the particular powers therein vested." Elliot III, 464. See Brutus II, 2.9.30 n. 22.

Speech of George Mason in the Virginia State Ratifying Convention

4 June 1788

While Patrick Henry carried the main burden of the Anti-Federalist argument in Richmond, George Mason, the only Virginia Anti-Federalist who had attended the Constitutional Convention, provided weighty assistance. Mason's first speech, printed here, was given on the first day of the debate proper, 4 June, following George Nicholas and Edmund Randolph for the Federalists and Patrick Henry for the Anti-Federalists. It is an excellent short statement, bearing many resemblances to the more extensive arguments of Richard Henry Lee. Mason is concerned with the consolidating tendency of the Constitution, and argues that popular governments can only exist in a small territory. Under the Constitution, taxes are to be laid by persons who have neither the necessary information nor a common interest or fellow feeling with the people. Mason proposes that the general government be given the alternative of laying direct taxes only if requisitions on the states are not complied with, a proposal much discussed in the subsequent debate. Admitting that the inadequacy of representation is unavoidable in the general government, Mason insists that such a government must be given powers with a very cautious hand. He is fearful, moreover, that the number of representatives in the House of Representatives will not be increased as the population grows. It is interesting to compare this speech with the *Objections*,[1] although it should be kept in mind that the speech is directed to the first section of the Constitution and that Mason discussed other sections later in the debate.

The speech is taken from *Debates and Other Proceedings of the Convention of Virginia, Convened at Richmond, on Monday the 2d day of June, 1788, for the purpose of deliberating on the Constitution recommended by the Grand Federal Convention* (Petersburg 1788–89), 3 vols.

1. See above, 2.2.

Mr. Chairman—Whether the Constitution be good or bad, the present clause clearly discovers, that it is a National Government, and no longer a 5.17.1

confederation. I mean that clause which gives the first hint of the General Government laying direct taxes. The assumption of this power of laying direct taxes, does of itself, entirely change the confederation of the States into one consolidated Government.[1] This power being at discretion, unconfined, and without any kind of controul, must carry every thing before it. The very idea of converting what was formerly a confederation, to a consolidated Government, is totally subversive of every principle which has hitherto governed us. This power is calculated to annihilate totally the State Governments. Will the people of this great community submit to be individually taxed by two different and distinct powers? Will they suffer themselves to be doubly harrassed? These two concurrent powers cannot exist long together; the one will destroy the other: The General Government being paramount to, and in every respect more powerful than, the State governments, the latter must give way to the former.[2] Is it to be supposed that one National Government will suit so extensive a country, embracing so many climates, and containing inhabitants so very different in manners, habits, and customs? It is ascertained by history, that there never was a Government, over a very extensive country, without destroying the liberties of the people:[3] History also, supported by the opinions of the best writers, shew us, that monarchy may suit a large territory, and despotic Governments over so extensive a country; but that popular Governments can only exist in small territories. Is there a single example, on the face of the earth, to support a contrary opinion? Where is there one exception to this general rule? Was there ever an instance of a general National Government extending over so extensive a country, abounding in such a variety of climates, &c. where the people retained their liberty? I solemnly declare, that no man is a greater friend to a firm Union of the American States than I am:[4] But, Sir, if this great end can be obtained without hazarding the rights of the people, why should we recur to such dangerous principles? Requisitions have been often refused, sometimes from an impossibility of complying with them; often from that great variety of circumstances which retard the collection of monies, and, perhaps, sometimes from a wilful design of procrastinating. But why shall we give up to the National Government this power, so dangerous in its nature, and for which its members will not have sufficient information?—Is it not well known, that what would be a proper tax in one State would be grievous in another? The Gentleman who hath favored us with an eulogium in favor of this system,[5] must, after all the encomiums he has been pleased to bestow upon it, acknowledge, that our Federal Representatives must be unacquainted with the situation of their constituents: Sixty-five members cannot possibly know the situation and circumstances of all the inhabitants of this immense continent: When a certain sum comes to be taxed, and the mode of levying to be fixed, they will lay the tax on that article which will be most productive, and easiest in the collection, without consulting the real circumstances or convenience of a country, with which,

in fact, they cannot be sufficiently acquainted. The mode of levying taxes is of the utmost consequence, and yet here it is to be determined by those who have neither knowledge of our situation, nor a common interest with us, nor a fellow feeling for us:—The subjects of taxation differ in three-fourths; nay, I might say with truth, in four-fifths of the States:— If we trust the National Government with an effectual way of raising the necessary sums, 'tis sufficient; every thing we do further is trusting the happiness and rights of the people: Why then should we give up this dangerous power of individual taxation? Why leave the manner of laying taxes to those, who in the nature of things, cannot be acquainted with the situation of those on whom they are to impose them, when it can be done by those who are well acquainted with it? If instead of giving this oppressive power, we give them such an effectual alternative as will answer the purpose, without encountering the evil and danger that might arise from it, then I would chearfully acquiesce: And would it not be far more eligible? I candidly acknowledge the inefficacy of the confederation; but requisitions have been made, which were impossible to be complied with: Requisitions for more gold and silver than were in the United States: If we give the General Government the power of demanding their quotas of the States, with an alternative of laying direct taxes, in case of non compliance, then the mischief would be avoided; and the certainty of this conditional power would, in all human probability, prevent the application, and the sums necessary for the Union would be then laid by the States; by those who know how it can best be raised; by those who have a fellow-feeling for us. Give me leave to say, that the same sum raised one way with convenience and ease, would be very oppressive another way: Why then not leave this power to be exercised by those who know the mode most convenient for the inhabitants, and not by those who must necessarily apportion it in such manner as shall be oppressive? With respect to the representation so much applauded, I cannot think it such a full and free one as it is represented; but I must candidly acknowledge, that this defect results from the very nature of the Government. It would be impossible to have a full and adequate representation in the General Government; it would be too expensive and too unweildy: We are then under the necessity of having this a very inadequate representation: Is this general representation to be compared with the real, actual, substantial representation of the State Legislatures? It cannot bear a comparison. To make representation real and actual, the number of Representatives ought to be adequate; they ought to mix with the people, think as they think, feel as they feel, ought to be perfectly amenable to them, and thoroughly acquainted with their interest and condition: Now these great ingredients are, either not at all, or in so small a degree, to be found in our Federal Representatives, that we have no real, actual, substantial representation; but I acknowledge it results from the nature of the Government: The necessity of this inconvenience may appear a sufficient reason not to argue against it: But, Sir, it clearly shews, that we

ought to give power with a sparing hand to a Government thus imperfectly constructed. To a Government, which, in the nature of things, cannot but be defective, no powers ought to be given, but such as are absolutely necessary:[6] There is one thing in it which I conceive to be extremely dangerous. Gentlemen may talk of public virtue and confidence; we shall be told that the House of Representatives will consist of the most virtuous men on the Continent, and that in their hands we may trust our dearest rights. This, like all other assemblies, will be composed of some bad and some good men; and considering the natural lust of power so naturally inherent in man, I fear the thirst of power will prevail to oppress the people:—What I conceive to be so dangerous, is the provision with respect to the number of Representatives: It does not expressly provide, that we shall have one for every 30,000, but that the number shall not exceed that proportion: The utmost that we can expect (and perhaps that is too much) is, that the present number shall be continued to us:—"The number of Representatives shall not exceed one for every 30,000." Now will not this be complied with, although the present number should never be increased; nay, although it should be decreased? Suppose Congress should say, that we should have one for every 200,000, will not the Constitution be complied with? For one for every 200,000 does not exceed one for every 30,000. There is a want of proportion that ought to be strictly guarded against: The worthy Gentleman tells us, we have no reason to fear; but I always fear for the rights of the people: I do not pretend to inspiration, but I think, it is apparent as the day, that the members will attend to local partial interests to prevent an augmentation of their number: I know not how they will be chosen, but whatever be the mode of choosing, our present number is but ten: And suppose our State is laid off in ten districts; those Gentlemen who shall be sent from those districts will lessen their own power and influence, in their respective districts, if they increase their number; for the greater the number of men among whom any given quantum of power is divided, the less the power of each individual. Thus they will have a local interest to prevent the increase of, and perhaps they will lessen their own number:[7] This is evident on the face of the Constitution—so loose an expression ought to be guarded against; for Congress will be clearly within the requisition of the Constitution, although the number of Representatives should always continue what it is now, and the population of the country should increase to an immense number. Nay, they may reduce the number from 65, to one from each State, without violating the Constitution; and thus the number which is now too small, would then be infinitely too much so: But my principal objection is, that the confederation is converted to one general consolidated Government, which, from my best judgment of it (and which perhaps will be shewn in the course of this discussion, to be really well founded) is one of the worst curses that can possibly befal a nation. Does any man suppose, that one general National Government can exist in so extensive a country as this? I hope that a

Government may be framed which may suit us, by drawing the line between the general and State Governments, and prevent that dangerous clashing of interest and power, which must, as it now stands, terminate in the destruction of one or the other. When we come to the Judiciary, we shall be more convinced, that this Government will terminate in the annihilation of the State Governments: The question then will be, whether a consolidated Government can preserve the freedom, and secure the great rights of the people.

If such amendments be introduced as shall exclude danger, I shall most gladly put my hand to it. When such amendments, as shall, from the best information, secure the great essential rights of the people, shall be agreed to by Gentlemen, I shall most heartily make the greatest concessions, and concur in any reasonable measure to obtain the desirable end of conciliation and unanimity. An indispensible amendment in this case, is, that Congress shall not exercise the power of raising direct taxes till the States shall have refused to comply with the requisitions of Congress. On this condition it may be granted, but I see no reason to grant it unconditionally; as the States can raise the taxes with more ease, and lay them on the inhabitants with more propriety, than it is possible for the General Government to do. If Congress hath this power without controul, the taxes will be laid by those who have no fellow-feeling or acquaintance with the people. This is my objection to the article now under consideration. It is a very great and important one. I therefore beg Gentlemen seriously to consider it. Should this power be restrained, I shall withdraw my objections to this part of the Constitution: But as it stands, it is an objection so strong in my mind, that its amendment is with me, a *sine qua non*, of its adoption. I wish for such amendments, and such only, as are necessary to secure the dearest rights of the people. 5.17.2

1. On consolidation see Plebeian 6.11.15 n. 9.
2. On concurrent taxation power see Federal Farmer III, 2.8.39 n. 29.
3. Cf. Cato III, 2.6.13 n. 8.
4. In the Virginia Assembly, Mason had declared "that no man was more completely federal in his principles than he was: . . . that he regarded our perfect union as the rock of our political salvation"; but that after considering the new constitution he could not approve it. Rowland, *The Life of George Mason* II, 191. Cf. Henry 5.16.6 n. 18.
5. George Nicholas, who opened the debate, Elliot III, 7–21.
6. Cf. Brutus IV, 2.9.48 n. 34.
7. See replies to this argument by George Nicholas (Elliot III, 12) and Publius (*The Federalist* no. 58). For other replies see Federal Farmer III, 2.8.39 n. 29.

Address by Denatus

VIRGINIA INDEPENDENT CHRONICLE
11 June 1788

This unusually interesting composition by Denatus appeared in the *Virginia Independent Chronicle* on 11 June, while the Virginia ratifying convention was sitting. The author identifies himself as a relatively unknown foreigner and admits that the essay is imperfect; but there are several interesting points. Denatus objects to the obscurity of the Constitution and to the illegality of the proceedings, shrewdly observing that most of the harm has been done by the mere proposal. He objects to the absence of a bill of rights, since the proposed government is not in fact a confederation, where a bill of rights is unnecessary (5.18.7). His chief criticism, however—one that is in some tension with his fears for the state governments—is that the framers failed to provide for the education of the people in the principles of morality, religion, jurisprudence, and the art of war. He proposes that a series of academies be established for this purpose and briefly outlines their objectives (5.18.9–12). Fearing both adoption and rejection of the Constitution, Denatus prefers adoption with amendments, and makes the interesting suggestion that the ratifications and amendments from the states should be laid before General Washington "for him to select and make what alterations shall appear best" (5.18.15).

To the Members of the Virginia Federal Convention, collectively, and individually.

Gentlemen,

5.18.1 Happy in the enjoyment of my own reflections, the tranquility of my neighbours, and the peace and prosperity of every good man, I pass a great part of my time in solitude. At these periods, the fœderal constitution, with the criticisms of the wise upon it, made their appearance. Considering the work itself, I could not bring it within my view. To me, the commentators have bewildered the subject, and hid it from my mind, in impenetrable obscurity. After reading it three times carefully, I formed an opinion, which I still retain, and which, daily, sinks deeper into my belief. That opinion I

now lay before you, in hopes that some thought of mine, may be worthy of observation and contribute to the general good.

Men of learning and experience, judge of others with humanity. You have too much liberality, and too great a desire for the improvement of every useful degree of human study, to blame me for this address. Those who determine without reason, may think otherwise: to them I reply, 5.18.2

That all men have as great a right, either together, or in opposition to each other, to reason upon suppositions, as upon facts, and to censure the conduct of men, as to approve it; that evil may be prevented, by the fear of blame and punishment: for all men, in the same society, have a right to enquire into all opinions, to examine all subjects, to represent all grievances, to shew what laws are pernicious or defective, and to lay before the public their sentiments, agreeable to truth. Where this reciprocation is not allowed, social liberty is in a great measure destroyed.—The press is the vehicle of this intelligence—I will enjoy the privilege, and return to the matter in hand.

I object to the said constitution, generally, and specially—but, wish that may it be adopted, and if possible, with amendments.—This appears strange. Be pleased to suspend your opinions, until you hear my reasons. 5.18.3

I renounce it entirely, because, in my opinion, it was composed without any legal authority. As far as I can learn, the express purpose of the convention was, to revise and amend, the articles of the union. Instead of this, which they had law to do, they followed their own imaginations, contrary to law. Instead of repairing the old and venerable fabrick, which sheltered the United States, from the dreadful and cruel storms of a tyrannical British ministry, they built a stately palace after their own fancies, and in every convenient part of the floor, and of the foundation, securely planted the seeds of monarchy. In the equity of things, it avails nothing, to say, if the people do not like it, they may let it alone. The innovation, and the injury to public justice, is still the same. Had they preserved only one article of the union, and built the present constitution to it, the objection of innovation would be unreasonable: But they have done what you know. A more fatal innovation may be made at a future day, for as Junius says, "one precedent creates another, they soon accumulate and constitute law—What yesterday was fact, to-day is doctrine—Examples are supposed to justify the most dangerous measures, and where they do not suit exactly, the defect is supplied by analogy."[1] 5.18.4

Supposing the above objection had never existed, I remonstrate against the constitution, because, to me it appears incomprehensible and indefinite.[2] For these divine attributes, its pious friends, say, by way of encomium, that it is a gift from heaven—Such observers know very little of gifts from heaven: but enthusiasts must rave. I will venture to make a bold observation here[:] I think the sun never shone upon a man that could take it within his view—No being, that we have any knowledge of, but the Deity, 5.18.5

can see through it—God, the first cause of all things, sees through the whole down to the final effect.—Contracted man, takes the effect, and struggles up to the cause; then, along the steps he has ascended, looks down to the effect again—This is the way that mechanics regulate their ideas.—A millwright stands at the water-wheel, and mentally sees the cause and effect of every movement in a complicated flour-mill, regularly on to the meal-trough—he then understands the machinery—If he cannot see, regularly along to the meal-trough, he does not understand it.—The water, is the cause of every movement—The mechanic knows how every thing will happen—The constitution, if adopted, will be the cause acting upon the conduct of men and nations.—And where is the man who can see through the constitution to its effects? The constitution of a wise and free people, ought to be as evident to simple reason, as the letters of our alphabet—This constitution I think is calculated for men of high monarchical principles, and to swallow up the constitutions of the different states.

5.18.6 Human nature ever hath, is, and will be the same, while this world continues under the same divine law.—History in all ages, affords instances of this truth too shocking to be mentioned. Let any man examine his own mind, and he will discover a mixture of democratical, aristocratical, and monarchical principles; and perhaps I would not be far wrong, to add, despotic and tyrannical.—Let whoever doubts of this, turn his attention sharply, to any man he is acquainted with.—Suppose then, the simile is directly in point.—That an uncommonly strong man possessed of every implement of war, and thirteen weak men, but denied the use of any weapon of defence, were to receive a grant of lands, in some uninhabited part of the world, and by mutual agreement, proposed by this same strong man to be governed by him, in such a manner, that no matter what any of them did, or might desire to do, for the happiness of all,—it could be of no effect, unless it agreed at that time with his peculiar cast of mind, because, not *their* voices, but *his*, must be the *supreme law of the land*.—Would not these thirteen men be very simple.—And if this mighty strong man would twist their heads off some day in his wrath—Is it not what might be naturally expected? I'll tell you how he would act. Common decency, and the shame which naturally attends the outset of an unjustifiable course of life, would induce him to exercise in conjunction, those attributes of his soul, which were the purer parts of democracy, aristocracy, and monarchy. This time would be the happiest of their days.—By and by the latent qualities of power, and hatred of restraint, having gathered strength, from time, and conscious superiority, would bury democracy, and incline him to move the land mark a little. The people remonstrate against the encroachment—The aristocrat, makes a parade of bombastical wisdom, says the land-mark was not evidently fixed upon the face of the ground, but only ideal—The people seem satisfied—He studies their imbecility, and moveth the land-mark a little farther.—The people exclaim against this violation of plighted

faith—By this time he has become a monarch in his own intentions, claps his hand on his sword to unarmed men, gives a stamp, and moveth the land mark farther still.—The people exclaim to heaven against him for redress, and say, that to each man he promised to *guarantee* the full possession of his property—Guarantee! says the tyrant, true I did, but you see now, I do not choose to do it, and where is the power to compel me? Heaven is neuter in this second dispute.—The genius of real liberty, who had waded through seas of blood to crush oppression and licentiousness, whispers these to unhappy men. The tyrant perceives the conference, draws his sword, and pronounces the following words—You see I have the command of every weapon of war. I am a man mighty in battle: You are destitute of any thing to defend yourselves. I have every necessary for two years; you can command nothing; and if you do not quietly relinquish the whole of your possessions, into my management, before the end of twelve months I will sacrifice you as a striking example to succeeding ages, that those people who inconsiderately resign their natural rights into the hands of others may expect the same fate.

I object to it also, because, it appears to be a huddled piece of work: and (that in the general bustle) they forgot to put a bill of rights to it. A bill of rights! say Mr. Wilson and others, to confederated powers, is unnecesssary[3]—very truly, to powers properly confederated, but this is no confederation. It is a national government, i.e. through a little time, the incroachment will so prevail, that the fœderal constitution will expunge entirely the state constitutions—It appears to be a confederation now, but the monarch who is asleep in its bosom, at a convenient time, will awaken with a vengeance!—There would be no need of a bill of rights, were the states properly confederated. The land-mark clearly drawn between the powers that give, and the power given:—And where the remaining parts of the powers that give, are ever to be held sacred by the power given. The remaining parts of the powers that give, or the residue, of our state constitutions, would be a bill of rights, to the power given, or the fœderal constitution. Had this distinction been clearly fixed, so as to prevent any future controversy, the constitution in question, would have been a glorious, and an immortal example of human wisdom. But alas! this is not the case—There is no barrier to the power of the fœderal constitution. It will easily overleap our state constitutions with impunity. When this comes to be the case, and the fœderal constitution sovereign in all things, we ought to have a bill of rights; to save us from oppression. The want of this, is of an alarming nature, and I hope will be one of your amendments. 5.18.7

Had the creator of the universe thought proper to form mankind without selfish and dissocial passions, I think I can maintain, that we would be happy, and in little need of human government. Reason, or the internal voice of infinite wisdom, would be the sole conductor of man.—But for purposes best known to this almighty sovereign of pure goodness and order, 5.18.8

we are subject to many jarring propensities. Among these, vanity, ambition, and the love of riches, are not the least.—While reason and conscience can confine the passions, their action and re-action on each other, constitute human happiness. But when they overcome reason and conscience, they produce our misery. To guard against this misfortune, as much as human foresight could discover, ought to have been the chief business of the late fœderal convention.[4] This necessary and heavy part of the work is not mentioned in the constitution, and for this reason I object to it—Some will say this is no objection—It would have been simple in the convention to debate on preventing those things which have no being, and which, if necessary, may be done by Congress at a future period. I may be wrong, but in my way of thinking, it is an objection, for the source of all the revolutions and calamities that ever will befal the United States of America, lie dormant in the human mind this very day. The prevention of these misfortunes, which will flow from the passions, instead of being utterly neglected, ought to have employed the most solemn moments of the convention, and ought to have been the point, to which all their views should have tended.

5.18.9 Here it may be asked "and pray, Sir, what do you wish should have been done?" Far be it from me, so contracted in my views and experience, to say absolutely, that any thing should have been done.

As I have, I will continue to give my opinion as the constitution of a free people ought to be formed in the best possible manner for the happiness of them, and their posterity, it ought to contain some mode, rivited through its very essence, for the present and succeeding ages, to be educated in the principles of morality, religion, jurisprudence, and the art of war. This is a duty which the framers of a constitution owe to posterity.—For the neglect of which, by men so famed for wisdom, very few excuses indeed, can be admissable—The first, or second article of the said constitution, ought to contain something to this effect—That as soon as possible, academies shall be established at every proper place throughout the United States for the education of youth in morality; the principles of the christian religion without regard to any sect, but pure and unadulterated as left by its divine author and his apostles: The principles of natural, civil, and common law, and of our constitution: And the art of defending and conquering nations in battle, either by land or sea—These academies to be regulated from time to time by Congress, and their establishment to be perpetual.[5]

5.18.10 As man is an accountable being, to his creator and to his fellow-creatures, the study of morality would enable him to act consistent with his duty to society, and the study of religion, with his duty to God. I will venture to affirm, that was this mode established we would have fewer law suits, less backbiting, slander, and mean observations, more industry, justice and real happiness, than at present. Says a pious writer, "be careful not to neglect religion in the education of your children, in vain will you endeavour to conduct them by any other path: If they are dear to you, if from them you

expect to receive credit or comfort from religion must be derived their happiness and your own."[6] Another elegant writer observes nearly in the same manner, speaking to a father of his son. "Teach him science, and his life will be useful. Teach him religion and his death will be happy."[7]

5.18.11 The study of jurisprudence would prepare our young men, and our old men, for every department of public business. They would be qualified, in point of education, for every office at home, and as their virtues and genius merited, would be appointed consuls or ambassadors abroad. Far other is the case now. How absurd it is, to send men to do the business of which they are ignorant. To make laws, and unacquainted with the principal ties of social union. If this remark is thought hard, I appeal to our late acts of Assembly, and to the sufferings of the nineteen-twentieths of our people. The multiplicity of our jarring laws—Their inconsistency in some instances, with common sense—The honest men being pointed at by the Assembly, ever since the revolution—The struggle for instalments—The execution law—The perspicuity of the district law, and to crown all the tenacious continuance of the *holy six months law*—I think ought to cool the enthusiasm of every anti-fœderalist.

5.18.12 Were these academies established, and study of the art-military, and the militia exercise, would qualify us for crushing at once, every enemy to our government, foreign or domestic. Like the Roman generals we would have the statesman and the warrior united in the same man—Our people educated in this manner, at stated times, would put the theory of fortification, gunnery, and manouvering of armies into practice. We would march, encamp, have mock battles and sieges, go through every part of the military duty as if in real war, then return home, prepare our arms for a moments warning, and each man fall to his occupation as before. This would guard against effeminacy: It is the natural way to enjoy the sweets of society, and to prevent any nation, or people from disturbing our quiet. We see in private life, that the man who wishes to hector over another, is more sound than substance, and when he meets with manly opposition, fights at a distance. He does not turn out hand to hand, alone, and on equal terms, as a brave man ought to do, but fights most valiantly, throughout the regions of fancy: So it is in nations. Would Portugal choose to declare war against France or England? Would any of the powers contiguous to Russia, choose to declare war against that empire? I think they would not, because they would be conscious of having to contend with a superior power, and according to my way of thinking, if the United States of America were wisely cemented together, as one people and properly educated in the sciences of morality, theology, jurisprudence, and war, the greatest of the forementioned powers would not dare to insult either our citizens or our ships. The great art in this business would be, to regulate the militia in such a manner that neither agriculture, industry, commerce, nor the military spirit should suffer. I think Congress could soon complete this organization. What occasion then, would we have for a

standing army? That dead weight upon the heart of nations! That disgraceful and wicked instrument in the hands of conscious worthlessness and guilt! High or low—rich or poor—citizen or governor, subject, king or president, the good man's character will ever be his guard—The wicked ought to suffer.

5.18.13 How fluctuating are the dissocial passions of men! These are the cause of the rise and fall of nations and the changes of government. Some time ago, the regal power was sovereign in America—Since, democratical republicanism now nearly anarchy, and without great care, it is not unlikely but we may soon experience a change worse than either. These revolutions are a lesson, to be cautious, of what powers, and of what time, the president of Congress should be appointed—He ought by no means to command the forces of the United States, without leave from Congress—nor to be eligible successively—and never after being twice in office—none of his brothers, uncles, sons, first cousins—nor father ought to fill the same post during his natural life—after governing he ought to be governed, to prevent his despotic principles from making head. The conduct of Dejoces, Julius Caesar, Oliver Cromwell, and what Hannibal might have done, had he returned victorious from Italy to Carthage, and also, how the present empress of Russia ascended the throne, ought ever to be held in view when the powers of this president are in contemplation.

5.18.14 The above in part, are my objections to the fœderal constitution, each of which, is a genus. As I am a warm friend to the union, and to justice among its individuals—I will object no more—My sincere prayer is, that it may be amended, and then adopted—It certainly has a great many excellent qualities, and as many bad ones. The ambiguity of the whole, is its greatest fault. I remember, in a public court yard, to have heard a baptist preacher make three score and sixteen objections to it, and grunt and condemn it from end to end—and within five minutes a practitioner of the law, to defend it most vociferously from end to end.—A blacksmith at my elbow, pitied them both—I really thought then, what I still think, that we all knew very little about it.

5.18.15 If we adopt it without amendments, the seeds of our ruin are sown. If we reject it, disunion, the highest injustice, perhaps anarchy, and thousands of calamities will be the consequence—The people are impatient and will not consider things cooly—In my opinion, the safest way would be, to adopt it with amendments. When the whole, or nine states have come into the measure—to lay the ratifications and amendments from all the states, before General Washington, and from the whole, for him to select and make what alterations shall appear best—He certainly knows the natural rights of mankind, the general interests of this country; its natural and artificial productions, and upon the scale of nature with other nations to what they may become, and also, this genius of the people, better than any other man. And

whether his amendment would agree with speculative reasoning, or not, his name to sanctify the whole.

Well knowing I address men whose souls are expanded, by education, humanity and experience, I am at ease, with respect to the imperfections of the composition, either on account of its sentiments, or its language—I am subject to human frailty; but mean well. As I am not known to some, and but very little indeed to any of you, it is no matter who or what I am—If this address can have the smallest good effect I will be happy. This much however I will observe, that I am a foreigner, and with yourselves may say, of the same ancestors, the same language, the same government, the same religion, and the same spirit we are all branches of the same tree. You towards the trunk, I towards the top: and if the branches towards the top are longer in making their appearance, than those towards the trunk, is there any essential difference in their qualities? Are they not homogeneous? Do they not collectively unite to the utility and beauty of the whole: And do we not conjointly, contribute to the glory of that power who gave us existence, to dwell in peace, harmony, and brotherly affection upon the same land? 5.18.16

There is one thing, particularly, which I beg leave to observe—I hope it will be of more benefit than all I have written. You are now on business of the most awful nature. Upon your wisdom, Virginia rests her future happiness. Let not then, any degree of party-work nor any kind of fallacious arguments, destroy the patriotic emanations of the soul. It is noble, it is great and glorious to acknowledge mistakes. Be like brothers, and we will be happy. All cannot be right, perhaps not one, throughout the system he may have in view. Gather the best parts of all, together, and throw the rest away. Consider the imperfections of human knowledge, and how often the greatest men have erred. Aristotle and Des Cartes themselves have gone astray in some things. Let social affection shine through all your conduct. Advise like brothers, but do not debate like foes. With reverential awe view your chairman as your father, studying the happiness of his children, and may he who presides over the councils of good men give you wisdom and unanimity. 5.18.17

Denatus.

Buckingham, May 27th, 1788.

1. *The Letters of Junius* [Woodfall's Junius], author's dedication. See references in Republican Federalist, 4.13.15 n. 11.
2. Cf. *The Federalist* no. 37, 234–37; no. 31, 193–95. See Cato V, 2.6.34 n. 21.
3. James Wilson, Address to the Citizens of Philadelphia, 6 October 1787, McMaster and Stone 143–44; see Federal Farmer IV, 2.8.50 n. 39.
4. Cf. *The Federalist* no. 15, 95–96.
5. On proposals for a national university, see David Madsen, *The National University: Enduring Dream of the U.S.A.* (Detroit 1966). Cf. Turner 4.18.2.
6. The source of this quotation has not been found.
7. The source of this quotation has not been found.

Letter from A Delegate Who Has Catched Cold

VIRGINIA INDEPENDENT CHRONICLE
18 and 25 June 1788

This essay was addressed to the chairman of the committee of the whole (George Wythe) of the Virginia ratifying convention, then completing its deliberations. Its author presumably had to leave or could not attend the convention. The general quality and some of the arguments of the piece are similar to those of Denatus, although the specific proposals are different. The author is clearly a minor Anti-Federalist figure. He seems, indeed, only a slightly reserved Federalist; but he is emphatically Anti-Federal in his concern to maintain the purity of the beginnings. He proposes that the Constitution be adopted without amendments for a certain period, at the end of which there should be a general revision and correction. The proposal is thin and not worked out, but it is defended (particularly in the latter half of the essay) with sensitivity to the peculiar needs for stability in republican government (5.19.9–12) and a good statement of the value of a bill of rights in preserving the people's attachment to their rights and their country. This bill of rights should be "so expressive, so clear, and at the same time so short, as never to require either comment or interpretation" (5.19.3).

18 June 1788

To the Honorable the Chairman of the Committee in Convention at Richmond.

5.19.1 In resuming at this interestant period all that has been written and said on the new constitution, and removing what passion and particular interest has suggested, it is naturally to be concluded,

1st. That our actual confederation is defective from a want of energy, which excludes unanimity, regularity, and celerity in its interior and exterior regulations, and consequently cannot preserve, either our tranquility, or our liberty, and exposes us to the invasions, or to the contempt of foreign

nations, which foresaw, with reason, our divisions and our next annihilation.

2d. That a new government is indispensable for remedying the defects of this, which if it be well organized, will encourage agriculture, and consequently raise the value of our lands, encrease our trade, and consequently augment our riches and our credit; re-establish the order and the exactness, and consequently, the confidence and reputation, and will people this continent with foreign emigrants, who to enjoy the advantages of our government, will bring in with them, arts, manufactures and industry.

3d. That the proposed constitution which has already been accepted by several states, has many of the qualities essential to our prosperity; but in remedying the weakness and defects of the old, it is not itself entirely free from them; those defects are of a very alarming nature, since they expose the sovereignty of the state and the liberty of the individual, and may reduce us to the debased situation of European republics.

4th. In any human performance imperfections are inevitable, and more essentially in the difficult task of forming a plan for to govern a people without endangering their liberties; and we must confess, my dear countrymen, that we planters who form the body of the people, though so essentially interested in this plan, we cannot be competent judges of its theory, when we find the learned and well skilled in this business differ so widely from one another; we must not set out in pursuit of ideal perfection, for we would find that we had been in search of an imaginary or an unattainable object; we can only in our capacity, judge of the effects and results of it by experience; but in making it, we should solely and essentially bend all our attention to the preservation of the inestimable right of having in our power at all times to new model our government according to circumstances, and to vary its course at certain periods; since it is really in this power that the sovereignty of the people consists.

Upon the above principles, which prove the necessity of the adoption of this plan, the impossibility in which we are, of discovering its imperfections, otherwise than by experience, and in fine the dangers to which our rights and liberties will be exposed by its adoption; our situation is plainly a very critical one. 5.19.2

Amendments are proposed; but if we were to make any, the other states have certainly the same right, and we are not to suppose that these amendments would be totally devoid of all partial views towards local interests, which have been conciliated as much as possible, in the general convention, in the presence of all the parties concerned. 5.19.3

Those amendments should be prematured, contradictory, they should carry discussions and slowness dangerous in this circumstance, and even being unanimously agreed, they could not preserve us, from the imperceptible usurpations of power and of the unexpected defects, forgetfulness and mistakes, than [that?] the experience alone can demonstrate; those 5.19.4

palliatives should prove only, the weakness and defects of our government, who since the moment of its formation, is subject to particular amendments, and of a model who ought to be short and intelligible at every body, it should be a difficult and complicated work, subject to commentaries and interpretations in all senses; in fine, a true labyrinth whom the lawyers alone should know the way. But let me ask any one of these proposers of amendments, if he were to make what alterations and corrections he thought proper in this plan, whether it would then be free from all the defects and inconveniences it is now reproached with, or if after such alterations, he could guarantee to the people of America, a government by which their liberty, and happiness, would be secured to them. Let them for a moment lay aside their vanity and consult only their honor and conscience, and then answer in the affirmative.—I will put the same question, in the name of the people, to those who recommend the adoption of this plan without amendment! can any of them under this plan guarantee to us our privileges and liberties—if either of these parties were alone to be answerable for the event they engaged for, they would hesitate without doubt, in entering into such a guarantee.

5.19.5 In that painful situation, and obliged to take a resolution, I put myself above all apprehensions of being accused of presumption in giving you my opinion; I deliver it with zeal and confidence, because it appears to conciliate the interests of these two opposite parties. I propose the adoption of the new constitution without amendment for a limited term, at the end of that period, let it be revised and corrected, and this without affecting the 5th art. of the constitution, which provides reforms whenever found necessary.

5.19.6 That mode appears such as would be agreed to by Congress, since it maintains the union for a term of 6, 8, or 10 years, and it would probably be approved of by the other states, since the minority in their convention required amendments and the majority wished for them, and all they accepted it in its present form, only from an apprehension of the mischiefs, which a disunion would necessarily occasion; they will be with pleasure a period fixed and convenient for correcting the faults it is now reproached with, as well as those which may hereafter be discovered.

5.19.7 This precaution for revision will awake our attention and oblige us to invigorate our government at that stated period; it not only enables us to operate the corrections wished now; but all the other foreseen and unexpected, before they be rooted and naturalized with our government; that enables us to enjoy directly the benefits of that new constitution, without apprehending the inconveniency of the actual particular and partial amendments; for to leave that reform undecided and for an unlimited time, as it is indicated by the 5th art. of the constitution, it may be delayed, or drawn back by the very powers granted by the people, or will take place only, when abuses kept up by leaders, will be too much rooted and cause a

revolution! besides a reform becoming indispensable by the defects and vices of the constitution, should not subject to more dangers, if it were suddenly to take place, than if it were to be generally expected and supposed to be nothing more, than a customary revision; such an institution would resemble that of the censors of Pennsylvania, who take place every seven years, which distinguishes the constitution of this state and cannot be too much commended:[1] and farther the time being fixed for that revision it would make our rulers more careful and circumspect, than an uncertain epoch.

If our present confederation which is visibly defective, has found so many defenders, and give such trouble for exchanging it against one certainly better, what difficulty and dangers shall we meet with, in amending the new, if a term for such reform is not pointed out. 5.19.8

If all the nations of Europe the more civilized, were in possession of such a regulation, they should not lament certainly under ridiculous and barbarous laws, institutions and customs, which are in contradiction with their actual morals and their learning.

By A Delegate
who has catched cold.

(To be concluded in our next.)

25 June 1788

(Concluded from our last.)

Sir,

As republican governments admits of few abuses in their state of original purity! but when they do exist, they are more striking, and visible by their contrasts, and the government then possesses more energy to effect a correction; as societies encrease, grow old, and acquire perfection in appearance by their population, commerce, arts, riches and luxury, then abuses and vices multiply, subdivide and are insensibly confounded with one another, each of them in detail becomes less striking but by their union, their pernicious effects, are discovered and removed with more difficulty, because, the government at best has only retained its first situation; and has not held the same progressive tenor with the society; hence springs the shocks and revolutions by which, either the people overturn the government, or the government oppresses the people: it is then necessary to vary its regime at periodical epochs: all things in nature is subdued by periodical order, heavens and earth have their precise revolutions, and ourselves are subdued for our wants at that general law, we follow it in all our actions and 5.19.9

business to maintain the good order, thus, we ought to observe it in this great and important transaction.

5.19.10 It is an incontestible fact that all governments, how perfect soever their organization, have been at last destroyed; even that of the Jews, which they boast to have held immediately from God himself, have obeyed this general law and has not preserved that people from dispersion, etc. etc.

5.19.11 Some authors after having rapidly glanced over all the governments which have existed to this day, have imagined that the political bodies resembled the human body in these circumstances, of infancy, growth, decline, and dissolution; there are others who have considered this comparison as rather ingenious than pertinent, because the political bodies being composed of individuals continually succeeding each others, in the same order, may be always youthful and last as long as the world, were it not deranged by great and untoward events! but without examining the truth or falsehood of these reasonings, we may be easily convinced, that though it be out of the reach of human prudence to guard a government against these untoward events, it may at last by renewing and giving it a fresh spring at stated periods, prevent or retard these interior causes, which may prey upon its vitals, and cause its natural death: Probably this mean of reforming themselves and of recovering their pristine vigor, might have brought down to our days, those nations that have now disappeared; we have now in our hands this happy remedy, we apply it at this crisis, and our principal endeavors should tend to preserve to us the use of it.

5.19.12 It is very lamentable to view the inconstancy and contradiction of our several legislatures, not only against one another, but with Congress, not only in the forms, but in the principles of their regulations, every year brings on reforms and amendments which require the same thing the following year; this continual change of system in administration, destroys that very confidence, which it ought to promote, and far from improving them, it augments the disorder of public affairs, as well in commerce as in finances.[2] Another inconveniency not less considerable attends those legislatures which cannot, or will not, either through prejudices and systems, or by haughtiness and presumption, be reformed, but with difficulty, at very distant periods, and as it were by a shock; both these extremes are dangerous, we shew the example of the one, the Europeans of the other: the resolution that we shall take by our new constitution, in investing the Congress with powers necessary for the great object of general administration, is a great step towards perfection, for to have good and uniform laws, and the clause that we shall add for its duration, for to revise it to a fixed period, is a prudent precaution, for to have those laws always suitable to our circumstances, and will prevent us from falling into either of those extremes.

5.19.13 As we may propose and recommend amendments to Congress, and to avoid the reproach of making them either partial, or numerous and con-

tradictory, let us be satisfied with presenting a bill of rights of the people of America, in such general terms; so expressive, so clear, and at the same time so short, as never to require either comment or interpretations. Nothing that has been yet laid before the public is satisfactory; may it be written by men conscious of its necessity and of the dignity of their subject, that it may be an honorable introduction to the constitution of the United States of America.

Our rights as a free people, were fixed and fully expressed at the head of our different constitutions. Why then should they not be placed also at the head of this general fœderation, which may supercede these? Some states, it is true, have no bill of rights, but it is an additional reason for inserting one in the fœderal; since as Americans their rights are the same, and making a greater concession of those rights to the fœderal body, that precaution is at present indispensible: it is not possible now to be ignorant of our rights, and to contest them, being so near of the glorious epoch of their acquisition; but it will be attempted in the future time and the history of all ages announce that they will no more be spared, than those of all the people who have preceded us, if we have no more care for their preservation. 5.19.14

In considering all peoples existing on the earth and the nations who have preceded them, it is not possible to sustain, that they have been reduced in that state of servitude with their full consent and by the free concession of their rights! but in contrary it is certain, that they have lost them imperceptibly and have been subjugated by gradation, or by a violent revolution occasioned by anarchy; if they had well known, established and maintained their prerogatives and their government, they should have prevented those two extremes, who have constrained them to creep under a chief, and becoming conqueror, or conquered people. 5.19.15

Those rights characterise the man, essentially the true republican, the citizen of this continent; their enumeration, in head of the new constitution, can inspire and conserve the affection for the native country, they will be the first lesson of the young citizens becoming men, to sustain the dignity of their being; in fine the publication of those prerogatives has drawn us the envy and the admiration of all Europe, and being the preamble of our fœderal constitution, they may be the means of a considerable emigration to this continent.[3] 5.19.16

We shall consider the new modelled Congress, as the general arsenal in which we deposit our arms and our ammunitions, our bill of rights, if accepted, will be the authenticated act of deposit, and the limited time for revision, will serve to verify, whether they have been kept in good order and whether the trust has not been abused. 5.19.17

Under a firm persuasion and conviction of the necessity of an energetic, uniform and regular government, to which we must necessarily yield up a part of our states sovereignties, I cannot discover, with my feeble under- 5.19.18

standing, any other means, that this sacred palladium that can effectually secure us and our posterity from the odious tyranny of an artistocratic government, nor any thing less, than the adopting this new constitution to save us from anarchy and annihilation.

A Delegate
who has catched cold.

1. See Pennsylvania Convention Minority 3.11.8 and n. 3; cf. *The Federalist* no. 48, 336–37.
2. Denatus (5.18.4) expresses a similar concern. Cf. *The Federalist* no. 49.
3. See Federal Farmer XVI, 2.8.196 n. 118.

Sentiments of Many

VIRGINIA INDEPENDENT CHRONICLE
18 June 1788

This essay in the name of "Many" contains a discussion of the value of a bill of rights (5.20.2–3) in which the author is, like Denatus (5.18) and A Delegate (5.19), concerned with the need to provide a brief and popularly comprehensible statement of the fundamental principles of the government. The essay is also of some interest for its discussion of the provision making treaties the law of the land (5.20.3–4), its reference to Publius in this respect as "the oracle of the fœderalists" (5.20.3), and its objection to permitting the continuation of the slave trade for twenty years (5.20.6).

Mr. Davis,

The public is under great obligations to you, for the fund of entertainment and instruction, your paper has afforded since the publication of the proposed fœderal constitution: the most illiterate may now discern the usefulness of the press in a free state. It gives all the people an opportunity to learn to be wise, to choose or refuse, in an important affair: indeed it is the noblest exhibition, the new world has yet witnessed. Let us therefore seek after truth, no matter where, or from whom. 5.20.1

We see our way now more clearly than at first outset; several of our objections have been ably answered. But so attached are we to old forms, or from some other cause, we are not yet satisfied, with the want of what is called a BILL of RIGHTS.—What, if the expression was varied, and it should be termed *incontrovertable truths, or fundamental laws*—Why might not the new constitution be prefaced by such an instrument of writing? The use we would wish to see made of it, is a resort, or recurrence, a test, to try all the acts of the national legislature by.—It is known that the bulk of the people do not understand abstruse, or lengthy political disquisitions. The fundamental laws of a nation, might be expressed in a few articles, and those in a few words, yet plain, and pithy, to which the people would pay a similar deference, as to the decalogue.[1] 5.20.2

5.20.3 The explanations we have seen respecting the trial by jury, the freedom of the press, election of representatives, rotation in office, and responsibility to constituents are plausible, but not altogether satisfactory.

But how will the FREEHOLDER, or any other candid writer, take to convince us, that it is right that the *treaties* should be made the *supreme* law of the land.[2] We have hitherto been taught that all laws binding on the community, ought to be made with the consent of the people, or by that of their representatives, in their legislative capacity. But under the new constitution, Congress is to enact some laws, others to be enacted by a part of Congress, or one branch of the legislature, and these to be made *supreme*. We apprehend the Freeholder, or even Cassius,[3] will see some impropriety in this. PUBLIUS, the oracle of the fœderalists, in his paper no 15—says that treaties even among civilized nations, "scarcely are formed, before they are broken, giving an instructive, but afflicting lesson to mankind, how little dependance is to be placed on treaties, which have no other sanctions, but the obligations of good faith; and which oppose general considerations of peace, and justice, to the impulse of any immediate interest or passion."[4] The whole of the paper is worth the reader's attentive perusal. Would a sensible and free people, covet to have the supreme laws of their land, impressed with such "*lovely features.*"

5.20.4 Since the year 1776, the United States, by commissioners acting under their authority, have made a variety of treaties, with different nations of Savages; some of them if considered as law, will destroy the private rights of individuals without an hearing; infringe the sovereignty of States, are contradictory one with another; and in not a few instances manifestly unjust. Can the Indians give us constitutional security for the observation of stipulations on their part? What embarrasments must the Judges of the fœderal courts be under, when they come to pronounce, what is *the supreme law of the land.* They are either to be accessaries to a multiplicity of wrongs, or endure the imputation of trifling with the obligations of a solemn oath. Such generally are the consequences of ex post facto regulations.

5.20.5 Treaties, no doubt, are engagements of a solemn nature, and it is interesting to humanity that they be faithfully observed, provided the sanctions to oblige the parties to do so, are reciprocal. At all events, if PUBLIUS's account of them are true, they are improper matter, to make part of a code of laws, for the local administration of the national affairs.

5.20.6 In a serious hour, and in the presence of the Governor of the Universe, what reasonable excuse can then be made, for permitting, and that constitutionally, depredations on a distant and inoffensive people, for the term of twenty-one years.—Seemingly in the same spirit, and with the same narrow policy, is the clause expressed ambiguously for the admission of NEW STATES into the Union. Art. 11 of the confederation is expressed in a different style.[5]

There are many good things, excellent regulations, set forth in the new plan, that will long be respected by a grateful, and enlightened people. But when we turn our eyes to the dark side of the picture, a sigh, a tear, a lamentation, may be excited, for the imperfections that beset the best of men, and that attends the wisest institutions, whilst we are destined to act on the present theatre of human affairs. 5.20.7

Such are the sentiments of
Many.

May 13, 1788.

1. See Federal Farmer XVI, 2.8.196 n. 118.

2. The reference is to a long Federalist essay by A Freeholder, which appeared in the *Virginia Independent Chronicle,* extraordinary edition, 9 April 1788. (A shorter essay appeared on 23 April.) A Freeholder argues that the opponent of the Constitution "must acknowledge, even in the height of his jealous frenzy, that if Congress can not enforce the observance of her treaties, no nation will treat with her, and that the situation of America if ever involved in war would then be truly awful."

3. Cassius criticized Richard Henry Lee's letter to Governor Randolph, of 16 October 1787, in a lengthy essay published in the *Virginia Independent Chronicle* in April 1788. (See Brutus [Virginia], 5.15.) In the first part (published on 2 April) he argued that all countries regard treaties as part of the law of the land and that the power to make treaties has customarily been exercised by the executive, so that senatorial participation is an added safeguard.

4. *The Federalist* no. 15, 94.

5. "Art. 11. Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to, all the advantages of this union; but no other colony shall be admitted into the same unless such admission be agreed to by nine states." Art. IV, sec. 3 of the Constitution provides merely that "new states may be admitted by Congress into this Union," with the proviso that no new state shall be formed in or of an existing state without that state's consent as well as that of Congress.

James Monroe
Some Observations on the Constitution

1788

In 1788 James Monroe was a rising young political figure, having served in the state legislature and in Congress, where he held a moderate position on the question of extending the powers of the general government. Under the new government he was to serve as senator, diplomat, governor of Virginia, Secretary of State, and finally fifth President of the United States. In an unfinished autobiographical sketch, Monroe described his reactions to the proposed constitution. Stuart Gerry Brown, who edited and published the sketch, writes:

Its powers transcended the limit which he had contemplated, but still he entertained doubts whether it would contribute most to the interest of the union to adopt it, in the hope of amending any of its defects afterwards, or to suspend a decision on it until those amendments should be previously obtained. When elected to the Convention, he expressed those doubts to his fellow citizens of the county before the poll commenced, but, having formed his opinion in favor of the latter course before the meeting of the Convention, he addressed a letter to them to that effect in which he stated the objections which had occurred to him to the Constitution. This address, being imperfectly printed, was not generally circulated; he communicated, however, copies of it to several distinguished characters and among them to General Washington, Mr. Jefferson, and Mr. Madison, who viewed it with liberality and candor. We see a copy of that which was sent to Mr. Jefferson in the Library among the collection of pamphlets transferred by him to the United States.[1] From General Washington an answer was received which is published in the documents attached to this work.[2] In the Convention, Mr. Monroe took part in the debate and in one of his speeches entered fully into the merits of the subject. We find that he was decidedly for a change and a very important one in the existing system, but that the Constitution reported had, in his opinion, defects which required amendment and which he thought had better be made before it was adopted.[3]

In a letter to Jefferson, Monroe explained that, while he had strong objections to the Constitution from the outset, he "had no inclination to enlist myself on either side, made no communication or positive declaration of my sentiments until after the Convention met." He enclosed a pamphlet ad-

dressed to his constituents, "but the impression was delayed so long, and so incorrectly made, and the whole performance up on reexamination so loosely drawn that I thought it best to suppress it."[4]

One of Monroe's editors, pointing to the tension between Monroe's strong nationalist arguments and his opposition to the Constitution, contends that while the dilemma was genuine, Monroe's essay "is a skillful example of 'strategic obfuscation.' "[5] It seems likely, however, that Monroe withdrew the pamphlet precisely because of the undesirable political impact it would have had. However much he may consider and give due weight to all sides of an argument, the politician is not obliged to furnish ammunition to his opponents when the time comes to fight out specific issues. In some ways Monroe's pamphlet is all the more revealing because of those very qualities that probably led the author to suppress it.

As already indicated, the most striking characteristic of the argument is Monroe's strong nationalism. He begins with a discussion of the defects of the present confederation, and his analysis is fundamentally identical with that of Publius in *The Federalist:* a league, which the Confederation fundamentally is, cannot be an efficient government; for the principle of such an organization is the interest of the parts rather than of the whole (5.21.5–12). There are only two remedies, the complete annihilation of the state governments or a partial annihilation of them with a considerable reduction of their powers. Strikingly, Monroe admits his attraction to the idea of a complete consolidation, "an idea not only elevated and sublime, but equally benevolent and humane" (5.21.12). The idea is not practical, however, because of the difficulty of maintaining democratic government over an extended and heterogeneous territory (5.21.12–14). The argument here is not perfectly clear, the difficulty being a common Anti-Federalist tension between the principle of union and the principle of the small republic.

Monroe then turns to a middle course, whereby the general government could be given those powers necessary for the safety and advantage of the whole and yet the states left with significant powers. Monroe sees clearly that this will be a new kind of government and that its success will depend on the skill with which the line between their powers is drawn (5.21.15–17, 36). He describes and advocates what has come to be known as "dual federalism" and he identifies the critical condition for the successful operation of such a system: "To mark the precise point at which the powers of the general government shall cease, and that from whence those of the states shall commence, to poise them in such manner as to prevent either destroying the other, will require the utmost force of human wisdom and ingenuity. No possible ground of variance or even interference should be left, for there would the conflict commence, that might perhaps prove fatal to both" (5.21.17). The principle is that of general and local interest.

Turning to the organization of the government, Monroe emphasizes two points: that the states should not have any part in it (5.21.17–18), and that

there should be an efficient separation of powers, including particularly a strong, independent executive (5.21.19–27) and a complete judiciary with final jurisdiction over all federal questions (5.21.28).

In the third part of the essay, Monroe lists his specific objections to the Constitution—especially the power of direct taxation, the state influence in the senate, the mode of electing and impeaching the executive, the provision for original jurisdiction, and the provision of lower federal courts (5.21.29–35).

Monroe concludes with a further discussion of the need for a balance between the general and state governments, the danger that federal contention (to some extent fostered by the new Constitution) will lead to monarchy, the danger of granting the federal government the power to lay direct taxes, and the need for improvements in the proposed Constitution. Having laid (or intended to lay) his views before his constituents, he promised that "if after a candid review, they shall appear indefensible, I will most chearfully submit to be governed by your wishes, and obey other instructions" (5.21.38).

1. This is probably the copy now in the possession of the Library of Congress, which is reprinted here. The only other known surviving copy (possibly Washington's, see note 2) is now in the National Archives. A number of corrections printed at the conclusion of the pamphlet have been incorporated here without notice, as have corrections of several additional obvious typographical errors.

2. The letter from Washington is printed in *The Writings of James Monroe,* ed. Stanislaus M. Hamilton (New York 1898) I, 349.

3. *The Autobiography of James Monroe,* ed. Stuart Gerry Brown (Syracuse 1959) 49–50.

4. *The Writings of James Monroe* I, 188.

5. Brown, in *The Autobiography of James Monroe* 6. It is interesting to note that prior to the rediscovery of the pamphlet printed here, a *defense* of the Constitution by A Native of Virginia was thought to be Monroe's pamphlet. See Joseph Culbertson Clayton's bibliographical note in this edition of Curtis's *Constitutional History,* II, 739–40. To be on the safe side, Hamilton printed both pamphlets. *The Writings of James Monroe* I, 307–99. For Monroe's views prior to the conclusion of the work of the Constitutional Convention, see his letter to Jefferson, 27 July 1787, *Documentary History of the Constitution* IV, 237–38.

Gentlemen,

5.21.1 When you did me the honour to elect me into the Convention, to decide for you upon the constitution submitted to the states from Philadelphia, I had not at that time examined it with that attention its importance required, and of course could give you no decided opinion respecting it. Other cares had unavoidably taken my attention from it. After you had reposed that trust in me it became my duty to pay it a more serious attention. Having given it the best investigation that my limited capacity is capable of, and perhaps formed in some measure my opinion respecting it, subject however to alteration when I shall be convinced that I am in an error, I should think

myself unpardonable if I witheld it from you. To you it belongs to approve or correct this opinion, for although it would give me pain to be compelled to take a course which my own mind did not approve, yet I have too high a respect for your rights, too just a sense of my duty, and too strong an impression of gratitude for the confidence you have reposed in me, to act contrary to your wishes. Under this impression I have thought proper to make to you the following unreserved communication of my sentiments upon this all important subject.

It will readily occur to you that this plan of government is not submitted 5.21.2
for your decision in an ordinary way; not to one branch of the government in its legislative character and confined under the constitution to the sphere it has assigned it; but to the people to whom it belongs and from whom all power originates, in convention assembled. In this situation your present state constitution was, or should have been, formed, and in this situation you are of course able to alter, or change it at pleasure. You are therefore to observe that whatever act you now enter into, will be paramount to all others either of law or constitution, and that in adopting this it becomes in reality the constitution of the state, and binding on you as such. Whether it will absolutely annul and do away that of the state is perhaps doubtful; my own apprehension is it will not, except in those cases wherein they disagree; in these it will of course prevail, and controul all the departments of the state government, being the ulterior act of the people. You will therefore perceive it is a subject of great extent and importance upon which you have to decide, and that you owe it to your country, yourselves, and posterity, that it be well examined in all its consequences before it is determined.

When we contemplate the causes that might probably have contributed to 5.21.3
make it necessary to submit to your decision the propriety of such a change in your political situation, we are naturally led into one of the following conclusions—either that the morals of the people have become corrupted—that the passions of mankind by nature render them unfit for the enjoyment of equal liberty, or that the form of the government itself under which we live is radically defective, and capable of such improvement, as will extend to us its blessings in a higher degree, and make them of longer duration. Believing firmly that the body of the people are virtuous, at least sufficiently so to bear a free government; that it was the design of their Creator in forming such an order of beings that they should enjoy it, and that it is only by a strange and unaccountable perversion of his benevolent intentions to mankind, that they are ever deprived of it, I will proceed to examine the latter hypothesis which supposes such defects in the present form, as to make a change adviseable. If we find that they really do exist, I will then proceed to suggest such remedies as will enable us comparitively to determine on the merits of that proposed to be substituted in its stead. I feel myself deeply impressed with the importance of this undertaking and am too well acquainted with my own inability, even to hope that I shall

conduct myself with propriety through it, but from a sincere desire to establish a perfect good understanding between us, and prevent the possibility of any future anxiety on this subject, I find myself constrained however painful it may be, and however ungracefully I may do it, not only to avow my sentiments respecting it, but the principles on which they are founded.

5.21.4 The present states were separate, from their first colonial establishments until the encroachments of Great Britain, compelled them into an union for their defence. But as their combined efforts soon promised to erect them into independent governments, the consideration which had united them for a time, and for the accomplishment of one object only, became perpetual, and the wisdom of their councils suggested the propriety of provisions that would secure them from like dangers for ever—under this impression they entered into the articles of confederation on the——day of——, 178 . To this instrument or bond of union therefore we are to look for the strength, or imbecility, for the perfection or demerits, of the present fœderal government. As this is the system whose defects we have to remedy, it will be proper to present to your view concisely a summary of its powers.

5.21.5 The powers which have been given by these articles of agreement or confederation to the general government are extensive. They are to be found principally in the 9th and the 6th articles, in the former positively, and in the latter negatively by a qualification of the rights of the individual states. By the 9th, the United States are authorised to make war and peace—send and receive ambassadors—enter into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislature of the respective states shall be restrained from imposing such duties on foreigners as their own people are subject to, or from prohibiting the importation or exportation of any species of goods or commodities whatsoever—establishing rules for deciding what captures shall be legal by land and water, and how appropriated; grant letters of marque and reprisal in time of peace—appoint courts for determining finally in all cases of captures; appoint courts for the decision of territorial controversies between states and individuals claiming lands under different grants from two or more states, whose jurisdictions respecting such lands have already been adjusted by the said court;—coin and regulate exclusively the value of coin throughout the United States—fix the standard of weights and measures—regulate the trade with the Indians not members of a particular state—establish and regulate post-offices—appoint all officers of land and sea forces, except regimental; make rules for their government and regulation and direct their operations—ascertain the necessary sums of money to be raised for the service of the United States appropriate, and apply the same—borrow money and emit bills of credit on the faith of the United States—build and equip a navy—agree on the number of land forces and make requisitions for the same. Provided that none of the said powers shall be exercised without the consent of nine states. By the

6th, the individual states are prohibited from sending or receiving embassies, entering into conferences, treaties or alliances with any foreign power, and the servants of the United States or individual states from holding offices of profit or trust under any foreign prince or potentate whatever—from partial confederacies without consent of Congress—from keeping up troops or vessels of war in time of peace except such as shall be approved by Congress—entering into a war with a foreign power unless invaded by an enemy—from granting letters of marque or reprisal except after declaration of war by the United States and then under particular restrictions only.

5.21.6 These articles give all the efficient powers to the United States—The 1st, 3d, 4th, 7th and 8th, although they establish some fundamental principles on which the government is to move, and especially the 8th the rule of apportionment, yet they give no real power; they are rather the rule by which the power already given is to be used than that they give any themselves. The 10th, 11th, 12th and 13th, fall still more under this exception or regulate other inferior objects of compact. But the 2d and 5th are of a different impression. By the former, each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, not expressly delegated to the United States and by the latter, that of appointing, continuing, or removing its own delegates at pleasure. These are the powers, and this the form, of the present government.

5.21.7 An attentive view of the subject will satisfy us that these powers are really great and extensive; they appear to have contemplated the greater part of those concerns wherein it might be supposed they had a national interest. Having made the United States the sovereign arbiters of war and peace, given them the right to require men and money, equip fleets and armies, to send and receive ambassadors, make treaties of alliance and commerce, with the very extensive catalogue which I have already enumerated, except the regulation of trade there seemed to be little left of external policy to the individual states. It is not my object to inquire here whether these powers should be more extensive. I may in the course of these observations; at present I shall examine more particularly the effect or operation of a government organised like this.

5.21.8 It is to be observed that by the 2d article the individual states retain their respective sovereignties, jurisdictions and rights in all cases not expressly ceded to the confederacy. And by the 5th they reserve the right of appointing, continuing or removing their respective delegations at pleasure. To these articles we are to look for the tone and character of this government, for upon these does its good or bad qualities depend. It is upon this point, that the present commotion hath taken place in America, and upon the merits of which we have to decide.

5.21.9 The deputies from each state being amenable for their conduct, and depending on it for their hopes and prospects, necessarily negociate for its interests. This property or distinction pervades the whole body, and thus

their general council or the Congress becomes a diplomatick corps, or a corps formed of ministers or representatives from sovereign states acting for the particular advantage of that to which they belong. The efforts therefore of each state, whatever may be the powers of the union over the several members that compose it, will be to shield itself from the common burdens of the government; and to effect this all the arts of intrigue and negociation will be constantly exerted. What is the obvious course of a government organised on such principles? Are not the seeds of dissolution deeply ingrafted in it?[1] The most powerful principles of human action[,] the hope of reward and the fear of punishment[,] are in the hands of each state, and whilst mankind are subject to their influences, or the passions and affections of the human heart continue as they have been, its course will always be the same. This government it is manifest can never bè an efficient one. Strong necessity and emminent danger may make it so occasionally, but whenever this cause ceases to operate, its repellent principles will prevail. If this position is just, I am perhaps right in supposing it a consequence necessarily resulting from it, that the stronger the powers of the government are, the more repellent will its qualities be, and the sooner its dissolution; at least certain it is that the conflict between the general and state governments, will be proportionally more violent, and its or their ruin the sooner accomplished, for it must soon terminate either in that of the one or the other, I mean as an efficient government. The higher toned those of the states were the more rapid would the progress be. I think I may venture to affirm that a confederacy formed of principalities would not last long, for the pride of princes would not brook those familiarities and insults which a free discussion of rights and interests, especially if they interfere, sometimes unavoidably occasions; and when an absolute prince takes offence he wields the state with him. But this is not the case with democracies, for although their chief magistrates may be offended, yet it is difficult for them to communicate at the same time, the same passions and dispositions to the whole community which they themselves possess.[2] This is a caution however which I hope it is not necessary to suggest here, for I am satisfied the state governments will never take this turn of themselves, nor whilst that of the confederacy is preserved and properly supported. But to carry this government a little further into practice.

5.21.10 Let us submit the concerns and interests of different states or individuals within them to this corps formed of representatives from each negociating for that to which they respectively belong, and what kind of justice may we expect from its decisions? If magazines were to be established or troops raised and stationed in some quarter of the union for public defence, might we not expect that these arrangements would take stronger byas, from the combination of the day, than any sentiment of propriety? If states or individuals within them had claims founded on the same principles with those upon which a decision had already been had in favour of others, are we to

calculate with certainty upon a similar decree? In short apply it to every case that may possibly arise, either of states or individuals, in the full scope of its powers, and we shall find its decisions depend, more upon negociation, the bargain of the day, than any established maxim of justice or policy.

5.21.11 On the other hand how are its treaties, laws, or ordinances to be carried into effect? Are they of authority and in force immediately within the states as soon as they are passed? Or does it require the intervention of a state law to give them validity? And if the law is necessary may not the state refuse to pass it, and if she does how shall she be compelled? It is well known from the practice of all the states in the confederacy that no act of Congress, of what nature soever it may be, is of force within them, until it is recognized by their own legislatures, prior to that event it is a nullity, and to that only does it owe its authority. This view of the subject demonstrates clearly that the present government, in its ordinary administration, though a league of independent states for common good, and possessed of extensive powers, must always be void of energy, slow in its operation, sometimes oppressive, and often altogether suspended—that it can never be calculated on by foreign powers, and of course that they will form no treaties or compacts whatever with it, that stipulate any thing, at least on equal terms, that in fine very little dependence can be placed in it by the states themselves, for destitute of the power of coercion, to say nothing as to the justice or propriety of the measures themselves, these will not be forward to comply with its demands, whilst those may refuse with impunity. On the other hand the illustrious event which hath placed them in the rank of independent states demonstrates with equal certainty, that it is competent to external defence, and perfect security from abroad, for how otherwise could it have been atchieved? These are the defects or the principal defects in the form of the present government, and they are inseparable from the league of independent states, for to that circumstance, and that alone they are to be attributed. We have then to weigh these evils, and compare them with the probable benefits and dangers that may accompany a change, and then see in which scale the balance preponderates.

5.21.12 It may be now asked are we reduced to this alternative either to subvert the state sovereignties or submit to these evils? Is the state sovereignty a vain and illusory hope, is it incompatible with its own and the general interests of the confederacy? Or is there any other alternative? The practice of nations and the field of enquiry is open before us, and we have every thing that is sacred and dear to mankind depending on the event. Two species of remedy only present themselves to my mind, and these contemplate either a complete annihilation of the state governments, or a partial one or considerable reduction of their powers. A complete annihilation and the organization of a general government over the whole, would unquestionably remove all the objections which have been stated above, and apply to it as a fœderal government; and I will be free to own that if it were in reality a practicable

thing, there is no object which my mind has ever contemplated, the attainment of which would give it such high gratification.[3] To collect the citizens of America, who have fought and bled together, by whose joint and common efforts they have been raised to the comparitively happy and exalted theatre on which they now stand; to lay aside all those jarring interests and discordant principles, which state legislatures if they do not create, certainly foment and increase, arrange them under one government and make them one people, is an idea not only elevated and sublime, but equally benevolent and humane. Whether it contains within it a territory as extensive as the Russian or German empires, or is confined in its operation to the narrow scale of their smallest principallities or provinces, yet it is the business of state legislation to pursue its destined course "the interests of those who live under it." For a legislature to contemplate other objects, and make a sacrifice of their own for the good of other people, or even decline availing itself of the legitimate exercise of its powers for that purpose, upon every opportunity which chance or fortune may present in its way, is a degree of liberality to which the human heart hath not as yet attained.[4] A society of philosophers of the antient stoick sect might perhaps be capable of such extended philanthropy, but this sect is now altogether at an end, and at its height, never formed but an inconsiderable part of any community, and was by all the rest of the world considered as affecting objects without the pale of human nature. How much more delightful therefore is it to the mind to contemplate one legislature organized over the whole continent, containing all the free inhabitants of the American states within it, nourishing, protecting, and promoting their interests in every line and extending its genial influence to every part; commerce flourishing, arts encreasing, lands rising in value, with all those other happy concomitants that attend a well formed and wisely directed government, than thirteen different legislatures, in pursuit of local objects, acting upon partial and confined considerations, without system or policy, jealous of their particular rights, dissatisfied with, and preying upon each other. If it were practicable, I should embrace this change with the utmost pleasure, and consider it the goal at which all our efforts should bend, the polar star that should direct all our movements. I should consider the abolition of the state legislatures as a most fortunate event for America, and congratulate my country on the commencement of a new aera in her affairs from whence to date the dawn of better hopes and happier days. But is it practicable, can it be accomplished? Can a legislature be organized upon such principles as to comprehend the territory lying between the Mississippi, the St. Lawrence, the Lakes, and the Atlantic ocean, with such a variety of soil and climate, contain within it all the vital parts of a democracy, and those provisions which the wisdom of ages has pointed out as the best security for liberty, and be at the same time a strong, efficient, and energetic government? Would it be possible to form in every respect a complete consolidation of interest and how otherwise would its

operation affect the weaker party? Or to accommodate its legislative acts so as to suit those of a local kind that were variant in the nature of things? To form a system of revenue, by direct taxation and excise, regulate the mode of collection, supervise it, without the establishment of a train of officers, and tribunal under tribunal, that would not be enormously expensive, free from more than ordinary imposition, and preserve the spirit of the government? Seperated at the distance of near 1200 miles, suppose the dispositions to do right the best that nature can infuse into the human heart, generally speaking in the operation of the government, will the man of Georgia possess sufficient information to legislate for the local concerns of New-Hampshire? Or of New-Hampshire for those of Georgia? Or to contract it to a smaller space of New-York for those of Virginia? Will not of course most of its measures be taken upon an imperfect view of the subject?[5] A wise legislator should possess a precise knowledge of the situation and interests of all the territory and of the state of society, manners, and dispositions of the people within it committed to his care. Some men perhaps to whom a kinder fortune had dispensed her more liberal gifts, who had devoted their earlier life to travels, general science, and those researches that were particularly necessary for it, might succeed, but unfortunately for us the most sanguine admirer of this plan, could not promise to America that her national councils, should always be filled with men of this stamp. I would not wish to discolour this plan of a complete national government, acting in all cases for the common good, to the exclusion of subordinate legislatures, so delightful in theory, with the reverse of this picture, nor to depaint those consequences which might result from its maladministration, if instead of the best qualities that are the portion of humanity, it should be its fortune to have its councils filled, with men remarkable for their ignorance, or any great malignity of heart, contending against difficulties, under its best form and with its best hopes, which perhaps are insurmountable, what would be its situation and issue in that event? As this subject is of great importance and leads to a decision upon an important trait in the plan of government now before you, it will be proper to give it a more particular investigation.

Perhaps an attention for a moment in this respect to those political establishments which have been erected in different quarters of the globe, in antient and modern times, may furnish an instructive lesson, upon the present occasion. In but few instances, and those at distant intervals of time, hath a democracy or government of the people ever been established. To what cause it is to be attributed, philosophers and statesmen may differ, but it is an unquestionable truth, that there hath been a constant effort in all societies, to exterpate it from off the face of the earth. The contest hath been often violent, and the manly exertions which the friends of equal liberty, have made against this disease of human nature, is the great, the instructive subject of history. They have had to contend against difficulties thrown in their way by all ranks of society: If the poor and those in moderate circum- 5.21.13

stances only, where an union might have been expected had united, a tyranny had never been erected. But the ignorance, the folly, and often times the vices of the lower classes have perhaps favoured this tendency as strongly as the lust for dominion and power in the wealthy. To illustrate this position by a review of the commencement, progress, and decline of those nations with which history furnishes us examples, with the causes that have contributed to hurry them to this their last stage, would not only present to your view a melancholy monument of the weakness of human institutions, but lead me beyond the bounds of the present enquiry. Be assured however there is no fact better established by history, than this tendency or effort in all societies, to defeat the purpose of their own institution, and terminate in despotism. If then we are not the unfaithful guardians of those rights, which an all gracious providence hath bestowed upon us, should we not attend to every circumstance that may contribute to preserve them? And will it be questioned, that the extent of territory is one of those that will have no influence on the subject?[6] The governments that have been purely democratic, to which only we should resort for satisfactory information upon this head, if any ever were, are but few. In several it is true the people have had some share of power, as in that of Rome. But it cannot be questioned that in this the Nobles or aristocracy had the prevailing influence. The endless quarrels between the different branches or rather orders of the people, the Senate and plebians, is perhaps the real cause of the perpetual warfare and extensive conquests, made by this rapacious mistress of the world. When the people became incensed against the Senate, as they often had reason to be, the latter had always sufficient address, to give their passions other objects to act on, by turning them against foreign powers. With this view it seems to have been a political maxim with that branch, in whose hands the executive authority was also lodged, never to be at peace with all nations at the same time, and in this they succeeded tolerably well, for from the commencement to the final dissolution of the empire, the temple of Janus, always open in time of war, if we may credit the tradition of their best historians, was hardly ever closed. But so soon as the whole globe had acknowledged her authority, and bowed beneath the yoke, the immense fabric she had thus raised fell to pieces. External opposition that had raised it to the height it had attained, having ceased, its foundation was taken away. There was no principle within it to unite its parts together. From this it is to be presumed that if her government had been organized upon harmonious principles, and made the people happy under it, her dominion would never have extended over more than one-tenth the territory it did. But be this as it may, the government of Rome acknowledged distinct orders of people, in which indeed the aristocracy prevailed, and can of course furnish no example for us. This may be said of Lacedemon and of Carthage, for according to the opinion of a profound historian and observer on the subject of government, that of Carthage was also divided and the greater

portion of power taken from the people and placed in the hands of the aristocracy.* If any ever were, Athens, Thebes, and Corinth, were for a time, pure democracies. But shall we draw our conclusion from their example, whose jurisdiction was more confined than that of some of our smallest states? In short, let us contemplate what forms, in what countries and times we please, where the rights of the people, and the spirit of liberty, were in any degree preserved, and we have the most solemn admonition to beware even making the attempt. The monarchy of Britain in which the executive power is armed with almost despotic authority, comprehends within it a territory smaller than that of this commonwealth, and yet it is believed its administration is happier than if it were more extensive. Even the king of France, sensible that his government will be happier for his subjects, and more faithful and beneficial for himself, has shewn a disposition to re-establish the provincial assemblies for this purpose, yet it cannot be denied that his powers are otherwise sufficiently great, or that any monarch was ever, in a greater degree, or more deservedly beloved by his people. But if these examples are not sufficient to warn us of the fatal consequences that will attend the vesting such powers in the Congress, let us turn our attention to those nearer at home, and which perhaps will make a deeper impression on our minds, and do we not behold the province of Maine separating from Massachusetts, Vermont from New York, Wyoming from Pennsylvania, and the district of Kentucky from Virginia, on this very principle, with others no less striking that might be enumerated.

It is true the improvement of government under this form, by representation, the discovery of which is attributed to modern times, might make some difference in this respect, but are there no bounds within which it should still be restrained? Shall it attempt things that seem from the concurrent testimony of all history to be the appropriate object of despotism? Maladies that are incurable after they have afflicted the body with all the pain and anguish incident, to a frail and feverish being, exhausted its efforts, and worn out its constitution, complete the work by terminating its existence. This government too, after having experienced the vicisitudes of fortune that might accompany its natural imperfections, of laws badly formed and indifferently executed, of anarchy disorder and confusion, after having worn out and broken the spirits of the people, would also have its end. But what form it would then assume is left for time to develope. The diseases of every government suggest its remedy. Other circumstances it is true give it a byas, but these have a principal influence in directing its course. Those of the federal system and which owed their birth and enormity to the want of strength in the federal head, had disposed the people to agree to an annihilation of their state governments, which yielded to the present one. Had this change been accomplished, by the designs of wicked and abandoned men, by 5.21.14

*Polybius, vol. 3, [bk. VI] page 92.

the usurpations of a tyrant, or the seductions of art and intrigue, it is to be presumed, and the experience of other countries hath approved it, that the people would now return to that they had forsaken, with a degree of zeal and fervor proportioned to the sufferings they had borne.* But if a long and patient experience had shewn its defects, a calm and dispassionate appeal had been made to their understandings, and a recollection of the great calamities, it had inflicted on them, demonstrated it was neither calculated, for the care of their liberties, their safety or common interests, they would make a new experiment and take a different course. From the causes above stated the incapacity of the legislative branch to form happy, wise, or uniform laws for the government of a territory so extensive, and of a people in pursuit of objects so opposite in their nature, had perhaps already often clogged its operations and suspended its course. This had gradually alienated the affections of the people and created in them a contempt for this branch of the government. The powers of the executive had of course been proportionably increased, for it is natural for the latter to supply the defects of the former. Accustomed to behold it in miniature, and to derive relief from its friendly interference, the people are at length prepared to have recourse to a Royal government, as the last resort the only safe assylum for the miserable and oppressed.[7] And this perhaps would be the issue of the present government; and for these reasons I should dread its establishment over these states. For to however low and pitiable a condition we may have fallen; however deservedly we may have acquired the contempt and scorn of nations, yet I had rather submit in peace and quiet, to those reproaches which the proud and disdainful may throw upon us, than by commencing on a stage upon which the fortunes of all nations have been wrecked, however splendid and meteor like our transient exhibition might be, risk the enjoyment of those blessings we now possess.

5.21.15 But may not some middle course be struck, some plan be adopted to give the general government those rights of internal legislation necessary for its safety, and well being, in all cases, and yet leave to the states other powers they might exercise to advantage? If by this it is intended to comprehend the right of direct taxation and excise with the absolute controul of the resources of the union, it will be easy to perceive its consequences. Those who are in any degree acquainted with the principles of government, or with those of the human heart well know that upon this point, the equal distribution of the resources of the union, between the two governments, will their balance depend. If you place the whole into the hands of one, it will require no casuistry, no great degree of depth in this science to determine which will preponderate. Acting on the bowels the body will soon decay and die away. The pageant ornaments and trappings of power will not last long, for the reason and good sense of mankind turn with disgust upon the mockery of

*As in the restoration of *Charles II.* in England.

empty forms. Such an arrangement would therefore in my apprehension, embark us on a more perilous and stormy sea, than even a complete annihilation of the state governments.

If then such a government as I have above described in either view pre- 5.21.16
sents an impracticable alternative, or such an one as we should not without a nearer and better view of it embrace, the other mode only remains or that which proposes the organization of a general government over the states forming a part of and acknowledged by the constitution of each, leaving at the same time a qualified government in each state for local objects. Let us examine this then since it is the only safe or even plausible course for us to take.

To organize a general government, that shall contain within it a particular 5.21.17
one for each state, or in other words, to form a constitution for each state, which shall acknowledge that of the union, is no easy thing, for there never was an example of the kind before. The amphictionic council, Achæan, Belgic, or Helvetic confederacies were but leagues of independent states, somewhat similar to the present one. To mark the precise point at which the powers of the general government shall cease, and that from whence those of the states shall commence, to poise them in such manner as to prevent either destroying the other, will require the utmost force of human wisdom and ingenuity. No possible ground of variance or even interference should be left, for there would the conflict commence, that might perhaps prove fatal to both. As the very being or existence of the republican form in America, and of course the happiness and interests of the people depend on this point, the utmost clearness and perspicuity should be used to trace the boundary between them. The obvious line of separation is that of general and local interests.[8] All those subjects that may fall within the former distinction, should be given to the confederacy, and those of the latter retained to the states. If the federal government has a right to exercise direct legislation within the states, their respective sovereignties are at an end, and a complete consolidation or incorporation of the whole into one, established in their stead. For in government it is, as in phisicks, a maxim, that two powers cannot occupy the same space at the same time. Let this therefore be the characteristic line of the division; internal legislation or the management of those concerns which are entirely local shall belong to the states, and that of those which have a foreign aspect, and in which they have a national concern, to the confederacy. In forming a constitution on these principles, the same rule should be observed, that has been in forming those of individual states; defining the powers given and qualifying the mode, in which they shall be exercised. All powers not ceded it is true belong to the people; but those given in a constitution are expressed in general terms, as that the Congress shall levy and collect duties; this involves in it the right of making laws for the purpose, for the means are included in the power; otherwise it is a nullity. The species of evidence and the mode of tryal are

subordinate objects under it, and does it not follow that the Congress might regulate these at pleasure? How are we secured in the trial by jury? This most excellent mode of tryal which has been found, in those few countries where it has been adopted, the bulwark of their rights, and which is the terror of despotic governments, for it disarms them of half their power, is but a matter of police, of human invention; if then we gave general powers unless we qualified their exercise by securing this, might they not regulate it otherwise? I would not be understood to insinuate it would be the case, but that it were possible is improper. The spirit of the times might secure the people of America perhaps for a great length of time against it; but fundamental principles form a check, even when the spirit of the times hath changed, indeed they retard and controul it. As it is with the trial by jury so with the liberty of conscience; that of the press and many others. As to the powers themselves, the distinction being drawn, the enumeration would be of course. To those of the former Congress some few might be added, or from those of the constitution, some few taken away, for nominally there is not so great a difference between them as some people suppose.[9] To the former for instance, let the absolute controul of commerce with the revenues arising from it be added. Let the right of apportionment be as in the constitution, for the ground on which the states have met on that point is certainly a happy compromise being that indeed which had been long recommended by Congress. Let them regulate the disciplining and training of the militia—the calling them forth and commanding them in service; for the militia of a country, is its only safe and proper defence. All countries are more or less exposed to danger, either from insurrection or invasion and the greater the authority of Congress over this respectable body of men, in whose hands every thing would be safe, the less necessity there would be, to have recourse to that bane of all societies, the destroyer of the rights of men, a standing army. But it may be urged the revenues from the impost would not be sufficient for national purposes, and that without the right of direct taxation, the government would be forced to have recourse, to the expedient of requisitions, the inefficacy of which had already been sufficiently experienced. The position in the first instance, as to the insufficiency of the revenues is doubtful; but the apprehension of the states neglecting requisitions under this, as they have done under the late government still more so. When the United States became in effect a national government, by being incorporated with those of the states, possessed considerable revenues, had at their command a fleet and army, with the absolute controul of trade; I cannot but believe that their constitutional demands, or requisitions, would be complied with. Let the individual states also be restrained from exercising improper powers, making war, emitting paper bills of credit and the like. All restraints that were necessary for the wise administration of a good and virtuous government, would have my ready assent. It is not my

intention to draft a form, a general idea is all I aim at, and in this perhaps I am tedious.

Having defined the powers, marked the line between, and secured as far as possible the harmony of the two governments, by making the former a part of the latter, it will be necessary to organize it upon such principles, as to secure the wisdom and happiness of its administration; for I presume it does not necessarily follow, because the constitutional acts of the government will be executed and become the laws of the land in each state that our researches should be at an end, and that we should conclude we had remedied all the defects of the present one. On the contrary our anxiety should be increased tenfold. From that our safety was to be attributed to its imbicility; but from this we should not be able to shelter ourselves under that protection. We should therefore be the more zealous, proportioned to the prize we have at stake, to distribute the powers and poize the government, so as to secure equal justice in all its acts, to every part of the confederacy; for wretched and forlon will the condition of that be, which shall not find itself equally secure under the protection, and in the enjoyment of its blessings, with every other part. From royalty itself, where the power is concentered in but one person, fluctuating in its systems and unsettled in its course, sometimes a ray of benevolence and even of justice is reflected on those whom it had marked out as the object of its resentment. Nature has cast into but few characters such malign and unfriendly dispositions, that their revenge cannot be satiated. But from a combination of states, acting systematically in pursuit of particular and local interests, wielding in their hands the powers of the government, and of course secure not only from censure but of the approbation and applause of those whom they served, however severely the attainment of the objects it contemplated, might bear upon the interests of the unfortunate minority, yet from their justice, it is to be feared, that neither moderation nor even mercy could be expected. But the present system is that we have to remedy and we should never loose sight of its defects. If the new government should be organized in the same manner with the old, consist of one branch only, each state appoint her own delegates and recall them at pleasure, I am satisfyed it would in the administration in Congress, or passage of the acts, be found in the experiment in that respect, just such a government as the other. There would be the same negociation, intrigue and management for the advantage of each state that now prevails. Its movements would be as slow and its decisions as unjust as they sometimes have been. In short it would still be a government of states in every respect and not a national one. How then shall we guard against, check and controul this intolerant and destructive state spirit? How infuse into all its departments a love, respect, and dread of the whole, for upon this every thing depends? 5.21.18

It has been long established by the most celebrated writers, but particu- 5.21.19

larly illustrated and explained by the Prendent Montesquieu and Mr. Locke, that the division of the powers of a government over one state, or one people only, into three branches, the legislative; executive, and judiciary, is absolutely necessary for the preservation of liberty.[10] This is now admitted by all who are not the friends of despotism, and I am persuaded it has already been demonstrated in the course of these observations, that such a division is, if possible, more necessary in a government to be organized over more than one. Taking this position then as established, I will proceed to an examination of the principles upon which this organization should be formed.

5.21.20 If the states as such or in their legislative character appoint any of the officers of this government, the effect will be the same, provided the rotative principle is preserved, which will I hope never be given up, that has already been experienced; for in the appointment is involved that of responsibility. It should therefore proceed from the people immediately, or by means of electors chosen for the purpose. This will make them amenable to the people only for their conduct, or to such constitutional tribunals where they are practicable, as they shall establish to take cognizance of offences. This we apprehend would contribute much to the establishment of a national government; each would move in the sphere the constitution had appointed for it, and be accountable to the people only for their conduct, the high and pure source, from whence they respectively derived their authorities.

5.21.21 The legislative branches are in all democratic governments, and of course would be so in this, the immediate representatives of the people. They should therefore be kept as dependent on them as possible, having in all respects the same interests with themselves. For offences in these branches the general government can provide no punishment, for there can be no tribunal under it, to take cognizance of them. Charges of corruption or prosecutions for it, or other offences, committed by those in these branches, should not be allowed from those in the others, for this might either unite them in mal-practices against their country, or create endless strife between them, and thereby destroy the balance of the government. A free people are the only proper judges of the merits of those who serve them, and they only should bring them to justice. This shews the necessity of frequent elections. The members of each should in my opinion return to the body of the people, those of the house of representatives at the expiration of every two years, and those of the senate of every four years, capable however always of re-election. Both these branches should if possible be filled on the principles of representation from all the states. For the house of representatives, the rule adopted in the constitution, is perhaps the proper one. Let twice that number, or a still greater ratio of numbers to that of representation, be the rule for the senate. The members of both branches should be incapable of appointment to other offices whilst in these, otherwise, a wide door will be

left open for corruption. This is not an idle or visionary precaution, but in a great measure the pivot, upon which the upright and faithful administration of the government will depend. The experience of Britain hath demonstrated, how often the most valuable interests of the people, have been bartered away, by leading members of the house of commons for a seat in the house of peers, or some lucrative office in the government; how much greater then should our apprehension be, of danger in the present instance, when we recollect that the government is organized upon such principles as to acknowledge no responsibility to the states, and comprehends within it such an extent of territory, as to put it out of the power of those who inhabit its extremities, to have any knowledge of the conduct of their servants! The possibility of this kind of traffic should therefore be absolutely prohibited.

But the power of the legislature should be confined to those objects, 5.21.22
which were intirely legislative in their nature, as the regulation of trade, requisitions for money, and the like. The soundest authorities and the melancholy experience of our state governments have shewn the propriety of this restraint, in a constitution over one state, and for reasons that are obvious the expedience, will be the more urgent, in the present instance. Its natural effort in all cases is, to grasp to itself all the powers delegated from the people,* and to prostrate the other branches before it; stimulated on by the state spirit, which will in some degree still remain, the difficulty here will be proportionably increased. The ingenuity of man can devise no other, without an appeal to the people, which if possible should always be avoided, than that of giving the Executive, the other active branch an absolute negative on the laws; for otherwise its enterprizes must be successful. Many restraints might be designated by the constitution, but without effect. And from this at the same time that it preserved the balance of the government, no injury could be sustained. Against the encroachments of the Executive the fears and apprehensions of the whole continent would be awake, with a watchful jealousy they would observe its movements. But against the legislature (if we may reason by analogy of that branch in this) from those in other governments, no such apprehensions could be entertained. Its movements comparitively would be accompanied with the confidence of the people. Every incroachment upon its rights would be popular. In every contest between them it must of course yield the ground. In short unless the Executive had a negative on the laws of the legislature, it would soon exist only in name.[12]

The right of impeachment and the mode of trial are of the first importance 5.21.23
in this government. The former, if with the people or even the states themselves, would never be exerted or greatly abused; it should therefore belong to the house of representatives. And the latter should be vested in a court of

*De Lolme.[11]

that high confidence and respectability of character, as to partake of none of those passions that sway the bulk of mankind. Unconnected by office, and of course no way interested in the event; unacquainted with the crime except as it might appear before them by satisfactory testimony, they should hear calmly and judge dispassionately upon the merits of the cause. From their decision the guilty would receive a fair condemnation, or the innocent be restored again to the confidence of their country, and the people return satisfied that their passions had been awakened, and their fears alarmed without any just foundation. The sentence should be final, and not shifted off to another tribunal. A further prosecution may appear odious, and the just resentments of the people calm away, and totally subside. For these reasons the senate should form the court of impeachment.

5.21.24 But although the legislative branch shall be elected by the people, and amenable to them alone for their conduct, yet as the state sovereignties though qualified, will still remain, and of course the state spirit, in contradiction to a fœderal one, from necessity be more or less influential in its councils, we should turn our attention to the other branches of the government, as our firm resource. The Executive is that upon which, in many respects, we should rest our hopes, for an equal, a fœderal, and a wise administration. Every possible effort should therefore be used to expell from the hearts of those who fill it, a preference of one part of the community to another. The experience of other governments hath taught us, it is possible to devise checks, which from motives of policy and private interest, will even make bad men faithful public servants.[13] The prospect of reward and the fear of punishment, as has already been observed, are the most powerful incentives to virtuous action. It should therefore be so organized, as to give every quarter indeed every man of the union, under the influence of these principles, as to those who fill it, an equal access to the human heart, whenever this equipoise is destroyed, and this high character taught to look up to this, or that state, or combination of states for the smiles or the frowns of government, from that moment will its oppression be felt, and a dreadful anarchy insue. And if you take from those whom the choice of their country hath called forth to this high station, the hope of further favour, and mark to them the extent of service, after the completion of which the door shall be forever closed upon them, in that degree will you deprive yourself of one of the principal instruments by which you are to preserve the equilibrium, and secure the public safety. Discharged forever from the service of the United States, will not the approbation of the union, cease to be the ruling passion, and an accommodation to state interests take its place and influence many of the public measures? For these reasons I could wish to see the right of impeachment, extended upon as liberal ground as possible, given for instance to the representatives of one third of the confederacy; and I could likewise wish to see the citizen at the head of this department, capable of re-election at the expiration of his service which

should be at the end of every three or four years, so long as he should merit the confidence of his country.

The mode of election should also be a fundamental in the organization of this branch.[14] If the command of this office was placed within the reach of court influence, the most alarming consequences were to be apprehended from it. If the ultimate decision should happen at the metropolis, it is easy to be perceived what an opportunity this would present for venality and corruption. It must be a great object particularly for either France or Britain to have the friend of their respective courts in this office, possessed of such extensive powers and which might dispense such important favours to them. The influence of the presiding magistrate himself, especially within the town in which he had for some time resided, and to whose citizens he had rendered many substantial services, and who of course would be averse to the introduction of a *novus homo* among them, would not be inconsiderable. In addition to which it is to be observed, that it forms a departure from a principle which should prevail through the whole, but particularly in the organization of this branch, a dependance of this officer, for every thing estimable among mankind, upon the people of America. By the people therefore should the appointment be made, not in person, but by the means of electors chosen for the purpose. To prevent the possibility of any interference, or byas on their free election, that of the electors by the people, should be on the same day in every state, and that of the President by the electors likewise on the same day and at some specified place in each, unless an invasion, or other extraordinary circumstance should prevent it; in which case perhaps the electors themselves, or the executive of the state might appoint some other. Whatever time might be employed in this mode of election is immaterial; it is of the first importance, and should never be dispensed with, that he be thus appointed. 5.21.25

But high power[s] in the Executive branch require in every respect, a direct and immediate responsibility; for although it should be so organized as that whilst to those who fill it, and act with propriety in the discharge of its functions, the door should be left open for a continuance of public favour, yet the sword of justice should be held constantly suspended over the heads of those, who shall be convicted of having basely sacrificed the interests, or made attempts upon the liberties of their country. There should be no constitutional restraint, no equivocation of office, to shield a traitor from the justice of an injured people. No circumstance to blunt or turn aside the keen edge of their resentment. With the charge should the powers of his office cease. He should stand alone unsupported, and unprotected except by the integrity of his heart and the rectitude of his conduct. For these reasons the executive power should be vested altogether in one person; unrestrained by a constitutional council, its operations will be more easy and regular, and its responsibility the greater and more immediate.[15] And for these reasons if there is a constitutional council it must be from its nature the most improper 5.21.26

tribunal, that can be formed or conceived, for the tryal of the offences of the principal, since they must be either partakers of the crime, or some way or either a party interested in it.

5.21.27 With an Executive organized on these principles, being independent of the legislature, and in a very responsible situation, I should be well content to intrust great powers, because I should calculate with tolerable certainty upon an honest and a wise execution of them. The constitution perhaps suggests those, with some exceptions that are proper; whether it would be safe to give it the absolute controul of the fleet and army at all times, in peace and war, the ordering them out, and laying them by, without consent of the legislature, or even knowledge, is at least doubtful. In Great Britain this power may be committed to the King with propriety; but he is the Lord of hereditary dominions, and transmits the inheritance in his line forever. By betraying his trust he might lose his crown, and perhaps gain nothing, even if he established despotism. But with the President who perhaps depends on a quadriennial election the case is different. It is certainly a formidable power to place in the hands of any one public servant. I would however in no event interpose the opinion of the legislature, so as to controul the movements of these forces, but merely to affix the condition, or emergency, upon which his absolute power over them should commence. As I would repose the whole trust of this department in one officer, so he alone should be responsible for all its transactions. He might associate whom he pleased, of the wise men of America in his councils, but they should be of his own association. An allowance might be made him, to compensate them for their services, for which he should be accountable.

5.21.28 Controversies between independent nations are usually settled by the sword. It is to the misfortune of mankind that no tribunal has ever been established to adjust their interfering claims, and inforce its decrees. It has been the defect of all other confederacies, of whose institutions history has given us any account, that although attempts in some have been made in this respect to preserve the harmony, and lessen the calamities of mankind, yet the courts to whom their controversies have been submitted, the council or representative body of each, have not been organized on such principles as to insure justice in all their decisions. To this circumstance perhaps many of their calamities were to be attributed. The framers of the confederation in some degree also fell into this error for those only of a territorial kind were to be submitted to a fœderal court.[16] Under that form its inconvenience has been often very sensibly felt, but under the present it would be insupportable. Great care should therefore be used, in the organization of this branch, to remedy this defect. The judiciary in this, as in all free governments, should be distinct from, and independent of the other branches, and equally permanent in its establishment. Performing its appropriate functions, the extent of its authority should be commensurate with theirs. As it forms the branch of a national government, so it should contemplate national objects

only. Whatever cases might arise under the constitution, the laws of the legislature, and the acts of the Executive in conformity thereto, (however trifling or important the interests it affected might be) should have their final decision from this court. All cases affecting ambassadors, other public ministers and consuls—of admiralty and maritime jurisdiction—all controversies between different states—between the United States and a state—a state and the citizens of another state, citizens of the same state claiming lands under different states, should of course be submitted to its decision. In cases affecting ambassadors, other public ministers and consuls, and in which a state shall be a party, the Supreme Court should have original jurisdiction; in the other cases above mentioned appellate jurisdiction as to law only, and from the Supreme Courts of the respective states. The laws of the United States becoming under the constitution those of each state, their courts of course take cognizance of them, from whose decisions, the object of the union will be completely answered by an appeal to their court as to law only, and with great accommodation to the interests of the people. In the organization of this branch, the object should be to found it on the state establishments, and not independently of them, for in the latter case new and very extraordinary difficulties present themselves to view, among which the clashing of jurisdictions would perhaps be the least important. The judges should be appointed by the President, who would of course take them from among the meritorious of our citizens in the different quarters of the union.

Having shewn the defects of our present federal system, pointed out those remedies or amendments both as to its powers, and their distribution or organization, that have appeared to me advisable, I am naturally led in conformity to the plan I had laid down in the beginning of these observations, into a more minute comparison or examination, of the constitution now before you, by the standard or test of those principles I have endeavoured to establish. And this I will confess, is the most painful part of the present enquiry. But where there is a contrariety of sentiment, in any degree, there can be no other mode of investigation; and it is I am persuaded the fairer course, for if the principles themselves cannot be supported it necessarily results, that all reasoning or deductions from them fall to the ground. 5.21.29

It may be recollected that I have not objected to any of those powers which were necessary to add, to the energy, strength, resource, or respectability of the government, but have fought to divest it of those only which I conceived it could never exercise, were impracticable, and whilst they remained even if not brought forth into action, would lessen it in the confidence of the people, but if ever exerted prove the source of endless strife between the states and the general government, that must terminate in the ruin of either the one or the other, which I have considered, (perhaps improperly) as a great national calamity. Those to which I have particularly 5.21.30

alluded are the right of direct taxation and of excise through all the states; and the more I have reflected on this subject the better satisfied I have been, that if the other powers were vested in it, and the government made as thereby it would be, strong, energetic and efficient, that the leaving those with the states would not only be happier for them, but more beneficial for it. For whether we examine it as an abstract proposition, or avail ourselves of those lights which the history of all times hath presented to our view, yet the demonstration, at least to my mind, seems satisfactory and conclusive, that under such a government, able and willing to compel the states to perform their duty, the want of which is the great defect of the present system, and which would thereby be completely remedied, that the same objects might be attained to better advantage through their intravention, than by any other mode or institution that could be adopted for the purpose. As this is perhaps the only objection which I have to the powers contained in the constitution, and is founded on principles I have already fully explained; it will be unnecessary to attempt a further illustration of it here. I shall therefore proceed, admitting the propriety of the general division into three branches, to an examination of the subordinate organization of the government, and first of the legislature.

5.21.31 Its division into two branches[,] an house of representatives and senate[,] has appeared to me to to be perfectly right; and the mode prescribed for the election of the members of the former by the people not only practicable, but highly commendable. The right of originating money bills, and of impeachment, have also been properly assigned to this branch; the term of service and the principle of representation upon which its house will be formed appear likewise inexceptionable. In short this branch of the legislative is organized entirely to my wishes. I must however confess my mind has not as yet acknowledged in these aspects, the same prepossessions in favour of the senate. The great defect as has been already often observed in the present form, is that of its being a diplomatic corps, a government by and for states, and not in any view of it a national one. In changing it, the object should be to correct that defect in all cases whatever, so far as it might be practicable, which can only be done by taking the appointment of all its officers out of the hands of the states, in their legislative characters, and placing it in those of the people, or electors by them appointed for the purpose. This has been done with the members of the house of representatives, but departed from with those of the Senate. This branch will therefore be in every respect the representative of the states, dependent on and responsible to them for their conduct. In forming a right estimate of the consequences resulting from this property in the character of this body, and of the tone it may give to the measures of the government, we must examine its powers in every direction, and pursue its operation upon every subject. And first as to its share in the legislature or its influence upon all legislative acts.

The senate has an absolute negative upon all laws; from this it results that 5.21.32
those not for the advantage of the states, or the prevailing faction in the government, to which they respectively belong will by those thus circumstanced be rejected; for is it to be presumed that because ten members from Virginia, eight from Massachusetts or Pennsylvania in the house of representatives, have passed a bill, whilst one from Rhode Island or Delaware only had rejected it, that these states will give up their equal suffrage in the senate? Is it not more presumable that their senators will look on at the nominal and unimportant superiority of those states, in the other house, laugh at their supposed triumph, and await coolly its submission to their board, where its fate will be inevitable? Or is it to be supposed, that the right to originate money bills, a thing proper in itself, being the more democratic branch, in the house of representatives, will controul this disposition, especially when we recollect that they are both only representative branches, equally dependent on the passage of such a bill for their wages or salary, and that the members of the latter holding their offices for a shorter term, have perhaps not been able to introduce such a degree of œconomy and order into their finances. This is a check of great importance in the English constitution, and indeed the preservation of the democracy, but the construction and principles of the two governments are so radically different, that it will be easily perceived by the slightest observer, the same effects are not to be expected from it, at least not to the same extent in this, that are experienced in that. Making due allowance for those considerations that should be taken into view, I am therefore led to believe that the defective principles of the present government, through the means of the senate, in respect to form and representation, have been communicated to this branch of the constitution. Appointed by the states and of course responsible to them for their conduct, the senators will act for those to which they respectively belong; nor can we reasonably expect from their concession any great accommodation. Thus the state spirit, with an equality among the members of the union, will be preserved in this branch of the government, and if there was an absolute necessity for yielding the point of representation, yet none suggests itself, at least to me, for not remedying the defect in the form, which has been found so pernicious in the present one.

By the consent of two thirds of the senators *present,* treaties shall be 5.21.33
formed; by that of a majority, ambassadors, other public ministers, and consuls, judges of the supreme court and other public officers not otherwise provided for by law, shall be appointed. The subjecting the decision of important questions to a dependance on the occasional presence or absence of any of the members, more especially as no quorum is established,[17] appears to me improper. If the vote of two thirds of the body is in any instance necessary, for the security of the interests of any part of the union, why should the death or delinquency of a member deprive it of this safeguard, by submitting them to the controul of perhaps less than one

fourth?[18] It is further to be observed that whatever influence this branch may have in directing the measures of the executive, from the nature of its appointment, will be exerted to give it a narrow state byas, and that from this source alone, constructed as the two branches are, much injury is to be expected from this extraordinary coalition.

"The senate shall have the sole power to try all impeachments." The president is to act under their controul in the cases above stated, if in any instance a wanton violation by their direction or permission should be made, which though not probable is yet practicable, of the rights or interests of any part of the community, and after solemn debate in the house of representatives, this high officer should be brought by impeachment before this body to expiate his offence, what would be his fate, especially as he still held his office and might wield his powers in his defence? A king of England involved himself in great difficulties by an attempt to establish the validity of a general pardon, but had the constitution submitted the trial of state offenders to himself, there would have been no occasion for the contest. Admitting however the members of this body to be incapable of moral turpitude, may we not suppose, as might be the case in that of any individual state; in the operation of this government, that offences might be committed against one quarter of the community, and which before a dispassionate court would receive severe reprehension, that would be highly beneficial to the others? And in such a case could we expect from the representatives of these states a candid or impartial decision against the interests of their constituents?

5.21.34 The placing the executive power in the hands of one person, appears to be perfectly right. If this branch had been put into commission, the state spirit would have been communicated to it, and have tainted all its measures; in addition to this there would have been less responsibility. But the mode of election, does not in all respects appear, to merit such commendation. A departure from the strict representative line, by adding the equal vote of the senate to the number each state hath in the house of representatives, is made in the first instance; but it is still more exceptionable in other respects. If an election shall not be made, and in all probability this will often be the case, indeed the presumption is the contrary will seldom happen, a very extraordinary subsidiary mode is resorted to. Those having the five highest votes are to be ballotted for by the house of representatives, the vote to be taken by states, and one member from each giving[19] the vote of the state. All cases that the constitution will admit of, should be considered as likely to happen some time or other. No person then I am persuaded who will make the calculation, can behold the facility by which the chair of the United States may be approached and achieved, even contrary to the wishes of the people, without equal anxiety and surprize.* Let it be admitted that the

*It is obvious that seven men only may elect the President; the constitution has not been copied nor any part of it, because it is presumed to be in the memory of every person.

temper of the times and the ardent spirit of liberty which now prevails, will guard it for the present from such easy access; but that person has profited but little, from the faithful admonition, which all history has given him, who shall conclude from thence, that this will always be the case. His right to remain in office after impeachment, with the influence though diminished, still attending it, appears to be highly improper. That of adjournment in case of impeachment, between the two branches, to such time as he shall think fit, is certainly too unqualified and extensive. The impropriety of the union of this branch with the senate has already been sufficiently dilated on; it will therefore be unnecessary to repeat the same arguments here. Contemplating however the consequences of this union, the expiration of his service, should in my opinion be accompanied with a temporary disqualification. The senators, would to save the commonwealth from injury, be able to give instruction to a new president, and it would perhaps be better, to change occasionally the acting party, of a combination that might otherwise be dangerous.

From the first clause respecting the judiciary it is obvious, that the Con- 5.21.35
gress, although there shall be one Supreme Court only, may establish as many subordinate to it, as they shall think fit. The presumption is, they will establish so many as shall be necessary for the discharge of the functions of the department, to the advantage of the government, and benefit of the people. The extent therefore of the duties which become the exclusive object of a fœderal court, may give some insight into that establishment they might probably adopt; and when we observe that the cognizance of all cases arising under the constitution and the laws, either of a civil or criminal nature, in law or equity, with those other objects which it specifies, even between the citizens of the same state, are taken from those of each state and absolutely appropriated to the courts of the United States, we are led into a view of the very important interests it comprehends, and of the extensive scale upon which it operates. It will therefore be the duty of Congress to organize this branch, by the establishment of such subordinate courts, throughout the whole confederacy, in such manner as shall be found necessary to support the authority of the government, and carry justice home, so far as it may be practicable, to the doors of all its inhabitants. What mode may be best calculated to accomplish this end, belongs to that body to determine. Bound by no rule they may it is true (as in the commencement they probably would) avail themselves of those of each state; but this would be a measure of expedience only and not of right and may hereafter be changed as the fortunes of the government, and considerations of expedience may dictate. How far it might be proper to authorise the subjects of foreign powers to carry the citizens of any state into a fœderal court, and afterwards by appeal into the Supreme Court, is of questionable propriety. The principal argument in its favour appears to be that of securing the United States from the danger of controversies with such powers, under

the partial decisions of those of the individual states. But if they knew such cases, were by a fundamental of our government submitted to them, it were reasonable to suppose, that all just cause of complaint, would be removed. The submission to a fœderal court of contests upon ordinary subjects, between citizens of the same state, or even of different states, or indeed upon any subject, that did not arise under territorial controversies between states, and which originally belonged to that court, appears to be highly improper and altogether unnecessary. The appeal as to fact is still more extraordinary and exceptionable. The verdict which has been found must of course be set aside, and the court subjected to the necessity of either trying the cause upon the evidence already given, with liberty to construe it at pleasure; of hearing it over again admitting other evidence, being judges of the fact themselves; or submitting it to another jury to find a second verdict, either of which modes appears to be highly exceptionable; for if the court become judges of fact under the old or a new trial, the right of trial by jury is dispensed with; and if a second jury shall be summoned, independent of the difficulty and hardship, attending the submission of controversies contracted at the extremities of the union, by people in some degree variant in their manners, customs, and prejudices, to a jury formed of those of any one town, the parties are necessarily exposed to the loss of time, (of importance especially to the lower classes of society) and the enormous expence inseparable from a tryal carried on at a great distance from home. What necessity there can be, so effectually to lay aside the state courts, (which though perhaps improperly organized at present are yet capable of improvement) and subject the good people of America to such new and unheard of difficulties, I must confess I am not able to comprehend, nor can I readily forsee the very important consequences into which it may lead.

5.21.36 Having now taken a view as concisely as I have been able, of the defects of the present system, suggested their remedy with the principles upon which it is founded, examined the constitution by that standard, and shewn wherein I have either approved or disapproved of it; perhaps it may be expected (as a deduction from the foregoing principles) that I should make some calculation, of the probable course and ultimate fate of the government, should it be adopted in its present form, since it might have some influence upon your opinion in the present instance. This must however be altogether conjectural, for in the operation of government, as in that of all other powers after consequences, have been clearly demonstrated, as resulting from certain causes, oftentimes some incident, not contemplated, nor taken into the combination, or extra circumstance arises, that gives it a different direction. To form any estimate in this respect some peculiarities present themselves to view very deserving of attention. The mixture between the general and state governments, being partly a consolidated and partly a confederated one, suggests a balance between sovereignties that is

new and interesting. So far as it proceeds from the people and its powers embrace the care of their interests, it partakes of the qualities of the former; and so far as the state governments remain of the latter. In weighing the momentum of their relative strength or force it is no less difficult to determine which will preponderate. Founded alike by the people, by the people also may either be changed at pleasure. If the precise boundary had been drawn between them, the proper checks established, and the general government well poised, [it][20] might for a long time, and I should hope forever, be stationary; defective in these respects it will probably soon experience a change. Pursuing a national course under those shocks it must expect, without any foreign impression to give it the fairest hopes, let us enquire what the interests of the people will dictate, for let that be its direction. Independent state sovereignties, or partial confederacies, have been reprobated in its commencement. Its foundation has been laid on the ruin of all schemes that had that tendency, and it is presumeable it would in no event embrace either, at least until it had experienced a great vicissitude of fortunes. If then it escaped the first paroxisms, the severe struggles, and violent efforts against it, exposed it to, its establishment might be considered as complete. And suppressing the spirit of opposition, its constitutional basis will be found broad and extensive. It is not the aid of the Delphic oracle, the blind zeal of enthusiasim, that will be called in to its support. It has the protection of the true religion, of divine authority itself, to shield it from danger. The exercise of powers in common that will be allowed of in its commencement, must yield on the part of the states, to its acquiring strength. And wielding those the constitution has given it without availing itself of such as were constructive, the state governments, under this progress, would soon become a burthen to the people. The confederated principle, or the spirit of state sovereignty, would however not be inactive, but operate so as to bring on the crisis; and the constitution itself presents a fruitful source of controversy, for the spirit of accommodation, or the mutual fear of danger, must be great, where the line between them is not exactly drawn, if they do not interfere. If this government had been organized over one state, with a moderate extent of territory, its natural progress, through the Senate, would be to aristocracy. But as it is I am inclined to believe, that although in its operation it may bear that tone, yet when it becomes convulsed and experiences a change, it will hold a different direction. Even the construction of that branch in its operation will contribute to hurry it into monarchy, and as there is no second class or order of nobles in America it is difficult to say in what it will terminate. If there was such an order, our earnest hopes and prayers should be, every circumstance considered, that it be a limitted one.[21] For these reasons and not that I fear any danger to the liberties of our country, from the effective sorce of the government, exerted immediately against the good people of America, could I wish those checks and guards adopted, omitted at present from neglect and

an over confidence of our security, but which it is possible if the present opportunity is lost, we may contend for hereafter in vain. Political institutions, we are taught by melancholy experience, have their commencement, maturity and decline; and why should we not in early life, take those precautions that are calculated to prolong our days, and guard against the diseases of age? Or shall we rather follow the example of the strong, active, and confident young man, who in the pride of health, regardless of the admonition of his friends, pursues the gratification of unbridled appetites, and falls a victim to his own indiscretion, even in the morn of life, and before his race had been fairly begun.

5.21.37 I have to apologize for the trouble I have given you in the perusal of these observations. I owe it to myself however to observe that the bounds within which I have been under the necessity of confining this letter has prevented my going into that detail, often necessary, especially on so intricate a subject for the sake of illustration; and the want of leisure has I fear, prevented even a tolerable degree of correctness. But if I have been able to explain myself to your satisfaction I shall be contented. Upon the whole it results that although I am for a change, and a radical one, of the confederation, yet I have some strong and invincible objections to that proposed to be substituted in its stead. Those of less weight might be yielded for the sake of accomodation; but until an experiment shall prove the contrary, I shall always believe that the exercise of direct taxation and excise, by one body, over the very extensive territory contained within the bounds of the United States, will terminate either in anarchy and a dissolution of the government, or a subversion of liberty. The judiciary I consider as illy organized and its powers as too extensive, the whole government in a great measure without responsibility, and the rights of men too loosely guarded. And when I behold the Senate, a corps more diplomatic in its principle, permanent in its station, and systematic in its operations, than even the late Congress itself, wielding in the one hand the strong powers of the Executive, and with the other controuling and modifying at pleasure, the movements of the legislature, I must confess that not only my hopes of the beneficial effects of the government, are greatly diminished, but that my apprehensions of some fatal catastrophe are highly awakened. We have struggled long to bring about this revolution, we have fought and bled freely to accomplish it, and in other respects braved difficulties almost without a parellel. Why then this precipitation, why this hurry upon a subject so momentous, and equally interesting to us all? Is it to be supposed that unless we immediately adopt this plan, in its fullest extent, we shall forever loose the opportunity of forming for ourselves a good government? That some wild phrensy or delirium of the brain will seize upon us, and losing all recollection of things past, and abandoning the social ties that bind mankind together, we shall fall into some strange and irritrievable disorder? Or is it not more natural to suppose that perfection in any science, if attainable at

all, is to be approached by slow and gradual advances, and that the plan of government now presented for your inspection, though a powerful effort of the human mind, is yet to be improved by a second essay?

The subject now submitted to you, is no less interesting than it is important. Providence hath long seen nine-tenths of the habitable globe immersed, and groaning under the dreadful oppressions of slavery. To the people of America, to you it belongs to correct the opposite extreme. To form a government that shall shield you from dangers from abroad, promote your general and local interests, protect in safety the life, liberty, and property, of the peaceful, the virtuous and the weak, against the encroachments of the disorderly and licentious. Whether they are now endangered, whether the plan now before you, presented under the most faithful and illustrious auspices; under the auspices of men whose abilities and integrity you have long had the most satisfactory proofs, and who to the most important services, by abandoning the enjoyments of a peaceful and happy retirement, have added this further testimony, of their never failing attachment to the interests of their country, will accomplish this end, or is capable of still further improvement, belongs to you to determine. To differ in any respect from these men, is no pleasant thing to me; but being called upon an awful stage upon which I must now bear a part, I have thought it my duty to explain to you the principles on which my opinions were founded, under this further assurance, that if after a candid review, they shall appear indefensible, I will most chearfully submit to be governed by your wishes, and obey other instructions. 5.21.38

1. Compare the discussion that follows with *The Federalist* no. 15; see also Monroe's speech in the Virginia ratifying convention, 10 June 1788, Elliot III, 219.

2. Publius makes use of this principle in his famous defense of the extended republic. "The influence of factious leaders may kindle a flame within their particular States but will be unable to spread a general conflagration through the other States." *The Federalist* no. 10, 84. On the extended republic, see Agrippa IV, 4.6.16 n. 10.

3. Opposition to consolidation is close to being the prime article of the Anti-Federal faith (see Plebeian 6.11.15 n. 9); yet there were a few Anti-Federalists like Monroe who were attracted by the glory of consolidation if only it could be achieved. Cf. Symmes 4.5.3; Cato [South Carolina] 5.10.

4. The fundamental *principle* of confederacy is the interests of the separate parts; see Agrippa VII, 4.6.58 n. 31.

5. Cf. Monroe's discussion in Elliot III, 216.

6. Cf. reference in Cato III, 2.6.13 n. 8.

7. See [Maryland] Farmer II, 5.1.30–31 and n. 24.

8. Cf. James Madison's statement in the Constitutional Convention about the desirability of an enumeration and definition of the powers of the national legislature, his growing doubts of the practicability of such an enumeration, and the need to submit to any means necessary to "promote for the safety, liberty and happiness of the Community." Farrand I, 53 (31 May). See also *The Federalist* no. 37, 234–38, and Brutus VI, 2.9.80 n. 56. While Monroe's discussion is typical, A [Pennsylvania] Farmer (3.14.8) probes more deeply into the distinction. Cf. One of the Common People 4.8.1; Smith 6.12.31.

9. In the Virginia convention Monroe argued as follows: "What are the powers which the federal government ought to have? I will draw the line between the powers

necessary to be given to the federal, and those which ought to be left to the state governments. To the former I would give control over the national affairs; to the latter I would leave the care of local interests. Neither the Confederation, nor this Constitution, answers this discrimination. To make the first a proper federal government, I would add to it one great power—I would give it an absolute control over commerce. To render the system under consideration safe and proper, I would take from it one power only—I mean that of direct taxation." Elliot III, 214.

10. Locke, *Second Treatise on Government* XI–XIII; Montesquieu, *The Spirit of Laws* XI, ch. 6. For other Anti-Federal discussions of separation of powers see Centinel II, 2.7.50 n. 29.

11. The reference is to J. L. DeLolme, *The Constitution of England,* whose argument is in many aspects similar; but whereas Monroe is concerned with the tendency of the legislature to encroach on the other branches of the government, DeLolme was concerned with the tendency for the people to be betrayed by their representatives of whatever kind. See Bk. II, chs. 9–10 and *passim.*

12. Cf. *The Federalist* no. 51, 347–50.

13. See 5.21.9. In the Virginia ratifying convention Monroe argued that, "the President ought to act under the strongest impulses of rewards and punishments, which are the strongest incentives to human actions." Elliot III, 488. Cf. *The Federalist* nos. 76–77.

14. *The Federalist* no. 68. On the election of the President see above The Federal Farmer III, 2.8.29 n.23.

15. See *The Federalist* no. 70 and J. L. DeLolme, *The Constitution of England* II, ch. 2.

16. See *The Federalist* no. 22, 143–44.

17. "More especially . . . established": this clause is striken from the Library of Congress copy by a reviser who may have been Monroe.

18. "by submitting . . . one fourth?": see note 17.

19. "giving": the reviser substitutes, "authorized to give."

20. "it": inserted by the reviser.

21. For a helpful elaboration of this point, see Monroe's comments in the Virginia ratifying convention Elliot III, 217. See [Maryland] Farmer II, 5.1.30–31 and n. 24.

The Complete Anti-Federalist

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Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 6

New York
and
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Contents

VOLUME SIX

Contents of Other Volumes vii
A Note on Cross References xi
Works Frequently Cited xiii

PART I

New York

Introduction 3
6.1 Essays by Cincinnatus (*New York Journal* November–December 1787) 5
6.2 Objections by A Son of Liberty (*New York Journal* 8 November 1787) 34
6.3 Essay by Brutus, Jr. (*New York Journal* 8 November 1787) 37
6.4 A Reply to Publius by An Observor (*New York Journal* 19 November 1787) 42
6.5 Reply to Medium by A Citizen (*New York Journal* 24 November 1787) 45
6.6 Letters from A Countryman from Dutchess County (*New York Journal* November 1787–February 1788) 49
6.7 Letters from A Countryman (*New York Journal* Decembe 1787–January 1788) 69
6.8 Essays by Sidney (*Albany Gazette* February–March 1788) 89
6.9 Address by Sydney (*New York Journal* June 1788) 107
6.10 Address of the Albany Antifederal Committee (Jer. Van Rensselaer, Chairman) (*New York Journal* 26 April 1788) 122
6.11 An Address by A Plebeian (New York 1788) 128
6.12 Speeches by Melancton Smith, Delivered in the Course of Debate by the Convention of the State of New York on the Adoption of the Federal Constitution (June 1788) 148
6.13 Notes of Speeches Given by George Clinton before the New York State Ratifying Convention (June–July 1788) 177

PART 2

Conclusion

6.14 Mercy Warren, History of the Rise, Progress and Termination of the American Revolution (Boston 1805), chapter 31, with excerpts from chapter 30 195

Contents of Other Volumes

VOLUME ONE

Foreword by Joseph Cropsey
Preface by Murray Dry
Prefatory Notes by Herbert J. Storing

What the Anti-Federalists Were *For*

1 Introduction
2 Conservatives
3 The Small Republic
4 Union
5 The Federalist Reply
6 The Aristocratic Tendency of the Constitution
7 Complex Government
8 Bill of Rights
9 Conclusion

The Articles of Confederation, Keyed to the Principal Anti-Federalist Discussions
The Constitution of the United States, Keyed to the Principal Anti-Federalist Discussions

VOLUME TWO

PART I

Objections of Non-Signers of the Constitution

2.1 Elbridge Gerry (3 November 1787)
2.2 George Mason (1787)
2.3 Robert Yates and John Lansing (14 January 1788)
2.4 Luther Martin (1788)
2.5 Edmund Randolph (10 October 1787)

PART 2

Major Series of Essays at the Outset

2.6 Cato (September 1787–January 1788)
2.7 Centinel (October 1787–April 1788)
2.8 The Federal Farmer (1787 and 1788)
2.9 Brutus (October 1787–April 1788)

VOLUME THREE

Pennsylvania

3.1 William Findley (28 September 1787)
3.2 Minority of the Pennsylvania House of Representatives (4 October 1787)
3.3 An Old Whig (October 1787–February 1788)
3.4 Montezuma (17 October 1787)
3.5 A Democratic Federalist (17 October 1787)
3.6 A Federal Republican (1787)
3.7 John Humble (29 October 1787)
3.8 An Officer of the Late Continental Army (6 November 1787)
3.9 Philadelphiensis (November 1787–April 1788)
3.10 Alfred (13 December 1787)
3.11 Minority of the Convention of Pennsylvania (18 December 1787)
3.12 William Penn (January 1788)
3.13 Deliberator (20 February 1788)
3.14 A Farmer (April 1788)
3.15 None of the Well-Born Conspirators (23 April 1788)
3.16 Aristocrotis (1788)

VOLUME FOUR

Massachusetts and New England

4.1 Anon., "A confederation" (9 October 1787)
4.2 A Gentleman in a Neighbouring State (October 1787)
4.3 John DeWitt (October–December 1787)
4.4 Vox Populi (October–November 1787)
4.5 William Symmes (15 November 1787)
4.6 Agrippa (November 1787–February 1788)
4.7 A Federalist (26 November 1787)
4.8 One of the Common People (3 December 1787)

4.9 Candidus (December 1787–January 1788)
4.10 Cornelius (December 1787)
4.11 Poplicola (24 December 1787)
4.12 Helvidius Priscus (December 1787–February 1788)
4.13 A Republican Federalist (December 1787–February 1788)
4.14 Samuel (10 January 1788)
4.15 Hampden (January–February 1788)
4.16 A Customer (March 1788)
4.17 A Farmer (January–June 1788)
4.18 Charles Turner (17 January and 6 February 1788)
4.19 The Yeomanry of Massachusetts (25 January 1788)
4.20 An American (28 January 1788)
4.21 A Bostonian (4 February 1788)
4.22 A Watchman (February 1788)
4.23 A Friend to the Rights of the People, A Friend to the Republic (February 1788)
4.24 David (7 March 1788)
4.25 A Newport Man (March 1788)
4.26 Consider Arms, Malichi Maynard, and Samuel Field (April 1788)
4.27 Phileleutheros (May 1788)
4.28 A Columbian Patriot (1788)

Volume Five

PART 1

Maryland

5.1 A Farmer (February–April 1788)
5.2 A Farmer and Planter (April 1788)
5.3 Samuel Chase (April 1788)
5.4 Minority of the Maryland Ratifying Convention (May 1788)
5.5 John Francis Mercer (April or May 1788)

PART 2

Virginia and the South

5.6 Richard Henry Lee (16 October 1787)
5.7 Cato Uticensis (17 October 1787)
5.8 A Proposal for Reviving Christian Conviction (October 1787)
5.9 A Georgian (15 November 1787)
5.10 Cato (November–December 1787)
5.11 Tamony (9 January 1788)

5.12 Rawlins Lowndes (January 1788)
5.13 Republicus (February and March 1788)
5.14 The Impartial Examiner (February–June 1788)
5.15 Brutus (14 May 1788)
5.16 Patrick Henry (June 1788)
5.17 George Mason (4 June 1788)
5.18 Denatus (11 June 1788)
5.19 A Delegate Who Has Catched Cold (June 1788)
5.20 Sentiments of Many (18 June 1788)
5.21 James Monroe (1788)

Volume Seven

Index

A Note on Cross References

For convenient cross reference, and without any other editorial purpose, a three-part number has been assigned to each paragraph (or group of paragraphs where they are brief) of the writings assembled in *The Complete Anti-Federalist*. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. A reference to, for example, Federal Republican 3.6.13 locates a passage in the Review of the Constitution Proposed by the Late Convention, by A Federal Republican, which can be found in volume 3 of this edition. These numbers are distinct from any numbering by the authors themselves or any of their publishers; Centinel III, 2.7.73 refers to the third letter of Centinel, in volume 2 above. The abbreviation "intro." is used for Storing's introductions to volumes or parts of volumes as well as the introductions to individual texts. A reference to, say, 2.8.intro. denotes the introductory sketch and outline of the Federal Farmer, located in volume 2. Cross references to volume 1 are by page number. A cross reference from one note to another uses a three-part number plus a note number, so that the reader may refer to the text as well as the note if necessary.

Murray Dry

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PART 1

New York

Introduction

Two weeks after Virginia began her deliberations, the New York delegates convened in Poughkeepsie. As in Pennsylvania, but in sharp contrast to Virginia, two opposing parties existed whose prior differences carried over to the question of ratification. The New York Federalists were the party of the commercial and professional classes of New York City, allied through background, interest and marriage with the large landholders of upper New York State. The Clintonian party, forerunner of the Anti-Federalists, drew its leadership from the radical Whigs and was solidly based on the small farmers.[1]

Always fearful of any relinquishment of state authority, Governor Clinton acquiesced to the growing pressure for a constitutional convention. However the Clintonians showed greater political understanding than the Pennsylvania Constitutionalists and deliberately sent two opponents of greater central powers, John Lansing, Jr., and Robert Yates, to bracket Alexander Hamilton, who was warmly supported by the many Federalists in the Senate and was known for his advocacy of a stronger central government. With the publication of the proposed Constitution, the Anti-Federalists produced a stream of criticism. An Albany Anti-Federalist Committee circulated an address of its own as well as Mercy Warren's Columbian Patriot. General John Lamb, the customs inspector of the port of New York, headed an Anti-Federal group which called itself the Federal Republicans and attempted, unsuccessfully, to concert the plans of Anti-Federalists throughout the country, incidentally providing historians with valuable materials on the ratifying controversy.[2]

The Clinton strategy during the ratification debate remains obscure, and it is difficult to avoid the conclusion that Clinton's normally sure hand in local affairs deserted him on this broader scene. The New York Legislature, in the control of the Clintonians, issued a call for a ratifying convention to be elected by universal manhood suffrage to meet on 17 June, rejecting a proposed preamble to the effect that the Constitutional Convention had exceeded its powers. The Anti-Federalists secured an overwhelming success, electing 46 delegates to the Federalists' 19. Had Clinton arranged to hold the Convention early in the year, a rejection by New York would have been likely, with its inevitable effect on the other states. Clinton appears not to

have felt certain that he could carry his party for rejection, if that was indeed what he wanted.[3] He chose to delay. By mid-June, however, eight states had ratified, and mid-way in New York's deliberations New Hampshire and Virginia joined them. New York's unpopular economic policies might now bring retaliation backed by a strong union. There were rumors of secession by the southern counties if the state rejected the Constitution. Many Clintonians, including Melancton Smith, the dominant Anti-Federalist figure in the debate, were anxious to find grounds of agreement. Various compromises were suggested, and unconditional ratification together with explanatory provisions and recommendatory amendments was finally agreed to by the narrow margin of 30 to 25.[4] Accompanying the ratification was a circular letter from Clinton to the other governors urging a second convention to draft amendments to the Constitution.

1. On background and ratification in New York see Spaulding, *New York in the Critical Period;* Thomas Childs Cochran, *New York in the Confederation: An Economic Study* (Philadelphia 1932); Clarence Miner, *The Ratification of the Federal Constitution by the State of New York* (New York 1921); and especially DePauw, *The Eleventh Pillar.*

2. For a discussion of the activities of the Federal Republicans see Isaac Q. Leake, *Memoir of the Life and Times of General John Lamb* ch. 23, and DePauw, *The Eleventh Pillar.*

3. Edward Carrington wrote to Jefferson on 23 October 1787 that "the Governor holds himself in perfect silence, wishing, it is suspected, for a miscarriage, but is not confident enough to commit himself to an open opposition." Curtis, *Documentary History* IV, 345.

4. See DePauw, *The Eleventh Pillar* chs. 18, 19, who regards the ratification as in substance conditional.

Essays by Cincinnatus

NEW YORK JOURNAL
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The essay of A Democratic Federalist ends with a promise to take up on some future occasion the powers of the President and senate and the other parts of the new Constitution.[1] It is possible that the promised resumption is to be found in these Cincinnatus essays, published in late 1787 and widely reprinted in the northern states. There are some similarities—the early reference to the provision of the Articles of Confederation that what is not expressly given is reserved, the reference to the Zenger case, the allusion to the connection between civil law and ecclesiastical tyranny, the reliance of certain republics, notably Switzerland, on a militia, etc. On the other hand, these are fairly common Anti-Federalist themes, and there is no other evidence that the authors are the same. The essays differ somewhat in style, and of course, they appeared in different newspapers in different states. The Cincinnatus essays are, however, sufficiently related to the earlier piece that they may be said to "follow" it, whether or not written by the same hand.

The letters of Cincinnatus were often attributed at the time to Richard Henry Lee. Thus a correspondent in the *Massachusetts Gazette,* 7 December 1787, commented that "Richard Henry Lee passed through this town a few days ago, on his way to Virginia. He spent a whole evening in reading his Cincinnatusses, and in abusing Mr. Wilson and the new government, to a group of schoolboys and hostlers, who have since made themselves very merry at his expense." An extract of the fourth Cincinnatus essay, printed in the *Salem (Massachusetts) Mercury* 11 December 1787, is preceded by a note, "supposed to have been written by Richard Henry Lee, Esq., Delegate to Congress from the State of Virginia."[2] However, the argument and the style are not on the whole much like Lee's.[3]

These essays are the longest of the Anti-Federalist attacks on James Wilson's much discussed 6 October speech to the citizens of Philadelphia. The argument is not of especially high quality; it is orderly and fairly well reasoned, but at the same time it contains the denunciation and rhetorical excess of the more vulgar essays on both sides.

The essays begin with a lengthy discussion of the absence of a declaration

of rights (I, II, III), the inadequacy of Wilson's distinction between the state and general governments in this respect (6.1.4), the liberty of the press (I, 6.1.5–10; II, 6.1.11–12), the trial by jury (I, 6.1.7; II, 6.1.13–17; III, 6.1.19–22), and the right of conscience (III, 6.1.19).[4] There follows a discussion of Wilson's defense of the power to raise and maintain a standing army (III, 6.1.23–24; IV, 6.1.25). This discussion, although not identical with that of the Democratic Federalist, is a kind of recapitulation in somewhat looser and more popular terms of the main heads of the earlier essay. In his fourth and fifth essays, Cincinnatus turns to the "most exceptionable part of the Constitution—the senate." This was the matter not reached by A Democratic Federalist and provides the heart of Cincinnatus' case against the Constitution and the "monstrous aristocracy" it will establish. Cincinnatus discusses the undemocratic basis of the Senate (a rather unusual argument for the Anti-Federalists), its extensive powers, its participation in all of the important activities of government, and the inadequacy of the House of Representatives (IV, 6.1.26–29). He argues that the Senate is defective both in constitution and powers (IV, 6.1.30–34; V, 6.1.35). He warns that the proponents of the Constitution and the anti-democratic party in Pennsylvania see the Senate as a constitutional foundation for their aristocratic plans (V, 6.1.36–37). He scorns, finally, Wilson's contention that the Senate is an admirable compromise, considering the heterogeneous materials out of which it had to be made, arguing (in uncharacteristic fashion for an Anti-Federalist) the essential homogeneity of the United States (V, 6.1.38–39).

Cincinnatus goes on to refute Wilson's claim that state sovereignties will not be destroyed by the new Constitution (V, 6.1.40) and to deny, in an extensive discussion, Wilson's claim that the impost will probably suffice to meet federal needs (V, 6.1.41–43; VI, 6.1.44–55). In the course of this latter discussion, he makes the interesting suggestion that the weakness of the government under the Articles of Confederation may have been "a veil happily thrown over the inability of people; and that the large powers given to the new government, will to every eye, expose the nakedness of our land" (VI, 6.1.48). He presents a sharp discussion of Wilson's motives (VI, 6.1.50–52), and ends with a short discussion of the power of the federal Congress to alter the times, places, and manner of electing federal representatives.

1. See above, 3.5.13.

2. Samuel Bannister Harding reports that the letters of Cincinnatus were extensively copied in Massachusetts and were attributed to Lee. *Contest over Ratification* 17–18 n. 3. On the other hand, William Short wrote to Thomas Lee Shippen (31 May 1788), reporting that he learned "from Mr. Paradise that A Lee [presumably Arthur Lee, Richard Henry's brother] was the author" of Cincinnatus. Thomas L. Shippen Papers, Box 4, MSS Division, Library of Congress.

3. Jackson Turner Main contrasts the rather democratic Cincinnatus with the "moderates," among whom Lee is numbered. *The Antifederalists* 173–74, 177. See 6.1.38 n. 31.

4. A reply to this part of the argument was given by Anti-Cincinnatus in the Northampton, Massachusetts *Hampshire Gazette* 19 December 1787, reprinted in the *New York Journal* 29 December 1787.

Mr. Greenleaf,

A speech made to the citizens of Philadelphia, and said to be by Mr. WILSON, *appears to me to abound with sophistry, so dangerous, as to require refutation.*[1] *If we adopt the new Constitution, let us at least understand it. Whether it deserves adoption or not, we can only determine by a full examination of it, so as clearly to discern what it is that we are so loudly, I had almost said, indecently called upon to receive. Such an examination is the object of the papers which I am to entreat you to lay before the public, in answer to Mr. Wilson, and under the signature of—Cincinnatus.*

I
1 November 1787

To James Wilson, Esq.

Sir,

You have had the graciousness, Sir, to come forward as the defender and panegyrist of the plan of a new Constitution, of which you was one of the framers. If the defence you have thought proper to set up, and the explanations you have been pleased to give, should be found, upon a full and fair examination, to be fallacious or inadequate; I am not without hope, that candor, of which no gentleman talks more, will render you a convert to the opinion, that some material parts of the proposed Constitution are so constructed—that a *monstrous aristocracy springing from it, must necessarily swallow up the democratic rights of the union, and sacrifice the liberties of the people to the power and domination of a few.* 6.1.1

If your defence of this new plan of power, has, as you say, been matured by four months constant meditation upon it, and is yet so very weak, as I trust will appear, men will begin to think, that—the thing itself is indefensible. Upon a subject so momentous, the public has a right to the sentiments of every individual that will reason: I therefore do not think any apology necessary for appearing in print; and I hope to avoid, at least, the indiscriminate censure which you have, with so much candor and liberality, thrown on those who will not worship *your idol*—"that they are industriously endeavouring to prevent and destroy it, by insidious and clandestine attempts."[2] Give me leave just to suggest, that perhaps these clan- 6.1.2

destine attempts might have been owing to the terror of *your mob,* which so nobly endeavoured to prevent all freedom of action and of speech. The *reptile Doctor,* who was employed to blow the trumpet of persecution, would have answered the public reasoning of an opponent, by hounding on him the rage of a deluded populace.[3]

6.1.3 It was to such men, and under such impressions, that you made the speech which I am now to examine; no wonder then that it was received with loud and unanimous testamonies of their approbation. They were vociferating through you that panegyric of their own intemperate opinions.

6.1.4 Your first attempt is to apologize for so very obvious a defect as—the omission of a declaration of rights. This apology consists in a very ingenious discovery; that in the state constitutions, whatever is not reserved is given; but in the congressional constitution, whatever is not given, is reserved. This has more the quaintness of a conundrum, than the dignity of an argument. The conventions that made the state and the general constitutions, sprang from the same source, were delegated for the same purpose—that is, for framing rules by which we should be governed, and ascertaining those powers which it was necessary to vest in our rulers. Where then is this distinction to be found, but in your assumption? Is it in the powers given to the members of convention? no—Is it in the constitution? not a word of it:—And yet on this play of words, this dictum of yours, this distinction without a difference, you would persuade us to rest our most essential rights. I trust, however, that the good sense of this free people cannot be so easily imposed on by professional figments. The confederation, in its very outset, declares—that what is not expressly given, is reserved. This constitution makes no such reservation.[4] The presumption therefore is, that the framers of the proposed constitution, did not mean to subject it to the same exception.

6.1.5 You instance, Sir, the liberty of the press; which you would persuade us, is in *no* danger, though not secured, because there is no express power granted to regulate literary publications. But you surely know, Sir, that where general powers are expressly granted, the particular ones comprehended within them, must also be granted. For instance, the proposed Congress are empowered—to define and punish offences against the law of nations—mark well, Sir, if you please—to *define* and punish. Will you, will any one say, can any one even think that does not comprehend a power to define and declare all publications from the press against the conduct of government, in making treaties, or in any other foreign transactions, an offence against the law of nations? If there should ever be an influential president, or arbitrary senate, who do not choose that their transactions with foreign powers should be discussed or examined in the public prints, they will easily find pretexts to prevail upon the other branch to concur with them, in restraining what it may please them to call—the licentiousness of the press. And this may be, even without the concurrence of the represen-

tative of the people; because the president and senate are empowered to make treaties, and these treaties are declared the supreme law of the land.

What use they will make of this power, is not now the question. Certain it 6.1.6
is, that such power is given, and that power is not restrained by any declaration—that the liberty of the press, which even you term, the sacred palladium of national freedom, shall be forever free and inviolable. I have proved that the power of restraining the press, is necessarily involved in the unlimited power of defining offences, or of making treaties, which are to be the supreme law of the land. You acknowledge, that it is not expressly excepted, and consequently it is at the mercy of the powers to be created by this constitution.

Let us suppose then, that what has happened, may happen again: That a 6.1.7
patriotic printer, like Peter Zenger, should incur the resentment of our new rulers, by publishing to the world, transactions which they wish to conceal.[5] If he should be prosecuted, if his judges should be as desirous of punishing him, *at all events*, as the judges were to punish Peter Zenger, what would his innocence or his virtue avail him? This constitution is so admirably framed for tyranny, that, by clear construction, the judges might put the verdict of a jury out of the question. Among the cases in which the court is to have appellate jurisdiction, are—controversies, to which the United States are a party:—In this appellate jurisdiction, the judges are to determine, *both law and fact*. That is, the court is both judge and jury. The attorney general then would have only to move a question of law in the court below, to ground an appeal to the supreme judicature, and the printer would be delivered up to the mercy of his judges. Peter Zenger's case will teach us, what mercy he might expect. Thus, if the president, vice-president, or any officer, or favorite of state, should be censured in print, he might effectually deprive the printer, or author, of his trial by jury, and subject him to something, that will probably very much resemble the Star Chamber of former times. The freedom of the press, the sacred palladium of public liberty, would be pulled down;—all useful knowledge on the conduct of government would be withheld from the people—the press would become subservient to the purposes of bad and arbitrary rulers, and imposition, not information, would be its object.

The printers would do well, to publish the proceedings of the judges, in 6.1.8
Peter Zenger's case—they would do well to publish lord Mansfield's conduct in, the King against Woodfall;[6]—that the public mind may be properly warned of the consequences of agreeing to a constitution, which provides no security for the freedom of the press, and leaves it controversial at least—whether in matter of libels against any of our intended rulers; the printer would even have the security of trial by jury. Yet it was the jury only, that saved Zenger, it was a jury only, that saved Woodfall, it can only be a jury that will save any future printer from the fangs of power.

Had you, Mr. Wilson, who are so unmerciful against what you are pleased 6.1.9

to call, the disingenuous conduct of those who dislike the constitution; had you been ingenuous enough to have stated this fairly to our fellow citizens; had you said to them—gentlemen, it is true, that the freedom of the press is not provided for; it is true, that it may be restrained at pleasure, by our proposed rulers; it is true, that a printer sued for a libel, would not be tried by a jury; all this is true, nay, worse than this is also true; but then it is all necessary to what I think, *the best form of government that has ever been offered the world.*

To have stated these truths, would at least have been acting like an honest man; and if it did not procure you such unanimous testimonies of approbation, what you would have received, would have been *merited.*

6.1.10 But you choose to shew our fellow citizens, nothing but what would flatter and mislead them. You exhibited, that by a rush-light only, which, to dissipate its darkness, required the full force of the meridian sun. When the people are fully apprized of the chains you have prepared for them, if they choose to put them on, you have nothing to answer for. If they choose to be tenants at will of their liberties, by the new constitution; instead of having their freehold in them, secured by a declaration of rights; I can only lament it. There was a time, when our fellow citizens were told, in the words of Sir Edward Coke—For a man to be tenant at will of his liberty, I can never agree to it—*Etiam si* Dominus *non sit molestus, tamen miserrimum est,* posse, *se velit*—Though a despot may not act tyrannically; yet it is dreadful to think, that if he *will,* he *may*.[7] Perhaps you may also remember, Sir, that our fellow citizens were then warned against those—"smooth words, with which the most dreadful designs may be glossed over."[8] You have given us a lively comment on your own text. You have varnished over the iron trap that is prepared, and *bated with some illustrious names, to catch the liberties of the people.*

Cincinnatus.

II
8 November 1787

To James Wilson, Esq.

Sir,

6.1.11 I have proved, sir, that not only some power is given in the constitution to restrain, and even to subject the press, but that it is a power totally unlimited; and may certainly annihilate the freedom of the press, and convert it from being the palladium of liberty to become an engine of imposition and tyranny. It is an easy step from restraining the press to making it place the

worst actions of government in so favorable a light, that we may groan under tyranny and oppression without knowing from whence it comes.

But you comfort us, by saying,—"there is no reason to suspect so popular 6.1.12
a privilege will be neglected."[9] The wolf, in the fable, said as much to the sheep, when he was persuading them to trust him as their protector, and to dismiss their guardian dogs. Do you indeed suppose, Mr. Wilson, that if the people give up their privileges to these new rulers they will render them back again to the people? Indeed, sir, you should not trifle upon a question so serious—You would not have us to suspect any ill. If we throw away suspicion—to be sure, the thing will go smoothly enough, and we shall deserve to continue a free, respectable, and happy people. Suspicion shackles rulers and prevents good government. All great and honest politicians, *like yourself*, have reprobated it. Lord Mansfield is a great authority against it, and has often treated it as the worst of libels. But such men as Milton, Sidney, Locke, Montesquieu, and Trenchard, have thought it essential to the preservation of liberty against the artful and persevering encroachments of those with whom power is trusted. You will pardon me, sir, if I pay some respect to these opinions, and wish that the freedom of the press may be *previously* secured as a *constitutional* and *unalienable right*, and not left to the precarious care of popular privileges which may or may not influence our new rulers. You are fond of, and happy at, quaint expressions of this kind in your observation—that a formal declaration would have done harm, by implying, that some degree of power was given when we undertook to define its extent. This thought has really a brilliancy in it of the first water. But permit me, sir, to ask, why any saving clause was admitted into this constitution, when you tell us, every thing is reserved that is not expressly given? Why is it said in sec. 9th, "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress, prior to the year, 1808." There is no power expressly given to the Congress to prohibit migrations and importations. By your doctrine then they could have none, and it was, according to your own position, nugatory to declare they should not do it.[10] Which are we to believe, sir,—you or the constitution? The text, or the comment. If the former, we must be persuaded, that in the contemplation of the framers of the constitution implied powers were given, otherwise the exception would have been an absurdity. If we listen to you we must affirm it to be a distinctive characteristic of the constitution, that—"what is not expressly given is reserved." Such are the inconsistencies into which men over ingenuous, like yourself, are betrayed in advocating a bad cause. Perhaps four months more consideration of the subject, would have rendered you more guarded.

I come now to the consideration of the trial by jury in civil cases. And 6.1.13
here you have, indeed, made use of your professional knowledge—But you did not tell the people that your profession was always to advocate one side

of a question—to place it in the most favorable, though false, light—to rail where you could not reason—to pervert where you could not refute—and to practice every fallacy on your hearers—to mislead the understanding and pervert judgment. In light of this professional practice, you make a refutable objection of your own, and then triumphantly refute it. The objection you impute to your opponents is—the trial by jury is abolished in civil cases. This you call a disingenuous form—and truly it is very much so on your part and of your own fabrication. The objection in its true form is, that—trial by jury is not secured in civil cases. To this objection, you could not possibly give an answer; you therefore ingenuously coined one to which you could make a plausible reply. We expected, and we had a right to expect, that such an inestimable privilege as this would have been secured—that it would not have been left dependent on the arbitrary exposition of future judges, who, when it may suit the arbitrary views of the ruling powers will explain it away at pleasure. We may expect Tressellians, Jeffree's and Mansfield's here, and if they should not be native with us, they may possibly be imported.

6.1.14 But, if taken even on your own ground it is not so clearly tenable. In point of legal construction, the trial by jury does seem to be taken away in civil cases. It is a law maxim, that the expression of one part is an exclusion of the other. In legal construction therefore, the preservation of trial by jury in criminal, is an exclusion of it in civil cases. Why else should it be mentioned at all? Either it followed of course in both cases, or it depended on being stipulated. If the first, then the stipulation was nugatory—if the latter, then it was in part given up. Therefore, either we must suppose the Convention did a nugatory thing; or that by the express mention of jury in criminal, they meant to exclude it in civil cases. And that they did intend to exclude it, seems the more probable, as in the appeal they have taken special care to render the trial by jury of no effect by expressly making the court judges both of law and fact. And though this is subjected to the future regulation of Congress, yet it would be absurd to suppose, that the regulation meant its annihilation. We must therefore conclude, that in appeals the trial by jury is expressly taken away, and in original process it is by legal implication taken away in all civil cases.

6.1.15 Here then I must repeat—that you ought to have stated fairly to the people, that the trial by jury was not secured; that they might know what, it was they were to consent to; and if knowing it, they consented, the blame could not fall on you. Before they decide, however, I will take leave to lay before them the opinion of the great and revered Judge Lord Camden, whose authority is, I hope, at least equal to that of Mr. Wilson.—"There is, says he, scarce any matter of challenge allowed to the judge, but several to the jurors and many of them may be removed without any reason alledged." This seems to promise as much impartiality as human nature will admit, and absolute perfection is not attainable, I am afraid, either in judge or jury or any thing else. The trial by [jury in] our country, is in my opinion, the great

bulwark of freedom, and for certain, the admiration of all foreign writers and nations. The last writer of any distinguished note, upon the principles of government, the celebrated Montesquieu, is in raptures with this peculiar perfection in the English policy. From juries running riot, if I may so, and acting wildly at particular seasons, I cannot conclude, like some Scottish Doctors of our law and constitutions, that their power should be lessened. This would, to use the words of the wise, learned, and intrepid Lord Chief Justice Vaughan, be—"a strange newfangled conclusion, after a trial so celebrated for so many hundreds of years."[11]

Such are the opinions of Lord Camden and Vaughan, and multitudes of the first names, both English and other foreigners[,] might be cited, who bestow unbounded approbation on this best of all human modes for protecting, life, liberty, and property.

I own then, it alarms me, when I see these Doctors of our constitutions 6.1.16
cutting in twain this sacred shield of public liberty and justice. Surely my countrymen will think a little before they resign this strong hold of freedom. Our state constitutions have held it sacred in all its parts. They have anxiously secured it. But that these may not shield it from the intended destruction in the new constitution, it is therein as anxiously provided, that "this constitution, and the laws of the United States, which shall be made in pursuance thereof; or which shall be made under the authority of the United States, shall be the supreme laws of the land; and the judges in every state, shall be bound thereby; any thing in the constitution and laws of any state, to the contrary notwithstanding."

Thus this new system, with one sweeping clause, bears down every con- 6.1.17
stitution in the union, and establishes its arbitrary doctrines, supreme and paramount to all the bills and declarations of rights, in which we vainly put our trust, and on which we rested the security of our often declared, unalienable liberties. But I trust the whole people of this country, will unite, in crying out, as did our sturdy ancestors of old—*Nolumus leges anglica mutari*.[12]—We will not part with our birthright.

Cincinnatus.

III

15 November 1787

To James Wilson, Esq.

Sir,

Your speech has varnished an iron trap, bated with some illustrious 6.1.18
names, to catch the liberties of the people. And this you are pleased to call a

constitution—"the best form of government that was ever offered to the world."[13] May Heaven then have mercy on the world and on us. And in this prayer, I am persuaded, you will join me when you come to consider temperately, the unbounded powers given to this best of all possible governments; and then recollect, from your reading, what horrible abuses have grown from too unlimited a confidence of the people in their rulers. It is always both easier and safer, to add to powers, which are found to be insufficient, then to recal those which are injuriously large. This is a maxim, which no people, who mean to be free, should ever forget. While the people have something to give, they will be respected by their rulers. When with Cappadocian baseness, they resign all at once, they will be deemed fit only to be hewers of wood and drawers of water.

6.1.19 In my former papers, I have shewn, that the freedom of the press is left at the mercy of the proposed government—that the sacred trial by jury, in civil cases, is at best doubtful; and in all cases of appeal expressly taken away. In equal insecurity, or rather equally at mercy, are we left as to—liberty of conscience. We find nothing that regards it, except the following;—"but no religious test shall ever be required as a qualification to any office or public trust under the United States." This exception implies, and necessarily implies, that in all other cases whatever liberty of conscience may be regulated. For, though no such power is expressly given, yet it is plainly meant to be included in the general powers, or else this exception would have been totally unnecessary—For why should it be said, that no religious test should be required as a qualification for office, if no power was given or intended to be given to impose a religious test of any kind? Upon the omission of the trial by jury in civil cases, you observe—"when this subject was in discussion, we were involved in difficulties which pressed on all sides, and no precedent could be discovered to direct our course. The cases open to trial by jury differed in the different states, it was therefore impracticable on that ground to have made a general rule."[14]—So, because the extent of the trial by jury varied in the different states, therefore it was proper to abolish it in all. For what else can your words—"it was impracticable to have made a general rule" mean?—If ever the rule is made, it must be general. And if this is impracticable—it surely follows, that in the fœderal court we must go without it in civil cases. What sense is there in supposing, that what, for the reasons you alledge, was impracticable with the Convention, will be practicable with the Congress? What faculty can the one body have more than the other, of reconciling contradictions? But the sophistry of this excuse consists in the word *made—make* you might not, but surely nothing hindered your *proposing* the general rule, which, if approved by the several state Conventions, would *make* the rule. You have made nothing. You have only proposed. It rests with the several Conventions, to make your propositions, rules. It is not possible to say, that the Convention could not have proposed, that there should be one similar general mode of trial by jury in

the Fœderal court in all cases whatever. If the states would not have acceded to the proposition, we should only be where we are. And that this trial by jury is best, even in courts where the civil law process now prevails, I think no unbigoted man can doubt. Judge Blackstone is so explicit on this head, that I need only quote him to enforce conviction on every unprejudiced mind.—"This open examination of witnesses viva voce, in the presence of all mankind, is much more conducive to the clearing up of truth, than the private and secret examination taken down in writing before an officer, or his clerk, in the ecclesiastical courts, and all others that have borrowed their practice from the civil law; where a witness may frequently depose that in private which he will be ashamed to testify in a public and solemn tribunal. Where an artful or careless scribe may make a witness speak what he never meant, by dressing up his depositions in his own forms and language; but he is here at liberty to correct and explain his meaning, if misunderstood, which he can never do after a written deposition is once taken. Besides the occasional questions of his judge, the jury, and the counsel, propounded to the witnesses on a sudden, will sift out the truth much better than a formal set of interrogatories previously penned and settled; and the confronting of adverse witnesses is also another opportunity of obtaining a clear discovery, which can never be had on any other method of trial. Nor is the presence of the judge, during the examination, a matter of small importance; for besides the respect, &c. with which his presence will naturally inspire the witness, he is able by use and experience to keep the evidence from wandering from the point in issue. In short, by this method of examination, and this only, the persons who are to decide upon the evidence, have an opportunity of observing the quality, age, education, understanding, behaviour, and inclinations of the witness; in which points all persons must appear alike, when their depositions are reduced to writing and read to the judge, in the absence of those who made them; and yet as much may be frequently collected from the manner in which the evidence is delivered as from the matter of it. These are a few of the advantages attending this way of giving testimony oretenus; which was also, indeed, familiar among the ancient Romans."[15]

They who applaud the practice of civil law courts, must either have seen very little of such practice not to know that it is liable to infinite fraud, corruption, and oppression. As far as it prevails in the English system of jurisprudence, from which we derive ours, it is a remnant of ecclesiastical tyranny. The free and pure part of the system, that is the common law courts, have ever cautiously guarded against its encroachments, and restrained its operation. All great judges have reprobated it, except Lord Mansfield. He indeed, has been as desirous of extending it in England, as he was of extending parliamentary power into America; and with the same view—to establish tyranny. This noble Lord's principles, if we may judge from the proposed constitution, has too many admirers in America. 6.1.20

6.1.21 But I shall be told, that almost all the nations in Europe have adopted the civil law. This is true; and it is equally true, that almost all European nations have adopted arbitrary power with the civil law. This ought to be a warning to us how we admit it, even as England has done. It would never have been admitted there, but from the ecclesiastical influence in the days of superstition. This, thank Heaven, is now no more; and I sincerely wish its offspring was also extinct.

6.1.22 I have been thus particular on the subject of civil law, to shew how little propriety there was in leaving it upon as respectable a foot, as the common law, in civil cases. In fact, the constitution leaves them both to shift for themselves, in original process, and in appeal seems to favor the former by placing both law and fact, in the arbitrament of the judges.

6.1.23 Upon standing armies, sir, your professional dexterity has not abandoned you. The Constitution proposes to give the power of raising and supporting armies—and this without any limitation as to number; and to appropriate money to that object for two years at a time. This you justify by saying, that you "do not know a nation in the world which has not found it necessary and useful to maintain the appearance of strength, in a season of profound tranquility":[16] your knowledge then, sir, has not extended to free nations. Your phraseology, it is true, is somewhat equivocal; but unless by the term, appearance of strength, we understand, a standing army, we must suppose you to have meant a disingenuous evasion. Your reading might have informed you, sir,—that the Grecian republics, while free, never kept up any standing army—that the Roman republic, while free, never kept up a standing army, but that with them, a standing army and tyranny were co-eval, and concomitant—that in the free Swiss Cantons, no standing army, was ever, or is now permitted; no, sir, in all these great and glorious republics, though surrounded with enemies, their military array was occasional, or at the utmost, annual; nor was there formerly, nor is there now, in the Swiss Cantons, any more appearance of strength kept up in time of peace, than their militia gives: and yet they are free and formidable.

6.1.24 You say a standing army has always been, "a topic of popular declamation."[17] Is it indeed nothing more, sir? Is that which all free nations have studiously avoided, as the rock on which their liberties would suffer shipwreck; that which in fact, is the source and security of tyranny; that which all great political writers concur in condemning; that which has animated the ardor, and inflamed the eloquence of the first orators in the two houses of parliament, in Great-Britain—that which all the art and influence of the crown could never obtain from the people for more than a year—is all that, sir, nothing more but a topic of popular declamation? Is it surprising, that such knowledge, and such sentiments, as this declaration holds out, should have given us such a constitution? But the weightiest reason is, that without a standing army, "the government must declare war, before they are prepared to carry it on."[18] This is without question a most warlike paragraph:

whether we are to invade Great-Britain, France, Spain, Portugal, or all together, under the new constitution, and with the standing army it has given, you have not been pleased to inform us. To do this, a navy too will be necessary, and I see no provision for that: however, I suppose that, as well as every thing else, is included in the power "to make all laws which shall be necessary and proper for carrying into execution the foregoing, and all other powers vested by this constitution, in the government of the United States, or in any department or officer thereof." Let then the people rightly understand, that one blessing of the constitution will be, the taxing them to support fleets and armies to conquer other nations, against whom the ambition of their new rulers may declare war.

Cincinnatus.

IV

22 November 1787

To James Wilson, Esq.

Sir,

The public appear to me, sir, to be much indebted to you, for informing them; for what purpose a power was given by the proposed Constitution, of raising and supporting armies.—Some, indeed, might have suspected, that such a power, uncontrouled by any declaration, that the military should always be subject to the civil power, might be intended for the purposes of ambition. Your declaration has removed all doubt. Every principle of policy, you say, would be subverted unless we kept up armies—for what—for our defence?—no,—to support declarations of war—to strike home, with dispatch and secrecy, before the enemy can be apprized of your intention. Upon the same principle a small army would be rediculous. Nothing less than the Prussian number, about 200,000 men would embrace this salutary object. And as you now say—"no man that regards the dignity and safety of his country can deny the necessity of a military force."[19]—You will next affirm, that no one, for the same reason, can deny the necessity of a large army. The safety of the country, we have already experienced to depend, upon the militia. Switzerland has often experienced the same. Why then, sir, should you be so very positive, that for this purpose a military force is necessary?—But for the dignity of the country, that is for the ambition of its rulers, armies I confess are necessary; and not less in number than other ambitious rulers maintain, by grinding the face of the people. For every thousand in these armies a million of dollars must be levied upon the public, and such armies—raised and supported, would at once maintain the dignity 6.1.25

of government, and ensure the submission of the people. We shall be as dignified as the Turks, and equally free.—The sole power of voting men, and money, is retained by the representative of the people in England. This is their shield and their defence against arbitrary power. Never has the King been able to obtain the extension of this vote beyond a year. But we are called upon, with all the solemnity of a constitutional act, to give it up for two years. And yet, sir, you talk of the controul and the restrictions which the new Constitution provides. There is, I confess, some dexterity in the negative terms in which this power is conceived—not more than two years. But what the Constitution permits, and what it grants are essentially the same. And since it seemed necessary to this almost all confiding Convention, to limit our confidence in this particular, the only rule that observation suggests is, that of England; where this confidence has never exceeded one year.

6.1.26 I come now, sir, to the most exceptionable part of the Constitution—the senate. In this, as in every other part, you are in the line of your profession, and on that ground assure your fellow citizens, that—"perhaps there never was a charge made with less reason, than that which predicts the institution of a baneful aristocracy in the Fœderal Senate."[20] And yet your conscience smote you, sir, at the beginning, and compelled you to prefix a—perhaps to this strange assertion. The senate, you say, branches into two characters—the one legislative and the other executive. This phraseology is quaint, and the position does not state the whole truth. I am very sorry, sir, to be so often obliged to reprehend the suppression of information at the moment that you stood forth to instruct your fellow citizens, in what they were supposed not to understand. In this character, you should have abandoned your professional line, and told them, not only the truth, but the whole truth. The whole truth then is, that the same body, called the senate, is vested with—legislative—executive—and judicial powers. The two first you acknowledge; the last is conveyed in these words, sec. 3d. The senate shall have the sole power to try all impeachments. On this point then we are to come to issue—whether a senate so constituted is likely to produce a baneful aristocracy, which will swallow up the democratic rights and liberties of the nation.

6.1.27 To judge on this question, it is proper to examine minutely into the constitution and powers of the senate; and we shall then see with what anxious and subtle cunning it is calculated for the proposed purpose. 1st. It is removed from the people, being chosen by the legislatures—and exactly in the ratio of their removal from the people, do aristocratic principles constantly infect the minds of man.[21] 2d. They endure, two thirds for four, and one third for six years, and in proportion to the duration of power, the aristocratic exercise of it, and attempts to extend it, are invariably observed to increase. 3d. From the union of the executive with the legislative functions, they must necessarily be longer together, or rather constantly assem-

bled; and in proportion to their continuance together, will they be able to form effectual schemes for extending their own power, and reducing that of the democratic branch. If any one would wish to see this more fully illustrated, let him turn to the history of the Decemviri in Rome. 4th. Their advice and consent being necesssary to the appointment of all the great officers of state, both at home and abroad, will enable them to win over any opponents to their measures in the house of representatives, and give them the influence which, we see, accompanies this power in England; and which, from the nature of man, must follow it every where. 5th. The sole power of impeachment being vested in them, they have it in their power to controul the representative in this high democratic right; to screen from punishment, or rather from conviction, all high offenders, being their creatures, and to keep in awe all opponents to their power in high office. 6th. The union established between them and the vice president, who is made one of the corps, and will therefore be highly animated with the aristocratic spirit of it, furnishes them a powerful shield against popular suspicion and enquiry, he being the second man in the United States who stands highest in the confidence and estimation of the people. And lastly, the right of altering or amending money-bills, is a high additional power given them as a branch of the legislature, which their analogous branch, in the English parliament, could never obtain, because it has been guarded by the representatives of the people there, with the most strenuous solicitude as one of the vital principles of democratic liberty.

Is a body so vested with means to soften & seduce—so armed with power to screen or to condemn—so fortified against suspicion and enquiry—so largely trusted with legislative powers—so independent of and removed from the people—so tempted to abuse and extend these powers—is this a body which freemen ought ever to create, or which freemen can ever endure? Or is it not a monster in the political creation, which we ought to regard with horror? Shall we thus forge our own fetters? Shall we set up the idol, before which we shall soon be obliged, however reluctantly, to bow? Shall we consent to see a proud aristocracy erect his domineering crest in triumph over our prostrate liberties? 6.1.28

But we shall yet see more clearly, how highly favored this senate has been, by taking a similar view of the representative body. This body is the true representative of the democratic part of the system; the shield and defence of the people. This body should have weight from its members, and the high controul which it should also possess. We can form no idea of the necessary number in this untried system, to give due weight to the democratic part, but from the example of England. Had it not been intended to humble this branch, it would have been fixed, at least, at their standard. We are to have one representative for every thirty thousand—they have nearly one for ten thousand souls. Their number is about six millions; their representatives five hundred and fifteen. When we are six millions, we shall have 6.1.29

only two hundred representatives. In point of number therefore and the weight derived from it, the representative proposed by the constitution is remarkably feeble. It is farther weakened by the senate being allowed not only to reject, but to alter and amend money-bills. Its transcendent and incommunicable power of impeachment—that high source of its dignity and controul—in which alone the majesty of the people feels his sceptre, and bears aloft his fasces—is rendered ineffectual, by its being triable before its rival branch, the senate, the patron and prompter of the measures against which it is to sit in judgment. It is therefore most manifest, that from the very nature of the constitution the right of impeachment apparently given, is really rendered ineffectual. And this is contrived with so much art, that to discover it you must bring together various and distant parts of the constitution, or it will not strike the examiner, that the same body that advises the executive measures of government which are usually the subject of impeachment, are the sole judges on such impeachments. They must therefore be both party and judge, and must condemn those who have executed what they advised. Could such a monstrous absurdity have escaped men who were not determined, at all events, to vest all power in this aristocratic body? Is it not plain, that the senate is to be exalted by the humiliation of the democracy? A democracy which, thus bereft of its powers, and shorn of its strength; will stand a melancholy monument of popular impotence.

6.1.30 Hitherto I have examined your senate by its intrinsic and its comparative powers. Let us next examine, how far the principles of its constitution are compatible with what our own constitutions lay down, and what the best writers on the subject have determined to be essential to free and good government.

6.1.31 In every state constitution, with a very trifling exception in that of Massachusetts, the legislative and executive powers are vested in different and independent bodies.—Will any one believe, that it is because we are become wiser, that in twelve years we are to overthrow every system which reason and experience taught us was right. Or is it, that a few men, forming a plan at Philadelphia subversive of all former principles, then posting to Congress, and passing it there, and next dispersing themselves in the several states to propagate their errors, and, if they can, get chosen into the state conventions; are actuated by motives of interest and bad ambition? I should be very unwilling to believe the latter, and yet it is utterly incomprehensible, how such a systematic violation of all that has been deemed wise and right, from which no other result can be expected, but the establishment of a baneful aristocracy, could have been recommended to a free and enlightened people.

6.1.32 "Lorsque dans la meme personne, says Montesquieu, ou dans le meme corps de magistrature, la puissance legislative est re-unie a la puissance executive; il n'y a point de liberte; parcequ'on peut craindre que le meme monarque, ou le meme Senat ne fasse des loix tyranniques, pour les execu-

ter tyranniquement." "When the legislative and executive powers are united in the same person, or in the same corps, there can be no liberty. Because, it may be feared, that the same monarch or senate will make tyrannical laws, that they may execute them tyrannically."[22] I am aware that this great man is speaking of a senate being the whole legislative; whereas the one before us is but a branch of the proposed legislaure. But still the reason applies, inasmuch as the legislative power of the senate will enable it to negative all bills that are meant to controul the executive, and from being secure of preventing any abridgment, they can watch every pliant hour of the representative body to promote an enlargement of the executive power. One thing at least is certain, that by making one branch of the legislature participant in the executive, you not only prevent the legislature from being a check upon the executive, but you inevitably prevent its being checked or controuled by the other branch.

To the authority of Montesquieu, I shall add that of Mr. de Lolme; whose disquisition on government, is allowed to be deep, solid, and ingenious. Il ne suffisoit pas, says he, d'oter aux legislateurs l'execution des loix, par consequent, l'exemption qui en est la suite immediate; il falloir encore, leur oter ce qui eut produit les memes effects—l'espoir de jamais se l'attribuer—["]It is not only necessary to take from the legislature the executive power which would exempt them from the laws; but they should not have even a hope of being ever able to arrogate to themselves that power."[23] To remove this hope from their expectation, it would have been proper, not only to have previously laid down, in a declaration of rights, that these powers should be forever separate and incommunicable; but the frame of the proposed constitution, should have had that separation religiously in view, through all its parts. It is manifest this was not the object of its framers, but, that on the contrary there is a studied mixture of them in the senate as necessary to erect it into that potent aristocracy which it must infallibly produce. In pursuit of this darling object, than which no greater calamity can be brought upon the people, another egregious error in constitutional principles is committed. I mean that of dividing the executive powers, between the senate and the president. Unless more harmony and less ambition should exist between these two executives than ever yet existed between men in power, or than can exist while human nature is as it is: this absurd division must be productive of constant contentions for the lead, must clog the execution of government to a mischievous, and sometimes to a disgraceful degree, and if they should unhappily harmonize in the same objects of ambition, their number and their combined power, would preclude all fear of that responsibility, which is one of the great securities of good, and restraints on bad governments. Upon these principles M. de Lolme has foreseen that "the effect of a division of the executive power is the establishment of absolute power in one of continual contention"; he therefore lays it down, as a general rule "pour q'un etat soit tranquille il faut que le pouvoir executif

6.1.33

y soit reunie''—for the tranquility of the state it is necessary that the executive power should be in one.[24] I will add, that this singlehood of the executive, is indispensably necessary to effective execution, as well as to the responsibility and rectitude of him to whom it is entrusted.

6.1.34 By this time I hope it is evident from reason and authority, that in the constitution of the senate there is much cunning and little wisdom; that we have much to fear from it, and little to hope, and then it must necessarily produce a baneful aristocracy, by which the democratic rights of the people will be overwhelmed.

It was probably upon this principle that a member of the convention, of high and unexceeded reputation for wisdom and integrity, is said to have emphatically declared, that *he would sooner lose his right hand, than put his name to such a constitution.*[25]

Cincinnatus.

V

29 November 1787

To James Wilson, Esq.

Sir,

6.1.35 In my former observations on your speech, to your fellow-citizens, explanatory and defensive of the new constitution; it has appeared, by arguments to my judgment unanswerable, that by ratifying the constitution, as the convention proposed it, the people will leave the liberty of the press, and the trial by jury, in civil cases, to the mercy of their rulers—that the project is to burthen them with enormous taxes, in order to raise and maintain armies, for the purposes of ambition and arbitrary power—that this power is to be vested in an aristocratic senate, who will either be themselves the tyrants, or the support of tyranny, in a president, who will know how to manage them, so as to make that body at once the instrument and the shield of his absolute authority.—Even the Roman Emperors found it necesssary to have a senate for this purpose. To compass this object, we have seen powers, in every branch of government, in violation of all principle, and all safety condensed in this aristocratic senate: we have seen the representative, or democratic branch, weakened exactly in proportion to the strengthening the aristocratic, or, what means the same thing, and will be more pleasing to your ear, Mr. Wilson, the republican branch. We have seen with what cunning the power of impeachment is apparently given to the representative of the people, but really to the senate; since, as they advise these measures of government, which experience has shewn, are the general

matters of impunity the executive officers will be sure of impeachment when they act in conformity to their will. Impeachment will therefore have no terrors, but for those who displease or oppose the senate.

Let us suppose that the privy councils who advise the executive govern- 6.1.36
ment in England, were vested with the sole power of trying impeachments; would any man say that this would not render that body absolute; and impeachment to all popular purposes, negatory? I shall appeal to those very citizens, Mr. Wilson, whom you was misleading, for the propriety of what I am going to observe. They know that their constitution was democratic—that it secured the powers of government in the body of the people.[26] They have seen an aristocratical party rise up against this constitution, and without the aid of such a senate, but from the mere influence of wealth, however unduly obtained, they have seen this aristocracy, under the originatical title of republicans, procure such a preference in the legislature, as to appoint a majority of the state members in the late convention, out of their body. Had such a senate, as they have now proposed, been part of your constitution, would the popular part of it, have been to effect more than a name. Can your fellow citizens then doubt that these men planned this senate, to effect the very purpose which has been the constant object of their endeavors, that is to overthrow the present constitution. And can you, O citizens of Philadelphia, so soon forget the constitution which you formed, for which you fought, which you have solemnly engaged to defend—can you so soon forget all this, as to be the willing ministers of that ambition, which aims only at making you its footstool—the confirmers of that constitution, which gives your aristocratic enemies their wish, and must trample your state constitution in the dust. Reflect a moment—who wish to erect an aristocracy among you—Mr. Wilson and his party; who were your delegates in framing the constitution now proposed to you—Mr. Wilson, and his party; who harangues you to smooth its passage to your approbation—Mr. Wilson; who have you chosen to approve of it in your state convention—Mr. Wilson.—O sense where is your guard! shame where is your blush! the intention of a state convention is, that a work of so great moment to your welfare, should undergo an examination by another set of men, uninfluenced by partiality or prejudice in its favor. And for this purpose you are weak enough to send a man, who was in the former convention, and who has not only signed his approbation of it, but stands forward as an agitator for it: is this man unprejudiced? would any man who did not suffer party to overcome all sense of rectitude, solicit or accept so improper a trust? He knows, in the line of his profession, that the having given an opinion upon the same question is a constant ground of challenge to a juryman. And does he think that this question is of less importance and ought less to be guarded against partiality and prejudice, than a common jury cause? He knows that a conscientious man will not sit as a juryman twice on the same cause: and is he in this most momentous cause, less conscientious than a common jury-

man? What are we to expect from the work of such hands? But you must permit me to lay before you, from your own transactions, farther proofs of Mr. Wilson's consistency, and of his sacred attention to your rights, when he counsels you to adopt the new constitution.

6.1.37 You know that he was one of the convention that formed, and recommended to you, your state constitution. Read what is there laid down as a fundamental principle of liberty—"As standing armies, in the time of peace, *are dangerous to liberty*, they ought not to be kept up."[27] Read now what this identical Mr. Wilson says to you in his speech—"This constitution, it has been farther urged, is of a pernicious tendency, because it tolerates a standing army in time of peace. This has always been a topic of popular declamation, and yet I do not know a nation in the world, which has not found it necessary and useful to maintain the appearance of strength, in a season of the most profound peace."[28] What a change of tone is here.—Formerly the mischief of standing armies was of sufficient moment, to find a place in a most solemn recognition of the fundamental rights of the people; standing armies were dangerous to liberty; but *now* they are only a topic of popular declamation, and are both useful and necessary in a season of the most profound tranquility:—O citizens of Philadelphia! do you hear, do you read, do you reflect? can you believe that the man means either wisely or honestly, who thus palpably contradicts himself, who treats with such levity, what your constitution declares to be one of your most sacred rights; and who betrays so little knowledge of ancient and modern history, as not to know, that some of the freest republics in the world, never kept up a standing army in time of peace! Can you, O deluded men, not see that the object of all this, is to fix upon you, with your own consent, a strong government that will enable a few proud, intriguing, aristocratical men, to make you the instruments of their avarice and ambition, and trample upon your privileges at pleasure. Your privileges, did I say, I beg your pardon; after a surrender of every thing on your part, into the hands of a few, their pleasure will be your only privileges.

6.1.38 I beg you will pardon me, Mr. Wilson, for this digression: it is not a pleasant one, and I wish the cause of it had never existed. We will return, if you please, to your speech. "When we reflect, you say, how various are the laws, commerce, habits, population, and extent, of the confederated states, this evidence of mutual concession and accommodation ought rather to command a generous applause, than to excite a jealousy and reproach. For my part, my admiration can only be equalled by my astonishment in beholding so perfect a system formed from such heterogeneous materials."[29] What a rhapsody is here; it certainly must have excited equal admiration and astonishment in your audience, and called forth those loud and unanimous testimonies of applause which Doctor Panegyric tells us, accompanied your speech.[30] Nil admirari, Mr. Wilson, is a wise lesson, and when you recover from your admiration and astonishment which are always in-

compatible with truth and reason; I shall ask you what union in the world is so similar in their laws, commerce, habits, population and extent? Is there such difference between Rhode-Island and Virginia as between Holland and Overyssel; between Massachusetts and Georgia, as between Berne and Switzs? Do not the several states harmonize in trial by jury of the vicinage; taxation by representation; habeas corpus; religious toleration; freedom of the press; separation of the legislative, executive and judicial functions. Are not these the great principles on which every constitution is founded? In these the laws and habits of the several states are uniform. But I suppose, because the citizens of New-York are not in the habit of being so ostentatious as those of Philadelphia, nor its merchants, of being such speculators in commerce as to fill the papers with bankruptcies; because in Carolina they are in the habit of eating rice, and in Maryland of eating homony; therefore the materials are heterogeneous, out of which this perfect system, his subject of amazement, was formed.[31]

6.1.39 What was this wonder working concession and accommodation? If they consisted in giving up, or hazarding any of the above fundamental principles of liberty, which I confess seems probable, because some furious spirits in the convention, and such there were, insisted upon it, such conduct may command your generous applause; but trust me, sir, when the people come to feel that their rights have been so basely betrayed by those they trusted, it will command a general execration. And here I cannot avoid remarking on what I have heard and for the truth of which I appeal to you. It is that a member of the late convention said, not very honorably distinguished for his moral or political virtue, admonished his associates that, unless they carried the constitution through before there was time for considering it, there would be no probability of its being adopted.[32] When I couple this profligate declaration, with the equally profligate measures taken by some persons to force it down in Philadelphia, and with the indecent speed with which others posted to Congress, and then to their several states, to hurry it forward—I confess I cannot help apprehending that such advice was not only given, but followed.

6.1.40 You would next induce us, Mr. Wilson, to believe, that the state sovereignties will not be annihilated, if the general one be established as the convention recommends. Your reason for this is as curious as it is conclusive. Because the state legislatures must nominate the electors of the President once in four years, and chuse a third of the Senate once in two years; therefore they will continue to be sovereign. Sovereignty then consists in electing the members of a sovereignty; to make laws—preside over the administration of justice—command the militia, or force of the state—these I suppose, do not constitute its sovereignty, for these are totally taken away, and yet you are clear the sovereignty remains. Did you think, Sir, that you was speaking to men or to children, when you hazarded such futile observations. Nor are they compensated by the very profound erudition you

display in defining the meaning of the word corporation. In common *parlance* we should call this egregious pedantry. Such is the anxiety manifested by the framers of the proposed constitution, for the utter extinction of the state sovereignties, that they were not content with taking from them every attribute of sovereignty, but would not leave them even the name.—Therefore, in the very commencement they prescribed this remarkable declaration—*We the People of the United States*. When the whole people of America shall be thus recognized by their own solemn act, as the people of the United States, I beseech you Sir, to tell us over whom the sovereignty, you say you leave to the several states, is to operate. Did the generous confidence of your fellow citizens, deserve this mockery of their understandings; or inebriated with so unusual a thing as popularity, did you think that every rhapsody you uttered, would be received as reason? That you may not expose yourself again on this subject, give me leave to recommend to you to read Mr. Locke, in whom you will find that sovereignty consists in three things—the legislative, executive, and negociating powers, all which your constitution takes absolutely away from the several states.[33] In Barbeyrac's Puffendorf, you will find these words, "La souveraintee entant qu'elle prescrit des regles generales pour la conduite de la vie civile, s'appelle pouvoir legislatif—entant qu'elle prononce sur les demeles des citoiens, conformement a ces regles, pouvoir judiciare—entant qu'elle arme les citoiens contre un ennemie etranger, ou qu'elle leur ordonne de mettre fin aux acts d'hostilites; pouvoir de faire la guerre et la paix; entant qu'elle se choisit des Ministres pour lui aider a prendre soin des affaires publiques; pouvoir d'etablir des magistrates." "]The sovereignty, inasmuch as it prescribes general rules for the conduct of civil life, is called the legislative power—in deciding controversies among its citizens, conformably to those laws it is called the judiciary power—in arming its citizens against a foreign enemy, or ordering them to cease hostilities; it has the power of war and peace—the appointment of officers to aid it in the case of the public, is the power of establishing magistrates."[34] Now, Sir, all these attributes of sovereignty, being vested exclusively in your new government, is it not a mockery of common sense to tell us, the state sovereignties are not annihilated? and yet you undertake to prove, that upon their existence depends the existence of the fœderal plan—and when this mighty undertaking is explained it is because they must meet once in two years to elect part of the federal sovereignty. O fie! O fie! Mr. Wilson! you had yet some character to lose, why would you hazard it in this manner?

6.1.41 On the subject of taxation, in which powers are to be given so largely by the new constitution, you lull our fears of abuse by venturing to predict "that the great revenue of the United States must and always will be raised by impost"[35]—and you elevate our hopes by holding out, "the reviving and supporting the national credit." If you have any other plan for this, than by raising money upon the people to pay the interest of the national debt, your

ingenuity will deserve our thanks. Supposing however, that raising money is necessary to payment of the interest, and such payment requisite to support the credit of the union; let us see how much will be necessary for that end, and how far the impost will supply what we want.

	Dollars.
The arrearages of French and Spanish interest amount now to	1,500,000
Interest and instalments of do. for 1788,	850,227
Support of government, and its departments, for 1788,	500,000
Arrears and anticipations of 1787,	300,000
Interest of domestic debt,	500,000
	4,650,227

The new Congress then, supposing it to get into operation towards October, 1788, will have to provide for this sum, and for the additional sum of 3,000,000 at least for the ensuing year; which together will make the sum of 7,650,227.

Now let us see how the impost will answer this: Congress have furnished us with their estimate of the produce of the whole imports of America at five per cent. and that is 800,000 dollars:[36] there will remain to provide for, by other taxes, 6,850,227. 6.1.42

We know too, that our imports diminish yearly, and from the nature of things must continue to diminish; and consequently that the above estimate of the produce of the impost, will in all probability, fall much short of the supposed sum. But even without this, it must appear, that you was either intentionally misleading your hearers, or very little acquainted with the subject when you ventured to predict, that the great revenue of the United States would always flow from the impost. The estimate above is from the publications of Congress, and I presume is right. But the sum stated, is necessary to be raised by the new government, in order to answer the expectations they have raised, is not all. The state debts, independent of what each owes to the United States, amount to about 30,000,000 dollars; the annual interest of this is 1,800,000.

It will be expected, that the new government will provide for this also; and such expectation is founded, not only on the promise you hold forth, of its reviving and supporting public credit among us, but also on this unavoidable principle of justice, that is the new government takes away the impost, and other substantial taxes, from the produce of which the several states paid the interest of their debt, or funded the paper with which they paid it. The new government must find ways and means of supplying that deficiency, or in other words of paying the interest in hard money, for in paper as now, it cannot, without a violation of the principles it boasts, attempt to 6.1.43

pay. The sum then which it must annually raise in specie, after the first year, cannot be less than 4,800,000: at present, there is not one half of this sum in specie raised in all the states; and yet the complaints of intolerable taxes has produced one rebellion, and will be mainly operative in the adoption of your constitution.—How you will get this sum is inconceivable, and yet get it you must, or lose all credit. With magnificent promises you have bought golden opinions of all sorts of people, and with gold you must answer them.

Cincinnatus.

VI

6 December 1787

To James Wilson, Esq.

Sir,

6.1.44 When I stated the monied difficulties, which the new government will have to encounter, my chief object was to prove to our fellow citizens, the delusion into which you have led them in your speech, when you ventured "to predict that the great revenue of the United States, must, and always will be, raised by impost." This is not the land, Sir, of *second sight;* and I have shewn that your prediction, is not founded on any knowledge of the subject. It is one of those numerous deceptions, that are practised upon the people to delude them into the toils that are spread for them by the proposed constitution.

6.1.45 To satisfy them more fully on the subject of the revenue, that is to be raised upon them, in order to give enormous fortunes to the jobbers in public securities, I shall lay before them a proposition to Congress, from Mr. Robert Morris, when superintendent of finance. It is dated, I think,* the 29th of June, 1782, and is in these words:—"The requisition of a five per cent. impost, made on the 3d of February, 1781, has not yet been complied with by the state of Rhode-Island, but as there is reason to believe, that the[ir] compliance is not far off, this revenue may be considered as already granted.—It will, however, be very inadequate to the purposes intended. If goods be imported, and prizes introduced to the amount of twelve millions annually, the five per cent. would be six hundred thousand, from which at least one sixth must be deducted, as well for the cost of collection as for the various defalcations which will necessarily happen, and which it is unnecessary to enumerate. It is not safe therefore, to estimate this revenue at

*I say, I think, because, by accident, the month is erased in the note I have, and I have not access to public papers which would enable me to supply the defect.

more than, half a million of dollars; for though it may produce more, yet probably it will not produce so much. It was in consequence of this, that on the 27th day of February last, I took the liberty to submit the propriety of asking the states for a land tax of one dollar for every hundred acres of land—a poll-tax of one dollar on all freemen, and all male slaves, between sixteen and sixty, excepting such as are in the federal army, or by wounds or otherwise rendered unfit for service; and an excise of one eigth of a dollar, on all distilled spiritous liquors. Each of these may be estimated at half a million; and should the product be equal to the estimation, the sum total of revenues for funding the public debts, would be equal to two millions."[37]

You will readily perceive, Mr. Wilson, that there is a vast difference between your prediction and your friends proposition. Give me leave to say, Sir, that it was not discreet, in you, to speak upon finance without instructions from this great financier. Since, independent of its delusive effect upon your audience, it may excite his jealousy, lest you should have a secret design of rivalling him in the expected office of superintendant under the new constitution. It is true, there is no real foundation for it; but then you know jealousy makes the food it feeds on. A quarrel between two such able and honest friends to the United States, would, I am persuaded, be felt as a public calamity. I beseech you then to be very tender upon this point in your next harrangue. And if four months study will not furnish you with sufficient descretion, we will indulge you with six. 6.1.46

It may be said, that let the government be what it may, the sums I have stated must be raised, and the same difficulties exist. This is not altogether true. For first, we are now in the way of paying the interest of the domestic debt, with paper, which under the new system is utterly reprobated. This makes a difference between the specie to be raised of 1,800,000 dollars per annum. If the new government raises this sum in specie on the people, it will certainly support public credit, but it will overwhelm the people. It will give immense fortunes to the speculators; but it will grind the poor to dust. Besides the present government is now redeeming the principal of the domestic debt by the sale of western lands. But let the full interest be paid in specie, and who will part with the principal for those lands. A principal, which having been generally purchased for two shillings and six pence on the pound, will yield to the holders two hundred and forty per cent. This paper system therefore, though in general an evil, is in this instance attended with the great benefit of enabling the public to cancel a debt upon easy terms, which has been swelled to its enormous size, by as enormous impositions. And the new government, by promising too much, will involve itself in a disreputable breach of faith, or in a difficulty of complying with it, insuperable. 6.1.47

The present government promises nothing.—The intended government, every thing.—From the present government little is expected:—From the intended one, much. Because it is conceived that to the latter much is 6.1.48

given—to the former, little. And yet the inability of the people to pay what is required in specie, remaining the same, the funds of the one will not much exceed those of the other. The public creditors are easy with the present government from a conviction of its inability—they will be urgent with the new one from an opinion, that as it promises, so it can and will perform every thing. Whether the change will be for our prosperity and honour, is yet to be tried. Perhaps it will be found, that the supposed want of power in Congress to levy taxes, is at present a veil happily thrown over the inability of the people; and that the large powers given to the new government, will to every eye, expose the nakedness of our land. Certain it is, that if the expectations which are grafted on the gift of these plenary powers, are not answered, our credit will be irretrievably ruined.

6.1.49 Once more, Mr. Wilson, be pleased to pardon me for digressing. We come now to your last argument, or rather observation, which is in these terms—That as establishing the new government will—"turn the stream of influence and emolument into a new channel, therefore every person who enjoys or expects to enjoy a place of profit under the present establishment, will object to the proposed innovation, not in truth, because it is injurious to the liberties of his country, but because it affects his schemes of wealth and consequence."[38]

6.1.50 This reflection, sir, is as ingenious as it is liberal. It reaches every man who will not worship the new idol. It is the shibboleth of your party. Every man who differs in opinion with you, upon the new constitution, if he is not actually a placeman under the present establishment, may be an expectant; and then, according to your liberal and gentlemanly conclusion, his opinion must be imputed to his pursuit of wealth and consequence.

6.1.51 But how could it escape you, that this was a two-edged argument, and might cut its inventor. Perhaps these very violent gentlemen for the new establishment, may be actuated by the same undue motives. Perhaps some of its framers, might have had its honours and emoluments in view. When you have let loose suspicion, Mr. Wilson, there is no knowing where it will end. Perhaps some may be audacious enough to suspect even—YOU. They may think, that the emoluments of an attorney generalship, or of a chief justice largely provided for, under a government gifted with almost chemic powers to extract gold from the people, might happily repair your shattered fortunes. Let us, Sir, suppose a man fallen from opulence into the most gloomy depths of monied distress, by an unsatiable love of wealth and as unwise a pursuit of it: would not such a man be a fit instrument in the hands of others to agitate the introduction of the new constitution. Such a man would have no objection to the golden speculations which such a constitution holds forth. Such a man, albeit unused to speak without a fee, and a large one too, would deign to harrangue gratis for such an object. His crest would be brightened, his eloquence animated by an anticipation of that

happy hour, when he might sail down this new pactolean channel, accompanied by his pathetic Doctor,[39] to sing a requiem to our expired liberties, and chant hallelujahs to his approach—to wealth and consequence. Such a man, Sir, in such a mood, would, as you do, regard the new constitution, in every point of view, with a candid and disinterested mind, and be bold to assert, "that it is the best form of government which has ever been offered to the world."[40]

Such a man as I have painted, you know, Mr. Wilson, is not a fiction. 6.1.52
What I have said was not to insult his distresses, but to admonish his discretion. He ought not to have touched ground, on which he, and his swelled superior,[41] who dances him forth to the people, is so very vulnerable. Upon my honor, Sir, I do not know two men in the United States more tender in this point. Permit me then to admonish them, through you, never again to insult the patience of the public with insinuations about the judgment of men on the proposed constitution, being affected by schemes of wealth and consequence.

There is one very material power given to the proposed Congress, on 6.1.53
which you have thought proper to be silent, and which as not coming within the scope of your speech I have reserved to this place. In the 4th section, it is said—"The times, places, and manner of holding election for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of chusing senators."

In all our constitutions, the regulation of elections is fixed; not left to the 6.1.54
legislature, because it is a fundamental right, in which the essence of liberty resides.

It is in fact the root of all rights. Nothing can be plainer than that Congress, under the pretence of regulating, might in various ways annihilate the freedom of elections. If ever the aristocracy should meet with the pliant representative, it will be easy so to regulate the times, places, and manner of holding elections—as to secure the complaisence of future representatives.

This power over elections is another proof of a prediction for the senate, and a determination to have a complete controul over the people. It participates precisely of the spirit, which dictated the rendering the power of impeachment nugatory, by the manner in which it is to be executed.

Thus too, the right of election, under controul from time to time, in point 6.1.55
of manner, times, and places, is but a shadow in the people; while the substance will necessarily reside with those to whom the regulation of it is resigned. But the senate was too sacred to be subjected to this unhallowed touch. The aristocracy is elevated on high, while the democracy is trampled in the dust. If the people can indeed be deluded into such a surrender of their most sacred rights; it must arise from the precipitation with which they are called upon to decide. Still, however, I trust, that they will have discern-

ment to discover the parts which are incompatible with their rights and liberties, and spirit to insist upon those parts being amended.

Cincinnatus.

1. James Wilson, "Address to the Citizens of Philadelphia," 6 October 1787, McMaster and Stone 143–49.

2. Ibid. 143. The quotation is a rough approximation, accurate in substance.

3. Dr. Benjamin Rush. See Philadelphiensis VI, 3.9.40 n. 19.

4. See Democratic Federalist 3.5.2.

5. See ibid. 3.5.4 n. 3.

6. See *The Letters of Junius* (Woodfall edition), preface. On appeal of questions of fact and law see Democratic Federalist 3.5.6 n. 6.

7. The source of this quotation has not been found.

8. The source of this quotation has not been found.

9. McMaster and Stone 144. Wilson's argument in this connection is narrower than it may appear. Conceding that a specific provision stating that liberty of the press would be appropriate in the case of the federal city, he argues that this was not the business of the convention but would be dealt with by future compact, "to which the citizens immediately interested will, and ought to be, parties; and there is no reason to suspect, that so popular a privilege will in that case be neglected."

10. Some of the other restraints on the general government are harder to explain than this one. See Brutus II, 2.9.30 n. 22. Presumably the "migration or importation" clause is an exception to the commerce power. That raises some further interesting questions, which do not appear to have been fully discussed, at least in public, at the time of the founding. See, however, Deliberator (3.13.5), who argues that under its commerce power Congress may authorize the importation of slaves, regardless of state laws to the contrary. See Walter Berns, "The Constitution and the Migration of Slaves," *Yale Law Journal* LXXVIII (1968), 198–228.

11. Bushel's case, King's Bench, 1670, in J. P. Kenyon, *The Stuart Constitution: Documents and Commentary* (Cambridge 1966) 420. On trial by jury see references below in Plebeian 6.11.15 n. 13.

12. Statute of Merton 1236, 20 Hen. 3.

13. McMaster and Stone 149.

14. Ibid. 144–45.

15. Blackstone, *Commentaries on the Laws of England* III, 373–74.

16. McMaster and Stone 145. For other Federalist arguments to this effect, see Brutus VIII, 2.9.97 nn. 66–67.

17. McMaster and Stone 145.

18. Defending the power to raise and maintain standing armies, Wilson asks, "what would be our national situation were it otherwise? Every principle of policy must be subverted, and the government must declare war, before they are prepared to carry it on. Whatever may be the provocation, however important the object in view, and however necessary dispatch and secrecy may be, still the declaration must precede the preparation, and the enemy will be informed of your intention, not only before you are equipped for an attack, but even before you are fortified for a defence." McMaster and Stone 145–46.

19. Ibid. 146. For other claims that the Federalists have vast national ambitions, see above Henry 5.16.2 n. 11.

20. McMaster and Stone 146.

21. As Main points out, this is a rather uncommon argument. *The Antifederalists*, p. 137. It is, however, also made by the Albany Anti-Federal Committee (6.10.3) and Impartial Examiner (5.14.33–34). The Anti-Federalists do often (though not invariably) disagree with the apportionment of seats in the Senate equally among the states. See Federal Farmer III, 2.8.28 n. 22.

22. Montesquieu, *The Spirit of Laws* XI, ch. 6.

23. J. L. DeLolme, *The Constitution of England* II, ch. 10.

24. Ibid. II, ch. 3.
25. George Mason, Farrand II, 479 (31 August).
26. The reference is to the Pennsylvania constitution and party struggles; see above, vol. 3, intro.
27. "Declaration of Rights of the Inhabitants of the Commonwealth, State of Pennsylvania," 1776, Thorpe, *Federal and State Constitutions* V, 3083.
28. McMaster and Stone 145.
29. Ibid.
30. Presumably Dr. Rush.
31. This argument of the essential homogeneity of the United States is an unusual Anti-Federalist argument; cf. Federal Farmer III, 2.8.24, also the references in Cato III, 2.6.13 n. 8; 2.6.16 n. 11.
32. The reference is probably to Gouverneur Morris. See Farrand II, 478 (31 August), and Luther Martin's letter of 19 March 1788, Ford, *Essays* 363–70 and Farrand II, 478.
33. Cincinnatus refers rather loosely to Locke's argument in *Second Treatise on Government* XI, XII, XIII.
34. Puffendorf, *Le Droit de la Nature et des Gens* (Barbeyrac, transl.) II. bk. 7, ch. 4.
35. McMaster and Stone 148.
36. *Journals of the Continental Congress,* XXIV, 257–60, 277–83.
37. *Journals of the Continental Congress* XXII, 439. The correct date is 29 July 1782.
38. McMaster and Stone 149.
39. Benjamin Rush again.
40. McMaster and Stone 149. See Centinel XIII, 2.7.158–59.
41. Presumably Robert Morris.

Objections by A Son of Liberty

NEW YORK JOURNAL
8 November 1787

In this short list of thirteen objections to the Constitution, A Son of Liberty gives more attention than was common among the Anti-Federalists to problems of search and seizure and security from governmental agents. He includes strong language regarding the destruction of liberty of the press and trial by jury. He warns that the state militias will be used in distant parts of the country to put down insurrections and to enforce despotic rule. The country will be perpetually involved in European wars and drained of resources to satisfy the ambitious views of ambitious rulers. This piece was first published in the *New York Journal* and was reprinted in papers in Pennsylvania, Massachusetts, and Virginia.

Mr. Greenleaf,

6.2.1 Having observed in your paper of the 25th ult. that a writer under the signature of *A Slave*, has pointed out a number of advantages or blessings, which, he says, will result from an adoption of the new government, proposed by the Convention:[1]—I have taken the liberty to request, that you will give the following a place in your next paper, it being an enumeration of a *few* of the *curses* which will be entailed on the people of America, by this preposterous and new-fangled system, if they are ever so infatuated as to receive it.

6.2.2 1st. A *standing army*, that bane to freedom, and support of tyrants, and their pampered minions; by which almost all the nations of Europe and Asia, have been enslaved.

2d. An arbitrary capitation or poll tax, by which the poor, in general, will pay more than the rich, as they have, commonly, more children, than their wealthy dissipated neighbours.

3d. A suppression of trial by a jury of your peers, in all civil cases, and even in criminal cases, the loss of the trial in the vicinage, where the fact and the credibility of your witnesses are known, and where you can command their attendance without insupportable expence, or inconveniences.

4th. Men of all ranks and conditions, subject to have their houses searched by officers, acting under the sanction of *general warrants,* their private papers seized, and themselves dragged to prison, under various pretences, whenever the fear of their lordly masters shall suggest, that they are plotting mischief against their arbitrary conduct.

5th. Excise laws established, by which our bed chambers will be subjected to be searched by brutal tools of power, under pretence, that they contain contraband or smuggled merchandize, and the most delicate part of our families, liable to every species of rude or indecent treatment, without the least prospect, or shadow of redress, from those by whom they are commissioned.

6th. The Liberty of the Press (that grand palladium of our liberties) totally suppressed, with a view to prevent a communication of sentiment throughout the states. This restraint is designedly intended to give our new masters an opportunity to rivet our fetters the more effectually.*

7th. A swarm of greedy officers appointed, such as are not known at present in the United States, who will riot and fatten on the spoils of the people, and eat up their substance.

8th. The militia of New-Hampshire, or Massachusetts, dragged to Georgia or South-Carolina to assist in quelling an insurrection of Negroes in those states; and those of Georgia, to another distant quarter, to subdue their fellow citizens, who dare to rise against the despotism of government.

9th. The citizens of the state of New-Hampshire or Georgia, obliged to attend a trial (on an appeal) at the seat of government, which will, probably, be at the distance of at least five hundred miles from the residence of one of the parties, by which means, the expence of suits will become so enormous as to render justice unattainable but by the rich.

10th. The states perpetually involved in the wars of Europe, to gratify the *ambitious* views of their *ambitious* rulers, by which the country will be continually drained of its men and money.

11th. The citizens constantly subjected to the insults of *military* collectors, who will, by the magnetism of that most powerful of all attractives, the *bayonet,* extract from their pockets (without their consent) the exorbitant taxes imposed on them by their haughty lords and masters, for the purpose of keeping them under, and breaking their spirits, to prevent revolt.

12th. Monopolies in trade, granted to the favourites of government, by which the spirit of adventure will be destroyed, and the citizens subjected to the extortion of those companies who will have an exclusive right, to engross the different branches of commerce.

*The Abbe Mably, one of most sensible writers on government says, that the most despotic monarch in any nation whatever, if he had as many troops as the ability of the nation could support, would not long hold the reins of government, if the press was not shackled to prevent political disquisition.[2]

13th. An odious and detestable *Stamp act,* imposing duties on every instrument of writing, used in the courts of law and equity, by which the avenues to justice will, in a great measure, be barred, as it will enhance the expences on a suit, and deter men from pursuing the means requisite to obtain their right.—Stamp duties also, imposed on every *commercial* instrument of writing—on *literary productions,* and *particularly,* on *news papers,* which of course, will be a great discouragement to *trade;* an obstruction to *useful knowledge* in *arts, sciences, agriculture,* and *manufactures;* and a prevention of *political information* throughout the states. Add to the above enumeration, the severest and most intolerable of all curses—that of being enslaved by men of our own creation (as to power) and for whose aggrandisement, many of us have fought and bled. Men who will, perhaps, construe our most innocent remarks and animadversions on their conduct, *treason,* misprison of treason, or high crimes and misdemeanours, which may be punished with unusual severity; we shall then be in a most forlorn and hopeless situation indeed.

A Son of Liberty.

Orange-County, November 4, 1787

1. Despite the suspicious pseudonym, the brief essay of A Slave, printed in the *New York Journal* 25 October 1787, appears to be a straightforward Federalist statement, arguing that the Constitution will result in, for example, "unity and peace at home," "respect and honour from abroad," "policy, power and spirit, to encourage virtue, punish vice, assert our rights, take possession of our territories, prevent encroachments, and repel invasions." Thirteen advantages are listed, but they are not replied to, point by point, in the thirteen objections of A Son of Liberty.

2. *De jure naturae et gentium.*

Essay by Brutus, Jr.

NEW YORK JOURNAL
8 November 1787

In this competent but undistinguished essay ("One of the newspaper scribbles of the time," E. Wilder Spaulding called it),[1] the author takes up two arguments frequently met at the threshold of a consideration of the Constitution: that the Constitution must be good because framed by wise and patriotic men and that failure to adopt the system will result in anarchy and confusion. On the contrary, Brutus, Jr., contends, many members of the Convention were aristocrats, despisers of the common people, and adventurers. The country is now at peace, recovering from the ills of war, and enjoying again the fruits of industry and frugality. Modest improvements in the government are necessary, to provide for regulation of trade and the payment of the interest on the public debt; but there is no reason for precipitation.[2] If tumults arise, they will have resulted from Federalist attempts to press the Constitution to approval without due consideration.

1. *His Excellency George Clinton* (1938) 177.
2. Merrill Jensen's judgment is that Brutus, Jr., presents a "brilliant answer" to Federalist propaganda along these lines. *The Articles of Confederation* (1940) 5 n. 6.

Mr. Greenleaf,

I have read with a degree of attention several publications which have lately appeared in favour of the new Constitution; and as far as I am able to discern—the arguments (if they can be so termed) of most weight, which are urged in its favour may be reduced to the two following: 6.3.1

1st. That the men who formed it, were wise and experienced; that they were an illustrious band of patriots, and had the happiness of their country at heart; that they were four months deliberating on the subject, and therefore, it must be a perfect system.[1] 6.3.2

2d. That if the system be not received, this country will be without any government, and of consequence, will be reduced to a state of anarchy and confusion, and involved in bloodshed and carnage; and in the end, a gov-

ernment will be imposed upon us, not the result of reason and reflection, but of force and usurpation.[2]

6.3.3 As I do not find that either Cato or the Centinel, Brutus, or the Old Whig, or any other writer against this constitution, have undertaken a particular refutation of this new species of reasoning, I take the liberty of offering to the public, through the channel of your paper, the few following animadversions on the subject; and the rather, because I have discovered, that some of my fellow citizens have been imposed upon by it.

6.3.4 With respect to the first, it will be readily perceived, that it precludes all investigation of the merits of the proposed constitution, and leads to an adoption of the plan, without enquiring whether it be good or bad. For if we are to infer the perfection of this system from the characters and abilities of the men who formed it, we may as well determine to accept it without any enquiry as with.—A number of persons in this as well as the other states, have, upon this principle, determined to submit to it without even reading or knowing its contents.

6.3.5 But supposing the premisses from which this conclusion is drawn, to be just, it then becomes essential, in order to give validity to the argument, to enquire into the characters of those who composed this body, that we may determine whether we can be justified in placing such unbounded confidence in them.

6.3.6 It is an invidious task, to call in question the characters of individuals, especially of such as are placed in illustrious stations. But when we are required implicitly to submit our opinions to those of others, from a consideration that they are so wise and good as not to be liable to err, and that too in an affair which involves in it the happiness of ourselves and our posterity; every honest man will justify a decent investigation of characters in plain language.

6.3.7 It is readily admitted, that many individuals who composed this body, were men of the first talents and integrity in the union. It is at the same time, well known to every man, who is but moderately acquainted with the characters of the members, that many of them are possessed of high aristocratic ideas, and the most sovereign contempt of the common people; that not a few were strongly disposed in favour of monarchy; that there were some of no small talents and of great influence, of consummate cunning, and masters of intrigue, whom the war found poor, or in embarressed circumstances, and left with princely fortunes, acquired in public employment, who are at this day to account for many thousands of public money; that there were others who were young, ardent, and ambitious, who wished for a government corresponding with their feelings, while they were destitute of that experience which is the surest guide in political researches; that there were not a few who were gaping for posts of honour and emolument; these we find exulting in the idea of a change, which will divert places of honour, influence and emolument, into a different channel, where the confidence of

the people, will not be necessary to their acquirement. It is not to be wondered at, that an assembly thus composed should produce a system liable to well founded objections, and which will require very essential alterations. We are told by one of themselves [Mr. Wilson of Philadelphia] the plan was matter of accommodation;[3] and it is not unreasonable to suppose, that in this accommodation, principles might be introduced which would render the liberties of the people very insecure.

6.3.8 I confess I think it of no importance, what are the characters of the framers of this government, and therefore should not have called them in question, if they had not been so often urged in print, and in conversation, in its favour. It ought to rest on its own intrinsic merit. If it is good, it is capable of being vindicated; if it is bad, it ought not to be supported. It is degrading to a freeman, and humiliating to a rational one, to pin his faith on the sleeve of any man, or body of men, in an affair of such momentous importance.

6.3.9 In answer to the second argument, I deny that we are in immediate danger of anarchy and commotions. Nothing but the passions of wicked and ambitious men, will put us in the least danger on this head: those who are anxious to precipitate a measure, will always tell us that the present is the critical moment; now is the time, the crisis is arrived, and the present minute must be siezed. Tyrants have always made use of this plea; but nothing in our circumstances can justify it.[4]

6.3.10 The country is in profound peace, and we are not threatened by invasion from any quarter: the governments of the respective states are in the full exercise of their powers; and the lives, the liberty, and property of individuals are protected: all present exigencies are answered by them. It is true, the regulation of trade and a competent provision for the payment of the interest of the public debt is wanting; but no immediate commotion will arise from these; time may be taken for calm discussion and deliberate conclusions. Individuals are just recovering from the losses and embarrassments sustained by the late war: industry and frugality are taking their station, and banishing from the community, idleness and prodigality. Individuals are lessening their private debts, and several millions of the public debt is discharged by the sale of the western territory. There is no reason, therefore, why we should precipitately and rashly adopt a system, which is imperfect or insecure; we may securely deliberate and propose amendments and alterations. I know it is said we cannot change for the worse; but if we act the part of wise men, we shall take care that we change for the better: It will be labour lost, if after all our pains we are in no better circumstances than we were before.

6.3.11 If any tumults arise, they will be justly chargeable on those artful and ambitious men, who are determined to cram this government down the throats of the people, before they have time deliberately to examine it. All the measures of the leaders of this faction have tended to this point. In

Congress they attempted to obtain a resolution to approve the constitution, without going into an examination of it. In Pennsylvania, the chiefs of the party, who themselves were of the convention, that framed this system, within a few days after it dissolved, and before Congress had considered it, indecently brought forward a motion in their general assembly for recommending a convention; when a number of respectable men of that legislature, withdrew from the house, refusing to sanction with their presence, a measure so flagrantly improper, they procured a mob to carry a sufficient number of them by force to the house, to enable them to proceed on the business.[5]

6.3.12 In Boston, the printers have refused to print against this plan, and have been countenanced in it. In Connecticut, papers have been handed about for the people to sign, to support it, and the names of those who declined signing it, have been taken down in what was called, a black list, to intimidate them into a compliance, and this before the people had time to read and understand the meaning of the constitution.[6] Many of the members of the convention, who were charged with other public business, have abandoned their duty, and hastened to their states to precipitate an adoption of the measure. The most unwearied pains has been taken, to persuade the legislatures to recommend conventions to be elected to meet at early periods, before an opportunity could be had to examine the constitution proposed; every art has been used to exasperate the people against those, who made objections to the plan. They have been told that the opposition is chiefly made by state officers, who expect to lose their places by the change,[7] though the propagators of this falsehood, know, that very few of the state offices will be vacated by the new constitution, and are well apprized, that should it take place, it will give birth to a vast number of more lucrative and permanent appointments, which its principal advocates in every state are warmly in the pursuit of. Is it not extraordinary, that those men who are predicting, that a rejection of this constitution will lead to every evil, which anarchy and confusion can produce, should at the same moment embrace and pursue with unabating industry, every measure in their power, to rouse the passions, and thereby preclude calm and dispassionate enquiry. It would be wise in them, however, to reflect in season that should public commotion take place, they will not only be answerable for the consequences, and the blood that may be shed, but that on such an event, it is more than probable the people will discern the advocates for their liberties, from those who are aiming to enslave them, and that each will receive their just deserts.

Brutus, junior.

1. See above Centinel I, 2.7.5 n. 2; Federal Republican 3.6.5 n. 4.
2. See above Centinel IV, 2.7.91 n. 47.

3. Bracketed portion in the original. The reference is to Wilson's 6 October speech to the citizens of Philadelphia. McMaster and Stone 146.

4. For Federalists' claims about the critical moment, see Centinel IV, 2.7.91 n. 43; for Anti-Federalist views, see references in Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

5. See Pennsylvania House Minority 3.2.

6. See Charles Warren, Massachusetts Historical Society, *Proceedings* 64 (1932), 153–54.

7. See Martin 2.4.118 n. 44.

A Reply to Publius by An Observor

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19 November 1787

The union between Scotland and England was a frequent subject of discussion by both Federalists and Anti-Federalists. In this essay, An Observor rebuts the favorable picture of this union presented by Publius in *The Federalist* no. 5.

Mr. Greenleaf,

6.4.1 A writer, under the signature of PUBLIUS, or the FEDERALIST, NO. V. in the Daily Advertiser, and in the New-York Packet,[1] with a view of proving the advantages which, he says, will be derived by the states if the new Constitution is adopted—has given extracts of a letter from Queen Anne to the Scotch parliament, on the subject of a union, between Scotland and England, and which I shall also here insert.

"An entire and perfect union will be the solid foundation of lasting peace: It will secure your religion, liberty and property, remove the animosities among yourselves, and the jealousies and differences betwixt our two kingdoms. It must increase your strength, riches and trade; and by this union the whole island, being joined in affection and free from all apprehensions of different interest, will be enabled to resist all its enemies." ["]We most earnestly recommend to you calmness and unanimity in this great and weighty affair, that the union may be brought to a happy conclusion, being the only effectual way to secure our present and future happiness; and disappoint the designs of our and your enemies, who will doubtless, on this occasion, use their utmost endeavours to prevent or delay this union."

6.4.2 I would beg leave to remark, that Publius has been very unfortunate in selecting these extracts as a case in point, to convince the people of America of the benefits they would derive from a union under such a government, as would be effected by the new system—It is a certainty, that when the union was the subject of debate in the Scottish legislature, some of their most

sensible and disinterested nobles, as well as commoners (who were not corrupted by English gold) violently opposed the union, and predicted, that the people of Scotland, would, in fact, derive no advantages from a consolidation of government with England, but, on the contrary, bear a great proportion of her debt, and furnish large bodies of men to assist in her wars with France, with whom, before the union, Scotland was at all times on terms of the most cordial amity. It was also predicted, that the representation in the parliament of Great-Britain, particularly in the house of commons, was too small;—forty-five members being very far from the proportion of Scotland, when its extent and numbers were duly considered; and that even they, being so few, might (or at least a majority of them might) at all times be immediately under the influence of the English ministry; and, of course, very little of their attention would be given to the true interests of their constituents, especially if they came in competition with the projects or views of the ministry. How far these predictions have been verified, I believe it will not require much trouble to prove; as it must be obvious to every one, the least acquainted with English history, since the union of the two nations, that the great body of people in Scotland, are in a much worse situation now, than they would be, were they a separate nation. This will be fully illustrated, by attending to the great emigrations which are made to America; for if the people could have but a common support at home, it is unreasonable to suppose, that such large numbers would quit their country, break from the tender ties of kindred and friendship, and trust themselves on a dangerous voyage across a vast ocean, to a country of which they can know but little, except by common report. I will only further remark, that it is not above two or three years since a member of the British parliament (I believe Mr. Dempster) gave a most pathetic description of the sufferings of the commonalty of Scotland, particularly on the sea coast, and endeavoured to call the attention of parliament to their distress, and afford them some relief, by encouraging their fisheries.[2] It deserves also to be remembered, that the people of Scotland, in the late war, between France and Great-Britain, petitioned to have arms and ammunition supplied them by their general government, for their defence, alledging that they were incapable of defending themselves, and their property, from an invasion, unless they were assisted by government. It is a truth that their petitions were disregarded, and reasons assigned, that it would be dangerous to intrust them with the means of defence, as they would then have it in their power to break the union. From this representation of the situation of Scotland, surely no one can draw any conclusion, that this country would derive happiness or security from a government which would, in reality, give the people but the mere name of being free; for if the representation, stipulated by the constitution, framed by the late Convention, be attentively and dispassionately considered, it must be obvious to every disinterested observer (besides many other weighty objections which will present themselves to his

view) that the number is not, by any means, adequate to the present inhabitants of this extensive continent, much less to those it will contain at a future period.

6.4.3 I observe that the writer above-mentioned, takes great pains to shew the disadvantages which would result from three or four distinct confederacies of these states.[3] I must confess that I have not seen, in any of the pieces published against the proposed constitution, any thing which gives the most distant idea that their writers are in favor of such governments; but it is clear these objections arise from a consolidation not affording security for the liberties of their country; and from hence it must evidently appear, that the design of Publius, in artfully holding up to public view such confederacies, can be with no other intention than willfully to deceive his fellow citizens.

6.4.4 I am confident it must be, and that it is, the sincere wish of every true friend to the United States, that there should be a confederated national government, but that it should be one which would have a controul over national and external matters only, and not interfere with the internal regulations and police of the different states in the union. Such a government, while it would give us respectability abroad, would not encroach upon, or subvert our liberties at home.

An Observor.

November 13, 1787.

1. *The Federalist* no. 5 appeared in the *Daily Advertiser* on 12 November 1787 and in the *New York Packet* on the 13th, having appeared in the *Independent Journal* on the 10th.

2. William Cobbett, *Parliamentary History of England from the Norman Conquest to 1800* (1806) XXIV (1783–85), 1015–16.

3 *The Federalist* nos. 1–14. See above, vol. 5, part 2 intro.; Centinel XI, 2.7.143 n. 75; Henry 5.16.11 n. 25.

Reply to Medium by A Citizen

NEW YORK JOURNAL
24 November 1787

This essay is a reply to a moderate Federalist piece over the name of Medium appearing in the *New York Journal* on 21 November. Medium had argued that the Constitution should be adopted but that the Federalists should join their opponents in recommending a bill of rights. A Citizen argues against what he says are the stale reasons given for adoption of the Constitution as it stands. His own contribution consists entirely in the contention that the business of the Philadelphia convention was to make commercial amendments and that consequently the representation was small and made up largely of commercial men, lawyers, and judges. The circumstances of the country do not demand hasty adoption; the people should consider fully, and a second convention should be called.

Mr. Greenleaf,

On reading your Daily Patriotic Register of the 21st inst. a political piece, 6.5.1
under the signature of MEDIUM, engaged my attention—From the name which the author has taken, I flattered myself, that his writings would have been influenced by candor and impartiality; his declarations in the first paragraph, of his having perused the publications for and against the new constitution, "without bias or prejudice," and that his researches had been solely directed to discover on which side the greatest reason prevailed—and, his indiscriminate censures of writers (without my stopping to enquire into the justice of them) confirmed my opinion in favor of his performance: you may judge then of my disappointment when I came to the two last paragraphs; these plainly discover that little dependence can be placed on appearances, and that the people ought to guard against the cunning and insidious arts, employed by designing men to mislead and betray them; for, it is evidently discernible, that the name which the writer assumes, and the candor that he effects, were purposely designed the better to carry on the

business of deception, and to effect the great end which a certain lordly party have in view—the adoption of the new constitution with all its defects; and, of course, risking the dearest rights of mankind to the precarious chance of being secured by future amendments.

6.5.2 In the first place, Medium asserts, that "It may be true, that the constitution is defective, but none have yet been able to prove that it is materially so;" he, however, admits, that it is not accompanied with a bill of rights, which he allows "to be the best security we can have against the encroachments of despotism"—Here it is granted, that the omission of a bill of rights is (whether proved so by other writers or not) "a material defect";—With what degree of consistency then can he urge "the embracing the constitution as it now stands"; certainly, he cannot be ignorant, that if it is agreed to without "that best security against the encroachments of despotism," that our liberties must, hereafter, entirely depend upon acts of an imperfect and unequal congressional legislature, which may be repealed at their pleasure, and, whenever it suits their arbitrary designs.

6.5.3 The stale and hackneyed reasons, that have been alledged for the adoption of the proposed system, in all its parts, are the only ones made use of by this writer, viz. The impracticability of getting a better, and the anarchy which will ensue its rejection. In order to shew the futility and absurdity of these positions, it may be proper to give the following concise account of the commencement and progress of this business.

6.5.4 A convention was appointed by the respective legislatures, at the recommendation of Congress, for the sole purpose of *revising* and *amending* the articles of confederation; Congress had no power to concur in any measures for alteration, but such as should be assented to by all the states; nor had the legislatures the least authority to confer powers for the purposes of violating or abridging the state constitution; the commission of the delegates to the late Fœderal Convention, consequently, could not, by any possible construction, invest them with powers which Congress and the legislatures themselves did not possess: the business of the *conventioneers* not to form a new constitution for the United States, but to revise and amend the old one, as far as was necessary and consistent with their delegation. It was well understood, that the account of provisions, for the general regulation of commerce, and for ensuring a compliance with requisitions made under the fœderal compact, were principal causes which induced the appointment of the convention. These being the main objects, the representations, from all the states, were small, principally taken from commercial cities, and composed chiefly of merchants, practitioners of the law, and judicial officers; of the two latter professions, nearly one half of the convention consisted.[1] This imperfect representation of the people, both as to numbers and descriptions, when assembled, shut their doors against their fellow citizens, and laid themselves under obligations of secrecy, and, by keeping from the world a knowledge of the important business which they had assumed upon them-

selves, they were precluded from all opportunities of receiving light or information, upon so interesting a subject, from the animadversions which their constituents would probably have made upon the different points under their deliberation. Under these unfavorable circumstances, this new constitution was formed, and it must therefore be considered as an unauthorized essay, which can only receive sanction from the assent of the people; it has already become the subject of general discussion, and, besides the omission of a bill of rights (which even Medium admits to be essential) many other radical defects have been pointed out; but, instead of attempting to amend them, it is insisted that it must, for the groundless and puerile reasons above-mentioned, be accepted in toto. What is there in the nature of our situation that imposes this disagreeable necessity upon us? Is it probable, that we shall ever be in a situation, in which we can with more temper and greater safety, deliberate upon this momentous concern than at present? From abroad, we have nothing to fear—the interesting affairs of the European powers will engage their attention beyond the atlantic—at home, we are in a state of perfect tranquility—for, although there are defects in the existing articles of confederation, yet the governments of the different states have energy sufficient to command obedience to their laws, and preserve domestic peace; America has not been subjected to as many tumults and disasters since the conclusion of the war, as countries, of an earlier foundation, have suffered in the same space of time. Some of the states have, already, with great calmness and temper, directed conventions of the people to assemble and take the proposed constitution into consideration—they ought, and it is unquestionably their duty to give every article a free and fair discussion; it would be inconsistent with, and derogatory to, every idea of the rights of freemen, to presume that they must approve of such parts as, in their opinions, are improper and dangerous, or, on the other hand, that they would reject what merited their approbation—it should also be their duty, to point out such amendments and alterations, as to them appear necessary and salutary—and they, or the legislatures, should appoint delegates to compose a new general convention; the members of which, being furnished with the remarks of the respective state conventions, will be enabled to form a system much less exceptionable, more perfect, and coincident with the wishes of the people; by this means the present animosities and divisions, which now prevail will, in all probability, be healed, and a government introduced that will engage the attachment, promote the felicity, and receive the support, of all ranks of people.

If the advocates, for the unqualified adoption of the new constitution, could be induced to divest themselves of prejudice, and reflect seriously and candidly, perhaps they would discover greater danger of anarchy and civil discord through their unjustifiable endeavors to establish a government (universally allowed to be defective) than by a concurrence in this practicable and rational mode of procedure. They ought deliberately to consider, 6.5.5

whether the proposed constitution will ensure to the people all those great advantages they are led to expect from the encomiums which its advocates so lavishly bestow upon it, in order to obtain its establishment; for, if the contrary (which is predicted by many) should happen, and the people, instead of having their happiness and interest promoted, find themselves deprived of their invaluable liberties, and their burdens increased by an expensive government, the inevitable consequences will be anarchy and discord, which may prove, when beyond the power of remedy, dangerous to the community, and *dreadfully fatal* to the authors of their deception.

A Citizen.

New-York, Nov. 22, 1787.

1. For a full account of the background, interests, and callings of the members of the Convention, see McDonald, *We the People*, ch. 3. See also Jackson T. Main's "Critical Review" of McDonald's study in *William and Mary Quarterly* January 1960.

Letters from A Countryman from Dutchess County

NEW YORK JOURNAL
November 1787–February 1788

The letters from A Countryman from Dutchess County appeared in the *New York Journal* and *Daily Patriotic Register* irregularly between November 1787 and February 1788. This is a distinct series that has, however, usually been confounded with the letters of A Countryman printed below and probably written by DeWitt Clinton.[1]

Contending that the majority of the Constitutional Convention were dupes of a few enemies of liberty, A Countryman from Dutchess County claims that they acted without authority and that the proposed Constitution deserves to be treated as a nullity. He devotes most of his first three letters to a strong denunciation of the slave trade provision and a comparison of its hostility to the principles of liberty with the former views of John Dickinson and Benjamin Franklin. Even if these men are as patriotic as is claimed, they have acted utterly without authority and should be indicted for disturbing the public tranquility, impeached for breach of trust, and charged with the disruption of the Union if that should occur.

Letter IV contains an attack on the undermining of state sovereignty implicit in the call for ratification conventions and an extensive consideration of the implications of the "supreme law of the land" clause, leading to the conclusion that laws and treaties will have equal authority with the Constitution. In a fifth letter the author lists amendments that might make the Constitution acceptable and concludes with a strong protest against the military power that the new Constitution would vest in the government and on which that government would depend. Finally, in letter VI, he takes up some writers for and against the Constitution. The greater part of the essay is devoted to some pointed and interesting criticisms of the Letters of The Federal Farmer.

1. See 6.7.intro. and n. 1.

Mr. Greenleaf,

Enclosed you have a copy of a letter I lately received from a gentleman in Dutchess county, and as it contains some very proper and important remarks on the Constitution proposed by the late Convention, I must request the favor of your publishing it in your useful paper. The writer has promised, occasionally, to continue his remarks; and as they come to hand, I shall, without farther introduction, send them to you for publication.

A Customer.

New-York, Nov. 20, 1787.

I
21 November 1787

Dear Sir,

6.6.1 As you have several Times intimated a Wish to know my Sentiments, relative to the conduct of the late Convention, as well as of the Constitution, which they have offered to the Consideration of the People, I shall freely, as often as convenient, communicate whatever occurs to me on the Subject, as most worthy of Observation, if not already publicly discussed. When the Latter is the Case, perhaps I may drop a Sentiment concerning the Propriety, or Impropriety, of the Discussion, etc. But all this, my Friend, will, in a great Measure, depend on your reciprocating; for I am too phlegmatic to write, unless answered.

6.6.2 In the first Place then, most unfeignedly do I wish, and that for the Sake of Humanity, that the Convention never had existed; and, for the Sake of our old illustrious Commander in chief, I wish, as they have departed from their Institution, that they had offered a Constitution more worthy of so great a Character. But, as he has acted entirely in a Ministerial Capacity, so I wish to consider him, whenever I am obliged to mention his venerable Name, or allude to it. Not that I think any Name, however great, can justify Injustice, or make Slavery more eligible than Freedom, and beg to be so understood.[1]

6.6.3 Yet, when I consider the original Confederation, and Constitutions of the States which compose the Union, as well as the Resolutions of several of the States, for calling a Convention to *amend* the Confederation, which it admits, but not *a new one*, I am greatly at a Loss to account for the surprizing Conduct of so many wise Men, as must have composed that honorable Body. In fact, I do not know, at present, whether it can be accounted for; unless it be by supposing a Predetermination of a Majority of the Members to reject their Instructions, and all authority under which they acted.

6.6.4 If this be the Case, the Transition to prostrating every Thing that stood in their Way, though ever so serviceable or sacred to others, was natural and easy.—However, I do not even wish to think so unfavorably of the Major-

ity; but rather, that several of them, were, by different Means, insidiously drawn into the Measures of the more artful and designing Members, who have long envied the great Body of the People, in the United States, the Liberties which they enjoy.—And, as a Proof of their being Enemies to the Rights of Mankind, permit me to refer you to the first Clause, of the 9th Section, of the first Article of the new Constitution, which is framed to deprive Millions of the human Species of their natural Rights, and, perhaps, as many more of their Lives in procuring others! That Clause, you will immediately perceive, has been purposely so contrived for reviving that wicked and inhuman Trade to Africa.—That Trade in Blood, and every Vice, of which the Avarice, Pride, Insolence and Cruelty, of Man is capable! A Trade, which, if ever permitted, will entail eternal Infamy on the United States, and all that they have ever said or done in Defence of Freedom.—Will it not be said, that the greatest Sticklers for Liberty, are its worst Enemies?—For these Gentlemen, no doubt, mean to treat the United States, if they adopt the new Constitution, as they have some of their Colleagues; that is, make Cloaks of them, to cover their Wickedness.[2]

6.6.5 At the Moment it is adopted by the States, in its present Form, that Moment the *external* Turpitude of it is transferred to the Adoptors; and the Framers of it will immediately say, it was called for by the People, of whom they were but the Servants, and, that the Adoption is a Proof of the Assertion.

6.6.6 Perhaps you may next enquire what can be done?—If you should, I will tell you, on Condition that you pardon the Anticipation, the Legislature may, and with the greatest Propriety, as its Delegate has exceeded his Powers, or rejected them, consider all that he has done as a Nullity.—Would not this be a useful Lesson for Usurpers?

Indeed, I cannot see the Consistency or Propriety of Congress's sending it, or even permitting it to be sent, to the Legislatures that compose the present Union, when it entirely annihilates the Confederation under which they act, and which admits not of any thing more than an Emendation, as is evident by the 13th article.

6.6.7 But, as I have often told you, such is the unfortunate Lot of Humanity, that there are a Thousand brilliant Characters, to one that is always consistent, and, of this, Dr. Franklin, and Mr. John Dickinson, are two recent Examples among the Many. The Doctor is at the Head of a humane Institution for promoting the Emancipation of Slaves, or abolishing Slavery;[3] yet lends his Assistance to frame a Constitution which evidently has a Tendency not only to enslave all those whom it ought to protect; but avowedly encourages the enslaving of those over whom it can have no Manner of Right, to exercise the least shadow of Authority.

6.6.8 Mr. Dickenson, a few Years before the Revolution, publicly impeached the Doctor's Conduct for offering to attempt a Change in the chartered Privileges of Pennsylvania,[4] and now joins him in destroying a far superior Constitution, yes, thirteen far superior Constitutions, and opening a Trade

which is a Disgrace to Humanity! Will not such Conduct leave these Gentlemen Monuments of much departed Fame? As I have several of their Publications by me, which, I imagine you never saw, I purpose in my Next, to let them speak for themselves, if you have no Objection.

I am, Dear Sir,
very respectfully, yours,
A Countryman.

November 10, 1787.

II
23 November 1787

(Continued from Wednesday's Paper)

6.6.9 In the Conclusion of my First, of the 19th[5] current, I promised that Mr. Dickenson, or the famous Author of the Farmer's Letters, and Doctor Franklin should speak for themselves; I now offer you as a Specimen of the Farmer's Rhetoric, the second Paragraph of his first Letter,[6] which appears thus—"From my Infancy I was taught to love Humanity and Liberty. Enquiry and Experience have since confirmed my Reverence for the Lessons then given me, by convincing me more fully of their Truth and Excellence. Benevolence towards Mankind excites Wishes for their Welfare, and such Wishes endear the Means of Fulfilling them. Those can be found in Liberty alone, and therefore her sacred Cause ought to be espoused by every Man, on every occasion, to the utmost of his Power. As a Charitable, but poor, Person does not withhold his Mite, because he can not relieve all the Distresses of the Miserable; so let not any honest Man suppress his Sentiments concerning Freedom, however small their Influence is likely to be. Perhaps he may touch some Wheel that will have a greater Effect than he expects." What gracious Sentiments, and how sweetly expressed!—But what are Sentiments, or the tenderest Expressions, when not accompanied by corresponding Actions? They certainly render the Author a greater Object of our Pity, if not of Contempt.—How is it possible to reconcile the first Clause of the 9th Section, in the first Article of the new Constitution, with such universal Benevolence to all Mankind?

6.6.10 Will this Gentleman say, that the Africans do not come within the Discription of "Mankind?" If he should, will he be believed?—Besides, he seems to have run counter to a generally received Maxim in educating the rational as well as the irrational Creation; as he acknowledges, that he was early instituted in Virtue, which, now, in advanced Life, he seems either to have forgotten or stiffled?

6.6.11 Had Cornwallis, Rawdon, Arnold, or any of the British, Marauding, Butchers, signed such a Clause, there would have been a Consistency; but,

for the benevolent Author of the Farmer's Letters, which every where seem to breathe the pure Spirit of Liberty and Humanity, to lend his once venerated Name, for promoting that which the Framers of the Clause were either ashamed or afraid, openly, to avow, exceeds Credulity itself, were it not for occular Demonstration.

6.6.12 Is this the Way by which we are to demonstrate our Gratitude to Providence, for his divine Interposition in our Favor, when oppressed by Great Britain?—Who could have even imagined, that Men lately professing the highest Sense of Justice and the Liberties of Mankind, could so soon and easily be brought to give a Sanction to the greatest Injustice and Violation of those very Liberties? Strange Inconsistency and painful Reflection!—And the more so, when it is considered, that not only Individuals in Europe, as well as in each of these states; but that several of the nations in Europe have, for some years before the Revolution, been endeavouring to put a Stop to a Trade, which was a Disgrace to the very Name of Christianity itself.—Nay, that Numbers among those whom we so lately considered as Enemies to Liberty, are now using every Means in their Power to abolish Slavery! Will not a contrary Conduct of the States tarnish the Lustre of the American Revolution, by violating the Law of Nations, and entailing endless Servitude on Millions of the human Race, and their unborn Posterity? Can any Person, who is not deeply interested in enslaving this Country, believe, that the Contrivers of such a diabolical Scheme had any Regard for the most sacred Rights of human Nature?

6.6.13 It really seems to have been, as Mr. Wilson acknowledged, a mere Matter of Accomodation between the Northern and Southern States;[7] that is, if you will permit us to import Africans as slaves, we will consent that you may export Americans, as Soldiers; for this the new Constitution clearly admits, by the 2d Clause of the 6th Article, which says, "that this Constitution and the Laws of the United States which shall be made in pursuance thereof, and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land, etc. any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

6.6.14 May not Treaties be immediately entered into with some of the Nations of Europe for assisting them with Troops, which, if they do not enlist voluntarily, may, by this Clause, be detached and transported to the West or East-Indies, etc.?

I ask the Doctor's Pardon, I promised in my first, that he should be permitted to speak for himself in this; but Time will not now admit of it—He shall have the Preference of opening my next.

I am, with every Sentiment of Esteem,
Dear Sir,
Your most Obedient,
A Countryman.

November 17, 1787.

III

3 December 1787

(Continued from this Register of the 23d. ult.)

Dear Sir,

6.6.15 My second Letter was concluded by a Promise that Dr. Franklin should have the Preference in this. However, I do not know, whether, upon the Whole, I ought not to make the Doctor some Acknowledgement, as he does not appear, all Circumstances considered, quite so inconsistent as Mr. Dickenson, or the Author of the Farmer's Letters, who, before this violent Attack on the present Confederation, has not, to my Knowledge, ever been concerned in subverting the Rights or Liberties of the People.

6.6.16 For the Sake of America and Humanity, I wish the same could, with Truth, be said of his Colleague, the Doctor, who, as you will presently perceive by his own Words, as well as by Mr. Dickenson's, has long been endeavouring to reconcile this Country to a standing Army, and, I think, an episcopal Hierarchy also; but, the Latter you will be better able to judge of, when you hear him speak for himself, and I do not wish to misrepresent a single Syllable to the Prejudice of him, or any other Person. Perhaps it may not be amiss to acquaint you, that the Doctor's Speech, of which I am going to transcribe a Part, was not an extemporaneous one; but written in Philadelphia, April the 12th, 1764, as appears by the Date, by Way of Letter, to a Friend in the Country, and afterwards published under the Title of "Cool Thoughts on the present Situation of our public Affairs."[8]

6.6.17 He thus begins—"Sir, your Apology was unnecessary. It will be no Trouble, but a pleasure, if I can give you the Satisfaction you desire. I shall therefore immediately communicate to you my Motives for approving the Proposal of endeavouring to obtain a Royal Government in Exchange for this of the Proprietaries; with such Answers to the Objections you mention, as, in my Opinion, fully obviate them"—Then follows, to the 15th Page, a Number of Observations, etc. on the Conduct of the Proprietaries and their Government, etc. with neither of which, at this Time, have we any Concern.

6.6.18 But the 2d. Paragraph in the Page mentioned above, exhibits a Case more in Point, if I may be allowed the Phrase, and begins thus,—"It is farther objected, you tell me, that if we have a Royal Government, we must have with it a Bishop, and a Spiritual Court, and must pay Tythes to support an Episcopal Clergy. A Bishop for America has been long talked of in England, and probably from the apparent Necessity of the Thing, will sooner or later be appointed; because a Voyage to England for Ordination, is extreamly inconvenient and expensive to the young Clergy educated in America; and the Episcopal Churches and Clergy in these Colonies can not so conveniently be governed and regulated by a Bishop residing in England, as by one resided among those committed to his Care. But this Event will happen neither sooner nor later for our being, or not being, under a Royal Govern-

ment. And the spiritual Court, if the Bishop should hold one, can have no Authority only with his own People, etc."[9]—The 2d Paragraph, in the 16th Page, I believe you will readily allow to be more to the Purpose, it being less equivocal; as the Doctor, in his usual Manner, avows his Sentiments, in the following Words—"That we shall have a standing Army to maintain, is another Bugbear raised to terrify us from endeavouring to obtain a King's Government. It is very possible that the Crown may think it necessary to keep Troops in America henceforward, to maintain its Conquests, and defend the Colonies; and that the Parliament may establish some Revenue arising out of the American Trade to be applied towards supporting those Troops. It is possible too, that we may, after a few Years Experience, be generally very well satisfied with the Measure, from the steady Protection it will afford us against foreign Enemies, and the Security of internal Peace among ourselves without the Expence or Trouble of a Militia. But assure yourself, my Friend, that whether we like it or not, our continuing under a Proprietary Government will not prevent it, nor our coming under a Royal Government promote and forward it, any more than they would prevent or procure Rain or Sunshine, etc. etc."[10]—To the last Paragraph in the 20th Page, which, as a Part of it, is so exceedingly applicable to the Doctor's, and his Colleague's late Conduct, as well as our Feelings, I presume you will have no Objection to hearing him conlude, as follows—"On the Whole, I cannot but think, the more the Proposal is considered, of an humble Petition to the King, to take this Province under his immediate Protection and Government, the more unanimously we shall go into it. We are chiefly People of three Countries: British Spirits can no longer bear the Treatment they have received, nor will they put on Chains prepared for them by a fellow Subject. And the Irish and Germans have felt too severely the Oppressions of hard-hearted Landlords and arbitrary Princes, to wish to see, in the proprietaries of Pennsylvania, both united, etc."[11]—Had he said,—"Nor will they put on Chains prepared for them by fellow Citizens," it might, perhaps, have been considered as prophetic of the present Era.—Of this intended Change of Government, in Pennsylvania, Mr. Dickenson, in a Publication, speaks as follows,—"Benjamin Franklin, Esq. was accordingly chosen Speaker, and in the Afternoon of the same Day, signed the Petition, as one of his first Acts; an Act which—but Posterity will best be able to give it a Name!"[12]—If Mr. Dickenson's Opinion, of the Doctor's Conduct, was then just, which I believe all honest, unprejudiced Men thought it was, must not the Language we now speak, become much more copious and expressive than it is, to enable Posterity to give a proper Name to their late joint Act, the new Constitution, as it is called?

I have been the more particular on these Gentlemen's Conduct, as I perceive that much Stress is laid, by some Writers, on their Patriotism etc. especially the Doctor's; and many at this time in your City, either from a State of Minority, or their former Residence, cannot be acquainted with all the Facts and Circumstances which I have produced. That Dr. Franklin 6.6.19

countenanced and encouraged the Stamp Act, I have had sufficient Proof from several of his most intimate Friends; from his Conduct in favoring unasked, as they said, several of those Friends Appointments for carrying that Act into Execution, and, lastly, from several Letters to some of those very Persons who were appointed: I saw a Letter *of the Doctor's own Writing,* in the Hands of his Attorney, in your City, wherein he was directed to acquaint the Printer of the New-York Journal, the late Mr. John Holt, *of most respected memory,* that, if he persisted in printing against the Ministry, he must not expect that his Papers would be permitted to circulate by the Post-riders; and this whilst the Doctor was in England, and the Execution of the Stamp Act was in Suspence. But Mr. Holt was neither to be cajoled nor intimidated; he wrote the Doctor, and told his Agent, that, if his Papers were refused the same Conveyance as the other Printers, he would appeal to the Public, and hire a Rider, who should carry his Papers, as well as Letters, to his Customers. This, and the Opposition to the Stamp Act, had the desired Effect, and absolute Refusal was not made; but, Mr. Holt's Papers were continually delayed, and not infrequently destroyed by the Doctor's Deputies.

6.6.20 But granting that the Doctor is really as great a Patriot as he has been represented, or, as ever existed, and that his Confederates were all as patriotic and wise as he, nay, supposing that they were all, *in their private Capacities of Divine Descent,* to what does it amount? As Members of the Convention, they were but Deputies of Deputies, not Representatives of the People. Whence then could they derive any Authority for offering a new and unheard of Constitution to the Inhabitants of the United States; when the Legislatures themselves, from whom the Convention derived its very existence, have not Power even to alter a single Sentence of the present Confederation; but only to confirm such Alterations as may be agreed to in a Congress of the United States? To save you the Trouble of looking for the Confederation, as it is now before me, I will transcribe the last Period of the 13th Article, which reads thus—"And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any Alteration at any Time hereafter be made in any of them; unless such Alterations be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State."—Can any thing be more plain and comprehensive?—With what Consistency or Propriety can the Legislature of this, or any other State, consent to calling a Convention to consider of such a manifest insult offered by their Deputies to the Sovereignties of the States, as well as a most attrocious Attempt to dissolve the Union, when they were deputed solely for the Purpose of improving it, or rather perhaps for devising Means to improve it? If a Convention should be called, of which I confess, I cannot see either the Necessity, or even a Propriety, ought it not to be for impeaching the insidious Contrivers of such deep laid Designs, as appear from the Conduct of some of the late Convention, and the proffered Constitution?

As a Grand-Juror, had the Convention sat in this State, I should have been for preferring a Bill against them, as Violators of the present Confederation, and Disturbers of the Public Tranquility. And, as it is, they appear to me, to be proper Objects of Impeachment in the respective States to which they belong; and that as well for a most unparalleled Breach of Trust and Usurpation, as for attempting to destroy the present Confederacy.—Should there, in Consequence of these Men's Conduct, be any Secession or Separation of the States, though I cannot believe that even a Majority will adopt it, as it is; must not they, the Contrivers, be considered as the Authors of all the Evil which may flow from a Dissolution of the Union? And yet, dreadful as the bare Apprehension of a Disunion may be, I do not really know, but it might be more eligible than the Adoption of what is offered us. For, though several very ingenious, sensible and patriotic Writers have undertaken to shew of what the different Parts of the new Constitution deprives us, not one, that I have seen, has attempted to shew in what it has fully and indefeasibly secured us, unless it be in building a Federal Town, with as many Seraglios as may be wanted, and supporting a standing army, to defend them against foreign Invasions, etc. Nor do I believe it in the Power of the Projectors and all their Adherents, to prove that we are sufficiently Secure in any one essential Right, either Civil or Religious, when such unlimited Powers are vested in a haughty Senate, and a hungry Monarchy, both of which may be continued as long as exorbitant Grants of Land, Contracts, Places, Pensions, and every Species of Bribery and Corruption, have an Influence. But more of this some other Time; I have not leisure, at present, to enlarge. I am, Dear Sir,

Very respectfully, your's, etc.
A Countryman.

IV

15 December 1787

(Continued from this Register of the 3d. inst.)

December 8th 1787.

Dear Sir,

When I closed my third letter, I wished to be more explicit on some things which I had mentioned in that, as well as to make several observations on the new constitution, as it is called; but the conveyance waited and time would not admit of saying any further. 6.6.21

I will now resume the affair of calling a convention. When I said, that I could not see the propriety, or necessity, of the legislatures calling a convention, it was merely on the principle of calling one in consequence of the 6.6.22

resolve or recommendation of the late convention, at Philadelphia: lest the people should infer, that the legislature, by recommending a state convention, considered the proceedings and resolve of the Philadelphia convention in some measure obligatory on them so to do. Which, as the latter rejected the authority of those by whom they were appointed (at least, that appears to me to have been the case with the delegate of this state, as well as with the delegates of several other states) and renounced all allegiance to the present United States, I cannot admit to be binding on the legislature, in any manner whatever, even had the late convention really offered a good constitution. But, as it is, I cannot help being of opinion, that the resolve or recommendation is an aggravation, if possible, of the crime and insult.—Should the legislature, when they meet, think that the calling of a convention will be the best means of restoring public tranquility, I shall acquiesce. But then, I wish them not to do it from a sense of any obligation which they are under to the act of their delegate, or that of the delegates of any other state, in the late convention; as the exorbitant act of that body, has, in my opinion, cancelled all obligation, on the part of this state, for considering their proceedings as binding. I should therefore be glad to see them very explicit on such a most *extraordinary* emergency; for surely such it must appear to all unprejudiced minds. It is to be hoped, that they will ascribe the effects to their true causes, which were an evident want of duty, and an inordinate desire for unlimited power, in some of the members who composed the convention; at the same time, pointing out to the people, in the plainest manner, the snare which is laid for them, and, that the adopting of it, will be their *last sovereign act,* unless it should be a violent resumption, by arms.

6.6.23 I imagine, that the faction were rather apprehensive of a reprimand, when they referred their plot to conventions of the people, "for their assent and ratification," in preference to the legislatures, by whom they had been appointed, and from whom they derived all the authority which they had to assemble for a very different purpose. Though, in their reference of it to conventions of the people; they have not been much more polite to those bodies, than they have to the legislatures, and that you must have observed; as it is not submitted to the former for their consideration, improvement, or rejection; but expressly "for their assent and ratification;" which seems to exclude all manner of choice! Was ever self-sufficiency more evident in man?

6.6.24 The legislatures are advised to call conventions of the people for *registering the revolt of their citizen and deputies, as the supreme law of the land!*—Could any thing be more humiliating to sovereign and independent states?—Would this junto have dared to offer such an indignity to any sovereign prince in Europe, had they been appointed by one?—I know that your answer must be in the negative. Why then thus presumptuously attempt to prostrate thirteen sovereignties?—But the answer is obvious, and therefore not requisite at this time.

If the legislature should not be pointedly clear on such an open attempt to dissolve the present confederacy, may we not, in a little time, expect a Shays, or, perhaps, a much more formidable insurgent in this state?

6.6.25 Have you considered the tendency of the 2d paragraph of the 6th article of the NEW EDICT?—It does not appear to me, that either the Centinel, Federal Farmer, or any other writer that I have seen, has sufficiently attended to that clause, and all the consequences which it may involve. I am sensible, that the Centinel calls it a "sweeping clause";[13] but, I imagine, not on account of what I am going to observe, or he would have been more explicit. These are the words:—"This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme* law of the land, etc." You well know that I am not fond of desputing about words, unless they have an evident tendency to deceive or lead to error, in which case, I think, they ought to be thoroughly canvassed, and well understood, especially in an affair of such vast importance as the present. The word 'supreme' is, I believe, generally received, in law and divinity, as an adjective of the superlative degree, and implies the highest in dignity or authority, etc. Now, if we analyze this clause, we shall see how it will appear.

6.6.26 The constitution is to be the *high-authority*—the laws made in pursuance of the constitution are to be the *highest authority,* and *all treaties made, or to be made* are to be the *highest authority;* and yet there is to be *but one highest authority!* However easy it may be for the contrivers of this, to reconcile it to their own views, I confess to you, that it appears to me something like creed-making.

6.6.27 If all the laws and treaties which may be made, in pursuance of this constitution (provided it be adopted) are to be of *as high authority,* as the constitution, I should be glad to know what security we can have for any one right, however sacred or essential, when there is no explicit proviso, that the laws and treaties which may be made, shall not be repugnant to the constitution?

It is true, that they are to be made in *pursuance* of the constitution; but, *pursuance* is a vague term, and, I presume, generally implies little more than "in consequence, etc."[14]—I have always understood, that the laws derived all their just authority from the constitution, or social compact, as it is sometimes called; and that the latter receives its whole authority, in free governments, from the common consent of the people, and recognizes or acknowledges all their essential rights and liberties, as well as ascertains the reciprocal duties or relations between the governed and their governors, or, perhaps, more properly, their principal public servants, who undertake to manage or conduct the affairs of the community agreeable to certain fixed stipulations, which are mentioned in the original compact or constitution, and not otherwise, but at the risk of being disobeyed, or opposed, as the case may require.

6.6.28 *If these ideas of a free government are just, ought there not to have been a positive distinction between the authority of the constitution and that of the laws, treaties, etc. The constitution, when once government is organized, will be mostly passive, but the laws, treaties, etc. of Congress, will be active and voluminous; whence it is easy to foresee what will become of the passive supremacy of it, when it happens to come in competition with two active supremacies, which are coeval and coequal with it, besides several others which will be added, you may rely: For there must be the supreme Lex Parliamentaria of a meagre, biennial representation of the people, and another of an encroaching lordly sexennial Senate, with the supreme prerogatives of a poor, greedy, quadrennial monarch, who must ever be ready to concur in any measures for fleecing the people, provided he is but allowed to participate of the spoil. And, to crown the whole, there must, of course, be a* most supreme standing army *for us to feed, cloathe and pay, if you will pardon the redundancy of the phrase.*

6.6.29 *Does it not appear to you, as if the framers of this clause had profited by the embarrassments which the British ministry frequently met with in their attempts to render acts of parliament, paramount to magna charta, or the great charter of the peoples essential rights, which is acknowleged, by the 43d. of Edward the 3d. not to be in the power of parliament to alter, change, or destroy; as all statutes made or to be made, against, or contrary to that constitution, or bill of rights, are, immediately, to be considered as null and void? I have many more observations to make on this political phenomenon, as well as its origination; but domestic affairs require my attention, and I must bid you adieu until another opportunity.*

I am, dear sir,
Very respectfully, Your's etc.
A Countryman.

To a Citizen.

V

22 January 1788

(Continued from this Register of the 15th ult.)

January 10, 1788.

Dear Sir,

6.6.30 Although an unavoidable impediment has prevented my corresponding with you, as often as I wished and intended, yet it has not, entirely, deprived me of all opportunity, of revolving the general convention and their pro-

ceedings in my mind. In doing which, I always endeavour to divest myself of every prepossession for, or against them, and their conduct, and, as impartially and candidly as I am capable, to view and consider the whole in every possible point of light, in which I can place it.—And, though it is readily granted, that the convention was composed of a number of very sensible men; yet, if we take the retrospect of the time, when it was first proposed, that there should be a general convention, and the design of it; and likewise reflect, that several of the gentlemen who composed the last convention, were also members of the first, as well as members of the different legislatures which deputed them, besides being delegates to Congress; by all which means they must have had frequent, and great opportunities of learning the sentiments of others with time to read and study the best authors on government, and make up their own minds; on the subject, previous to their last meeting. Shall we find, if we deduct a part of the constitution of this state, some part of the confederation, and the mode of election in Connecticut, etc. from what they have done, that all these combined circumstances, added to four months close application of great abilities and wisdom, which have been so often handied [handed? bandied?] about, have produced any thing adequate to what might reasonably have been expected from such united advantages?—Nay, have they produced any thing but what they ought not to have produced? And, to say no worse of it, have they not descended below the dignity of their characters? Have they not said,—"Done in convention, by the unanimous consent of the states present, etc." shortly after which, we see, "New-York," and "Alexander Hamilton," annexed to it, as though the state were fully represented by that one deputy, when it had sent three deputies?—And, either forgetting, or in hopes that others would forget, have they not afterwards said, "In convention, Monday September 17, 1787. Present, the states of New-Hampshire, Massachusetts, Connecticut," "Mr. Hamilton for New-York, etc.?" By what name ought this to be called? May not some of the wisdom of this world be truly called foolishness? I could very easily imagine, that a gentleman of far less understanding than "Alexander Hamilton," is said to be, would have had modesty enough to wait for further authority, before he set his name to an instrument of such immense importance to the state which entrusted him, and honored him with its interests and commands.

What was this but setting the state and his colleagues at open defiance, and, tacitly, telling the legislature and them, "I want none of your instructions, advice, nor assistance. I better know than you or they what ought to be done, and how to do it. Yes, I know what will suit you all, much better than any body else in the state. I know, that trial by jury, of the vicinage, is a foolish custom, besides frequently embarrassing the judges, it often disappoints the lawyers, and therefore, as I may never have it in my power again, I will now contribute all I can to the abolition of it." If it be 6.6.31

true, that actions may speak plainer than words, which, I believe, is a maxim pretty well established, must not the foregoing, or something like it, have been the language or ideas held by that gentleman?

6.6.32 Can the conduct of a man be spoken too freely of, who, unauthorised, has attempted to transfer all power from the many, to the few? Has this state, or, have the United States, expended so much blood and treasure for the sake of exalting one, or the few, and depressing the many? If they have, or, if that was their view, then have they been guilty of an unpardonable offense against God and their country. But it cannot be—that never could have been *even in contemplation,* with the *honest patriots* of seventy-six.

6.6.33 The conduct of George Grenville, the Earl of Hillsborough, Lord Mansfield, the Earl of Bute, Lord North, the King and Parliament of Great Britain, as well as that of their adherents, the stamp-masters, etc. in America, has always been canvassed and treated with the utmost freedom, by the friends of this country. Whence then all this reserve and tenderness for a *junto* of our fellow citizens, who have cast off their allegiance to the United States, and endeavoured to rob us of our best inheritance?

Will it not be said, by the nations of Europe and posterity, that they acted with more spirit and enterprise in robbing us of it, than we have in defending it, though we pretended to know the value of it? Others may do as they please, but, for myself, I am determined to pursue them, with my pen, as long as I can wield it, unless they should make a solemn, public recantation.

6.6.34 Should the new constitution be sufficiently corrected *by a substantial* bill of rights, an equitable representation, chosen annually, or not eligible under two years, the senate chosen triennally, and not eligible in less than three years afterwards, which, apart from it, becoming a more general object to men of learning and genius, might also be a means of preventing monopolies by a few men or families—separating the legislative, judicial and executive departments entirely, and confining the national government to its proper objects; but, by no means admitting a standing army in time of peace, nor a select militia, which last, is a scheme that a certain head has, for some time, been teeming with,[15] and is nothing else but an artful introduction to the other—Nor ought the militia, or any part of it, I think, to be marched out of the state, without the consent of the legislature, and then, not for more than a certain reasonable time, etc.—leaving the states sovereign and independent with respect to their internal police, and relinquishing every idea of drenching the bowels of Africa in gore, for the sake of enslaving its free-born innocent inhabitants, I imagine we might become a happy and respectable people. And, the conduct of the late general convention, by the violent effort which it has made to prostrate our invaluable liberties at the feet of power, fully evinces the absolute necessity of the most express stipulations, for all our essential rights.

6.6.35 But, should the constitution be adopted in its present form, without any amendment, I candidly think, that we should have been much happier, at

least for a number of years, in our old connexion with Great-Britain, than with such an absurd heterogeneal kind of government as the convention have proposed for our implicit adoption. Indeed, at present, there are so many dissentients, and others daily becoming so, in all the states, and with arms in their hands, that I cannot see how it could well be organized, without a force superior to every opposition, and that must, of course, absorb all the resources of ways and means immediately, and would defeat many of its own purposes and promises.

Besides, where is the difference between the people's cutting one another's throats, for their own diversion, or cutting them for the pleasure and aggrandizement of one or a few?—If any, I should prefer the former; that is, for my own diversion, etc. I have no idea of being gladiator to any man or body of men whatever; nor marching 500 or 1000 miles to quell an insurrection of such emigrants as are proposed by the new constitution, to be introduced for one and twenty years. No, nor of butchering the natives, that a few great speculators and landholders may engross all the best soil for a song, and revive the old feudal system, which I know to be the wish of some of the advocates for the new government. 6.6.36

Is it not fortunate for this state, that the executive is not one of the aristocracy, or we might have been precipitated into measures, perhaps, which would have afforded us ample time for repentance? 6.6.37

If, at any time, I should trespass on your patience, I beg you will please to place it to the account of the general convention, and believe me to be, dear Sir,

Your most obedient and
very humble servant,
A Countryman.

VI

14 February 1788

(Continued from this Register of the 22d ult.)

Dear Sir,

The pamphlets which you sent me, I have read, and, agreeably to what I proposed, in my first letter, will offer you, by way of return, for your politeness and friendship, some of the observations which occured to me, when I read them. Wherever you think me wrong, I beg your correction, when business permits; as I have nothing in view but the truth, and that I ever wish to avow, let who will be opposed to it. 6.6.38

Though I can not subscribe to the whole of the Fœderal Farmer; yet, I 6.6.39

think he has great merit, and well deserves the thanks of his country. But, if I mistake not, he seems at the latter end of the 3d page and beginning of the 4th, to lay rather too much stress on Mr. Pope's maxim, which is, that, "that which is best administered, is best."[16] With the greatest deference for the Fœderal Farmer's good sense, I beg leave to ask, whether this jingling maxim will not militate as much for the worst form of government, as for the best? From the candour which every where appears in his letters, I think, that I may venture to presume on his answering this question, if answered at all, in the affirmative. However, should I, in this, be wrong, I will as readily acknowledge the error, as ask the question. And, if so, what matter whether the form of government be good or bad, if it be but well administered? Besides, if Mr. Pope's mode of reasoning be just, why find fault with the constitution proposed, before it is put to the test; for who can tell, previous to its being administered, but it may, according to the poet's logic, be the best? Hence, does it not clearly appear how dangerous it is, to adopt the opinion or sentiments of any man, or number of men, however sanctioned by time, or the reputed wisdom, etc. of the author or authors, without first thoroughly canvassing the principles, and considering the consequences?

6.6.40 Perhaps, to a theocracy or divine government; that is, a government instituted and administered by the immediate interposition of the almighty, the poet's maxim may, with more consistency, be applied. In which, whatever is of divine institution, or administration, is certainly best.

But, I believe it is not pretended by any body, unless it be by the mad doctor, in Philadelphia, that the proffered constitution is of divine descent;[17] or, if it be, it is rather too nearly related to the divine right of kings, to be worshipped by true republicans, who enjoy the proper use of their reason. Why then adopt that which may as readily lead to error, as to truth?

6.6.41 As the letter writer appears to be a gentleman of true philanthropy, as well as of a clear and comprehensive understanding, I am bound to believe, that it is something, which, from an early adoption, or much use, has become very familiar to him, and, that he did not, at the time, attend to all its consequences. Neither is this any thing uncommon, or peculiar to him, as it undoubtedly has gone through the hands of thousands, before his; and, I imagine, almost every person may, at times, discover something or other of the kind, the absurdity of which, either from much use, or an early adoption, as mentioned above, has become so familiar or sanctioned by custom and time, as not to excite attention, and that too often in spiritual as well as temporal concerns.

6.6.42 At the bottom of the 15th page and top of the 16th, are these words, "I wish the system adopted with a few alterations; but those, in my mind, are essential ones; if adopted without, every good citizen will acquiesce, etc."[18] On which, I wish the gentleman had either been more explicit, or silent; as, in the first case, his meaning would have appeared to more advantage, and, in the other, there would have been no necessity for any observation. For,

when he says, "if adopted without, every good citizen will acquiesce," may it not imply, that, "every good citizen," ought, in duty, or of choice to "acquiesce," or that "every good citizen["] must of, or from, necessity "acquiesce?"

However, I imagine, that, from the epithet—"good citizen," the former construction may fairly be put on the phrase; that is, that it will, of course, be the duty or choice of *every good citizen to acquiesce,* even if the constitution should be adopted *without any alteration.* 6.6.43

Now, if this be truly the gentleman's meaning, and I can not, as I said above, at present, fairly put any other on it—I must deny his position. Nay, does not he, himself, tacitly deny it, when he says, that the alterations which he wished made, "are essential ones?" For, if *they are really essential,* according to the true sense of the word, will it not be rather difficult to prove, that it is the duty of a good citizen to acquiesce, in the manner represented, in what is essentially wrong?

Should it be said, that no more is meant by the word "acquiesce," than "a peaceable submission," I then say, that there was no necessity for mentioning *the quality of the citizen;* it being as much the duty of *a bad citizen,* as a good one, *to acquiesce,* perhaps, more requisite to be inculcated to the bad, than the good. And, should the constitution be adopted *without being essentially amended,* I hold it to be the *indispensible duty of every citizen,* good and bad, *not to acquiesce in the devises and institutions of men, which are directly opposite, or repugnant, to the word of god;* but, *by all and every just and prudent means, continually endeavour to procure a reformation or amendment of every thing which is essentially wrong.* 6.6.44

In page the 18th, paragraph the 2d, it is said, "The senate is entirely on the federal plan,"[19] which to me appears somewhat singular, when each senator is to have one vote. Either I do not comprehend his meaning, or there is a mistake, which ought to be corrected, for, by the present confederation, which is a union of the states, not a consolidation, *all the delegates,* from a state, have but one vote, and in the state senate, which is on the plan of consolidation, *each* senator has a vote. In page 38, there is an expression, which does not seem to be altogether consistent with the general tenor of the whole, but, perhaps not worth your notice at this time.[20] 6.6.45

I ask your pardon for being so tedious on such a trifling affair, seemingly; yet viewed in all their consequences, they appear to me, to be of some import rightly to understand. 6.6.46

The fabulous story of Actaeon and his hounds, is too often verified in disputes of this sort. If I do not mistake, it frequently so happened, just before the revolution, as well as in the course of the war; and, I think, that I remember seeing several such complaints in the public prints, when you returned to the city, especially of Phocion,[21] who then pretended to be as zealous an advocate for the constitution of the state, as Publius is now for the new constitution, of which, in No. 38, he gives but a vague account of

what is alluded to in the preceding paragraph, as well as the Federal Farmer.[22]

6.6.47 Not that I suppose the Federal Farmer to have been intentionally wrong. I do not, I assure you; and I beg, that he will not suspect me of it, let him be who he will, for who he is I know not. There are thousands of words and phrases made use of, and that by the most sensible men and best writers, which will not, in all constructions, bear a close examination; and, if that be the case with such characters as I have mentioned, there can be no doubt but you and he, should it be read by him, may discover such in these very observations; but be that as it may, I expect you will readily agree with me that, it is absolutely requisite to weigh every sentiment of friend as well as foe, before we approve, in such momentous concerns, as these times afford.—

6.6.48 As remarkable as the Federal Farmer is for candour and fair reasoning, just so remarkable is the pamphlet, said to be written by P——h W——r, of Philadelphia, for a farrago of falshood and a want of reasoning.[23] But I know the man and his creed; I have several of his essays, etc. etc. He is a creature of M——'s[24] and a child of the bank, if I may be allowed the phrase. And, had it not been for the pernicious influence of that bank, persuaded I am, that the people of Pennsylvania would not have been precipitated, in the manner they have, into the measures lately adopted by them.

6.6.49 Is it not curious enough, that our common friend ——, should accuse any man of not being a fair reasoner, when the very constitution itself, has not been effected by reason, but in direct opposition to it; and the adoption of it, in Pennsylvania, was carried in the same manner, only with more violence—the other more cunning. I am not entirely destitute of hopes, but that state may yet have another convention on the same subject. It cannot surely be possible, that the great body of the people, when they become fully informed of the *perfidious* advantage which has been taken of their confidence and credulity, by a few designing men, will patiently suffer themselves to be insulted by an aristocratical junto, and their adherents. No, I think, that they will spurn at the constitution, and the contrivers of it, in that state. And to my no small satisfaction, I observe, that the "Centinel" is perfectly competent, and willing to give them every information that their circumstances may require.

6.6.50 The Federalist, as he terms himself, or Publius, puts me in mind of some of the gentlemen of the long robe, when hard pushed, in a bad cause, with a rich client. They frequently say a great deal, which does not apply; but yet, if it will not convince the judge nor jury, may, perhaps, help to make them forget some part of the evidence—embarrass their opponent, and make the audience stare, besides encreasing the practice.

6.6.51 The Daily Advertiser, of January 17th, contains an extract, which is said to be part of "A letter from the late illustrious president of the general convention, to his friend in Fredricksburgh, Virginia,"[25] but which, I do not

believe to be his inditing, and for the following reasons:—That, neither the style nor composition, appears to be genuine; besides, several of the expressions are too positive and unguarded for any man of common prudence, and much more so, for a person who has always been considered as eminent for that very qualification.

Had such a thing made its appearance in the course of the war, I believe, that the medium of its origination might have been much more rationally accounted for, than it now appears to be.

Some time since, I also observed a paragraph in one of the papers, but which, at present, I really cannot tell, intimating, that the president of the late general convention, had consented to serve as a member of the state convention, if chosen for one of the counties in Virginia. This, I do not credit; for, though Mr. Wilson and some others, consented to become the encomiasts and worshipers *of their own image,* can there ever be a possibility, that HE, who has given so many unequivocal proofs of his native diffidence and modesty, should now assume quite a contrary style and conduct. I will not believe it—it can never be. Indeed, I sincerely wish, that he had refused to quit his peaceful shade. Nor do I believe that he would again have taken on him a public character, had not a very influential combination been formed, in and by which, every engine has been set to work, and that for the sake of accomplishing the *grand desideratum* of Mr. Adams's nobility, the well-born of America, or the United States. 6.6.52

But, to return to the extract, in which there are two periods, in the first paragraph, that prove too much (if they prove any thing) and, of course, amount to nothing, unless it be the writer's design. They are these:—"*And clear I am,* if another federal convention is attempted, that the sentiments of the members will be more discordant, or less accommodating than the last. In fine, they will agree upon no general plan."[26] 6.6.53

Now, if it be *impossible* for all the people of the United States, to form another *single* convention which shall agree upon *any one kind of government* (and is not this the obvious import or meaning of the assertion) I should be glad to learn, how the ingenious contriver of this curious extract expected, that *thirteen,* or even *nine different* conventions should ever agree to adopt the constitution, unless he intended to apply his "ultima ratio" to them? 6.6.54

Of late, I have observed several of these spurious extracts, paragraphs, etc. in the papers; but, as they were either anonymous, or the characters not of much consequence, I thought them unworthy of notice.—In this, I am impelled by duty.

I am, dear sir,
Your most obedient,
And very humble servant,
A Countryman.

1. For Federalist and Anti-Federalist views of the framers, see Centinel I, 2.7.5 n. 2, Federal Republican 3.6.5 n. 4.

2. For other discussions of the slave trade, see above Martin 2.4.65 n. 24.

3. Franklin was president of the Pennsylvania Society Promoting the Abolition of Slavery, and the Relief of Free Negros Unlawfully Held in Bondage.

4. "A Protest against the Appointment of Benjamin Franklin as Agent for the Colony of Pennsylvania," 26 October 1764, *The Writings of John Dickinson,* ed. Paul Leicester Ford, I (*Memoirs of the Historical Society of Pennsylvania* XIV, 1895), 147. See Dickinson's "Speech on a Petition for a Change of Government of the Colony of Pennsylvania," 24 May 1764, ibid. 1.

5. This is evidently a misprint for "10th," the date of the first letter.

6. The reference is of course to Dickinson's well-known *Letters from a Farmer in Pennsylvania* (1767).

7. Wilson does not in fact appear to have made such an acknowledgement, unless it can be inferred from his declaration before the Pennsylvania ratifying convention that the "migration and importation" provision "was all that could be obtained. I am sorry it was no more. . . ." McMaster and Stone 312. Wilson does use the term "accommodation" in describing the composition of the Senate in his speech of 6 October (ibid. 146); and A Countryman may have confounded this with the letters of An American Citizen (Tench Coxe), which were printed in pamphlet form together with Wilson's speech and which did acknowledge a compromise regarding the slave trade. See Ford, *Pamphlets* 133, 146.

8. *The Papers of Benjamin Franklin,* ed. Leonard Labaree (New Haven 1959–) XI, 153–73.

9. Ibid. 168.

10. Ibid. 169–70.

11. Ibid. 172–73.

12. The quotation is from the preface to Dickinson's "Speech on a Petition for a Change of Government of the Colony of Pennsylvania," 24 May 1764, which was written not by Dickinson himself but by the Reverend William Smith. *The Writings of John Dickinson* I 14.

13. Centinel II, 2.7.37.

14. Cf. W. W. Crosskey, *Politics and the Constitution* 990 ff.

15. The "certain head" has not been identified.

16. See above Federal Farmer I, 2.8.1 n. 3

17. Presumably Benjamin Rush. See Plebeian 6.11.27 n. 21.

18. See Federal Farmer III, 2.8.24.

19. See ibid. 2.8.28. For Anti-Federalist views of the Senate see Brutus III, 2.9.40 n. 26; Federal Farmer III, 2.8.28 n. 22; Cincinnatus IV, 6.1.27 n. 21.

20. The reference is probably to The Federal Farmer's observation that if the state conventions adopt the system, "I shall be perfectly satisfied. . ." On the same page of the original pamphlet, however, The Federal Farmer admits that "improper measures are taken against the adoption of the system as well as for it" (V, 2.8.62–63).

21. The letters of Phocion were published as pamphlets in 1784; written by Alexander Hamilton, they criticized the unconstitutional and unjust treatment of Loyalists by the New York legislature. *The Papers of Alexander Hamilton,* ed. Harold C. Syrett (New York 1962) III, 483–97, 530–58.

22. The reference is probably to Publius' contention that the Senate is based on the federal principle in *The Federalist* no. 39, 255. (This essay was numbered 38 in the original newspaper series.)

23. The reference is probably Pelatiah Webster's Remarks on the Address of Sixteen Members of the Assembly of Pennsylvania . . . , (McMaster and Stone 89 ff.) or to his *The Weakness of Brutus Exposed* (Ford, *Pamphlets* 117 ff.).

24. Presumably the reference is to Robert Morris.

25. This is Washington's letter to George Carter. Washington, *Writings* XXIX, 336–40. See American 4.20.2 n. 2.

26. Ibid. 340.

Letters from A Countryman

NEW YORK JOURNAL
December 1787–January 1788

A Countryman canvasses many of the usual objections to the Constitution as they might have been made by a simple, shrewd farmer who sees in the Constitution an intention to "keep down the common people." He deals in his first letter with the unrepublican structure and the absence of guarantee of a jury trial, and he concludes with a rather good parable illustrating the motives and tendencies involved in the new Constitution. He goes on (letter II) to display a bucolic perplexity over the confounding of the names "federalist and antifederalist," resolving to have his neighbor go through the papers with pen and ink and reverse the designations. In the sequel are discussions of the ambiguity and injustice of Art. I, sec. 9, clause 1 (6.7.5–6); the taxing power (6.7.7); the prohibitions on Congress that seem to imply powers not expressly granted (6.7.8); the desirability of mending the old rather than rushing to new, fashionable forms of government (6.7.8); the general welfare clause (6.7.13); the prohibition of ex post facto laws, which are sometimes necessary; and the absence of any protection of the rights of conscience, trial by jury and liberty of the press (6.7.13). In the course of his discussion the author subjects James Wilson and Publius to sharp examination (6.7.12), observing that the latter "seems to me as if he was going to write a history, so I have concluded to wait and buy one of his books when they come out."

The letters of A Countryman are usually attributed to DeWitt Clinton, but a difficulty arises from the fact that historians have failed to distinguish two series of letters that appeared in the same newspaper, at about the same time, and under the same pseudonym.[1] One series, which follows here, appeared in the *New York Journal* in December 1787 and January 1788. Another series, printed above (6.6), also signed by "A Countryman" but headed, "From a Gentleman in Dutchess County," and clearly a distinct series, appeared in installments between November 1787 and February 1788.[2] It is of course possible that both were written by the same man, although that seems implausible on its face.

Having established that there are two series of A Countryman letters, then, and assuming that DeWitt Clinton wrote only one of them, the question is, which one? The only evidence cited by historians (and the present editor has found no other) is a letter to DeWitt Clinton from his younger brother, George, written on 22 December 1787 and containing the following remark: "Your Countrymans Letters are very good and I think better adapted to the understanding of the Common People than any piece in the newspapers. They seem to be wrote in imitation of Col. D—n——."[3] The latter reference seems to be to James Dickinson's *Letters from a Farmer in Pennsylvania,* but that is not much help. Both series are in "imitation" of that kind of approach. Dickinson's letters are not in fact very rustic but contain a great deal of historical and literary quotation and commentary, and in that respect are more like A Countryman from Dutchess County. However, George's first observation seems to apply more to the series of letters that follows (6.7), which take the form of a simple farmer telling about his and his neighbor's thoughts on the Constitution and which *are* rather effective in that way. The more literary and denunciatory letters might still be regarded as appealing fairly broadly, but they are much less distinct from the usual run of Anti-Federalist pieces. Moreover, if the series young Clinton referred to is A Countryman from Dutchess County, he is praising his brother for imitating Dickinson in essays that vigorously criticize Dickinson's support of the new Constitution—an implausible indelicacy.[4] Assuming that the two series were by different hands, and as George's comment is the only evidence of authorship, a small margin of probability favors DeWitt Clinton as the author of the series of A Countryman printed here and not A Countryman from Dutchess County, printed above.[5]

1. Morton Borden identifies A Countryman as DeWitt Clinton and prints two extracts, but they are taken from different series, which are not distinguished (*The Antifederalist Papers* 103–4). DeWitt Clinton is also identified as the author by Main (*Antifederalists* 287) on the authority of Spaulding (*His Excellency George Clinton* 173). Spaulding merely says that DeWitt Clinton joined the fray with his "Countryman letters." Dorothie Bobbé, in her biography of DeWitt Clinton, describes "a series of letters under the signature of 'A Countryman' appearing in the Journal" in November and December of 1787 (*DeWitt Clinton,* 1933, p. 41). There was no November–December series but a November–February series and a December–January series. Bobbé refers to items in both series without distinction. The two series are also confounded by Linda Grant DePauw in her *The Eleventh Pillar.* See also Clarence Miner, *The Ratification of the Federal Constitution by the State of New York* 69–76.

2. To further complicate the matter, a *Federalist* series of letters, also signed by "A Countryman," appeared in the *New York Journal* at about the same time (30 November, 3 December, 5 December, and 17 December 1787).

3. DeWitt Clinton Papers (Columbia University). The long line after the "n" occurs at the end of a paragraph and probably does not represent a continuation of the name.

4. See Countryman from Dutchess County 6.6.7–8, 9–12. It should be observed that George was a very young man and probably quite partial in viewing his brother's productions. Unfortunately this consideration tends to lessen the value of George's

remarks as evidence of authorship one way or the other. It should also be noted that George himself might have failed to distinguish the two series or that he might have known that his brother was writing as A Countryman, while being mistaken about which one.

5. One fragment of evidence pointing (rather feebly it must be admitted) in the same direction is the absence of any reason for DeWitt Clinton to identify his Countryman as coming from Dutchess County. DeWitt Clinton was in New York at the time, and his home and associations were mainly in Orange county.

I
6 December 1787

Worthy and Esteemed Sir,

I received your letter of the 21st of last month with the new constitution 6.7.1
and several pieces for and against it, which you were kind enough to send me, and for which I return you my hearty thanks. You condescend to ask my opinion of it, which, I fear, will scarcely be worth the trouble it will give you in reading. All I know about politics, I learnt during the late troubles, and that chiefly by reading the votes of our assembly and the journal of Congress, which you were good enough, now and then, to lend me. In the fore part of the war, I had a very good opinion of our Congress and principal men, that were employed in public business—they appeared to me very honest and very much in earnest to forward the common cause, but I will honestly confess to you, that towards the last, when the danger seemed to be in a great measure over, and when they began to appoint ministers of finance, and ministers of one thing and ministers of another, I did not think so well of them. Near the end of the war, I sold a pair of as good fat cattle as any in the parts, to one of our commissaries, for thirty-pounds, which was cheap, and not more than they would have sold for before the war—he, indeed, appeared very generous, and did not seem to wish to bait me of the price—our bargain was for hard money, then pretty currently going in the country—but, instead of this, he gave me paper, that he called Morris's Notes, which, he said, was every bit as good, and I took them at his word; but, he was hardly gone from my house, before another man came, who said, he was immediately from Philadelphia, and told me a quite different story, and said, that they were much depreciated, and this made me very uneasy, you may be sure, as I did not like to throw away my cattle for nothing—however, he offered to take them from me, if I would make him an allowance, so I let him have them for five and twenty pounds, which, if I remember rightly, he called the discount—now, I thought this very strange, but my neighbour ——'s son, who, you know, was a serjeant in the standing forces, came home to see his parents a few days after, and he told me, there was nothing more common, for, whenever the soldiers got any pay it was in

that way, and that they were often obliged to sell, at the rate of ten shillings for the pound, and that they must either do it or starve, for they could not do without some money; but, that I was very wrong, for I could have laid out of my money a little while, and sent the notes to Philadelphia and got the cash, for that some of these notes issued, but when there was money at command to pay them off.—I told him, I thought this was very strange, since at that rate, they might send the money at once, as well as the notes—he said, I knew nothing of the matter, for, that there was a number of people always following the commissaries, quarter-masters, and pay masters, who bought these notes up in the manner they did from me, and who were concerned with great men, among them they made a great deal of money by it—whereas, if the money was sent at once, they would not have an opportunity of filling their pockets. Now, as I said before, I confess to you, worthy sir, this gave me a bad opinion of some of our great men; but to return to the new constitution, I really have not had much time to read it, or the papers about it, being much behind hand in my business this year, owing to one disappointment or another—I remember well that our first or second Congress, I do not know which, and I believe they were both made up of as wise and as good men as any ever we have had since, wrote letters to the people of England and Ireland, and to our neighbours in Canada, endeavouring to convince them, that we were right to oppose the late government, which they clearly proved was unjustly oppressing and injuring us. In their letter to the people of Canada, they complained grievously of the conduct of the rulers of our former government, and told them, that a certain Mr. Beccaria (who I suppose must have been a countryman of theirs, and, of course, more likely to be believed by them) says, "that there is an effort continually tending to confer on one part the heighth of power and happiness, and to reduce the other to the extreme of weakness and misery"; I believe these are the very words.[1] Now, I am really very much afraid, that this is the case with the new constitution men, for it appears to me, that this president-general will have a great deal of power, and I think the chance is as ten to one when he gets a standing army, and has the command of all the militia, that he may not make the best use of them, and I should not wonder at all (unless he should happen to be a very good tempered man) that the backs of some, of our militia men, would pay for it, as the tories did during the war—besides the senate seem to have a vast deal of power too, and from the manner they are appointed and continued in their places, I dont see how we are to set about to turn them out if they behave badly; indeed, good sir, the president looks to me very much like a king, and the senate like a house of lords, and, I suppose, the supreme judiciaries that are spoke of, will be like the lord justices of the assizes, or the twelve great judges in the old countries, where, they tell me, a man need to have a deep pocket if he goes to law, and that a poor man stands but very little chance, at any rate, to get justice done him, especially if he has to contend with a rich one—besides, it

seems to me, that the president and senate will have a great deal of business to do together, and it is so jumbled and contrived, that if they do wrong, we can hardly find out who to lay the blame to—and, I think it wont be a hard matter, as they have a great many good things to give, to get the assemblymen too on their side of the question, and I believe, we may pretty certainly expect, that if they once get fairly a going they will do as this Mr. Beccaria says, keep down the common people and encrease their own power, especially, as I see they are to have a common treasury, out of which they can pay themselves what they please, without asking any body, and I suppose they will make us sweat in taxes to keep it full.

There is another thing our Congress told the people of Canada, in their letter, and I believe they were in earnest, "That the trial by jury, was one of the best securities in the world, for the life, liberty and property of the people."[2]—Now to be sure, I am very much of their opinion in this; for I would rather trust my life, liberty and property to a verdict of twelve of my honest neighbours, than to the opinion of any great man in the world, for great men are not always honest men, and they may be too proud, and not care to give themselves the trouble to enquire very narrowly into common people's disputes; and if an honest farmer should happen to say any thing against a great man, tho' it was ever so true, it would be in the power of the judge to punish him for it very severely—and I don't doubt, but what he would do it; but I am sure a good honest jury of his neighbours would never punish him for speaking the truth; I know it is said that truth is not to be spoken at all times, but the best of us may be guilty of little acts of imprudence, for which however, we should not be too severely handled: I find the writers disagree about this matter; the one says this right of trial by jury is taken away by the new constitution, and the other says it is not.—Now, as they differ, I have been trying to find out the truth myself, and, it appears to me middling clear, that if it is not absolutely taken away; yet that this new General Congress, that we read of, may take it away whenever they please—now, if it is so good a thing that it never ought to be taken away, I think we ought not to give them power to do it; for I can't see the reason of giving them power, which they never can make use of, without doing us a great deal of hurt: Now all parties may mean what is honest at present, but notwithstanding, there may be a time, when we have bad men to rule us, and I think it would be imprudent to give power, which every one allows there is no necessity for, and with which bad men, if so disposed, might do us a great deal of harm, and I am more confirmed in this belief, when I think of what the said Mr. Beccaria says about this desire, which has always prevailed in men of increasing their power. This is all I can say about the matter at present, having, as I mentioned before, little time to attend to it; but, as my neighbour —— ——, whom you know to be a sensible thinking man, and has more learning than I have, has agreed with me to spend some time together to read it more carefully over, now that the evenings are growing

6.7.2

long, and the hurry of business is pretty near past, I will write to you again on the subject, if my letters do not prove troublesome.

6.7.3 Before I finish, I will relate to you, however, what has happened in our neighbourhood, since you were here, for although it is an affair of little consequence, it seems to me to be something like this new-government business; you know that we belonged to the —— congregation, and the church was at a great distance from us, and it was often very inconvenient to us, for many who had not horses for all our families to ride to church, were obliged, when it was bad walking, to stay at home, and in truth, we did not like the minister; this made us think of forming ourselves into a separate congregation, which, after taking the proper steps, we did; and we set about a subscription, and raised a little money, and built ourselves a small snug house to worship in, and called a very good kind of a man for a minister, who preached to us for a very moderate stipend, which we made out to pay him pretty punctually, considering the hardness of the times: and we were all very happy and contented, and religion seemed to flourish amongst us, until lately, that some of our young men, who were in the wars, returned home; some of these set about studying, and very soon became lawyers; others got a little goods, and became shop-keepers; and others done no business at all, but lived like gentlemen, expecting to get a living by public employments, as they called it: These young men began to find fault with every thing we did; they said, we were unacquainted with the world, and could not judge properly how matters should be conducted; they said our church was too small, too plain, and not well finished; and, upon this account, that we were despised by all the neighbouring congregations, who had larger and finer churches; and, it is strange to tell, but so it is, by these means they soon worked upon the vanity of some of our more elderly and serious people, and though they could not get them to consent to build a new church, they agreed to enlarge and repair the old one, and make it much more shewy. The next thing they did, was to get themselves with two or three of the elderly men (who were honest men and pretty wise about other matters, but knew little about repairing churches) appointed trustees to manage the business; which being done, they set about and collected a quantity of great heavy strong timber and other materials, and up they set a spacious large new house, as fine as you please, leaving the old one (tho a great deal weakened by taking out some of the under-pinning) standing, in the mean time to worship in, 'till the new one can be finished;—but now our difficulties began, the more sober part of the congregation found that this new building was a very expensive one, and was likely to create great divisions in the congregation, many of them liking the old one better than the new one, and thinking that it might have been repaired, so as better to answer all our purposes: these began to say, that they would pay nothing towards it, and have nothing to do with it: and, what greatly added to their dissatisfaction, was, that they found that it was not to end here, for from

some hints that were thrown out by those young men, and plans (as they are called) of the building, it was found, that this new building was so contrived, that it was to have a large steeple and galleries added to it, and large high pews in it for the better sort of people to sit in, so that they might not be troubled with the common people, or rabble as they fained to call them: and some even went so far as to say that upon raising the covering of that end of the church, where steeples are usually placed, and peeping in, that they had discovered the mortices and other things, which could only be contrived for adding a steeple to it in good earnest; this as you may judge, increased the discontent, until at length more than one half of the congregation refused to have any thing to do with it; the trustees finding this, brought suits against them to make them pay, what they said they had promised, and as they were chiefly lawyers, they had the advantage, for if judgment was given against them, they certiorared the justices, and put them to such costs and trouble in attending the courts at a great distance, that they are almost fairly tired and worried out; our poor minister too was led astray by these young men; they made him believe that his salary ought to be raised, and by following their advice in trying to get more, he, at last could get nothing at all, and was obliged to leave us: now in this our disagreeable situation, many of our most zealous and best-disposed people talk of breaking off entirely and joining the old congregation, seeing they cannot worship here peaceably without quarrelling, and too heavy expence for them to support, so that we are brought into a very sad pickle, by following the advice of these young men, and I do not know what will become of us. I heartily wish you could be among us a few days, in hopes, by your good advice, that we might get reconciled and to rights again; for we all place great confidence in you, and your opinion would have great weight among us; indeed, as I said before, I do not know what will become of us, if with our present difficulties and troubles, we should be saddled with more, by the new constitution.

I remain, honored sir,
Your real friend, and
Humble servant,
A Countryman.

II
13 December 1787

Honored and Good Sir,

Your kind letter of the 10th of this month gave me great relief, for I was sore afraid that my very long epistle to you, had wearied and offended you, which I am very glad to find is not the case, as you ask me to write to you 6.7.4

again, which I shant fail doing: my neighbour ——, and myself, as I mentioned to you in my last we intended, have since spent several evenings together, and sat up late, reading the new constitution, and papers, in hopes to come to a thorough knowledge of them, which to be sure, is not an easy matter; one thing, and it would appear but a trifling matter, puzzled us exceedingly, that is, the names the different writers have fixed upon one another; for we found that those who are for abiding by the confederation and strengthening it, so as to make it lasting, are called antifederalists; and the other party who are for throwing it aside, and having nothing farther to do with it, but are for making of us into one solid government, are called federalists: now I did not know the meaning of the high-flown words, but my neighbour told me, that antifederalists were people, that were against the confederation; and that federalists were those that were for it: now, as I said before, this puzzled us very much, and often prevented our understanding what we were reading—at length we both agreed, that either the writers themselves or the printers had made a mistake; so to hinder our being bothered any more, it was agreed, that my neighbour should take pen and ink, and strike out anti, where it was used, and put it to the other word, so as to make it read right all through, and this, I can assure you, was a great help to us, and well paid for the time it took, for we could understand what we read with much greater ease afterwards.[3] The day after, our old neighbour ——, who, you heard me tell, had just before the war, moved down to Pennsylvania, and had come up to see his friends here, and spent the next evening with us, and we mentioned the matter to him, and he told us there was nothing at all strange in it, for it was the way some great men had to deceive the common people, and prevent their knowing what they were about; he said it was just so down with them, for there was a party of grand men in Philadelphia, who had made a great deal of money during the war, and lived like princes, had been trying all their might to overset their constitution this several years, and he did not doubt, but they wished to have a king, that they might be lords, or something else still greater themselves and make more money again, yet they called themselves republicans, because they knew it was a name that is very pleasing to the pope [people?], when, in truth, they are no more republicans than the pope, or the pretender himself; this you may judge, worthy sir, cleared up the matter to us at once; however we did not repent that we made the alterations, for they will be useful to our neighbours, when we lend the papers to them to read. But to go on, after we thought we understood the new constitution, nearly as well as it can be understood, I thought to myself, I would shew my neighbour the last letter I wrote to you, for I kept a copy of it, which I did, and he read it over and over again, and it pleased me a good deal, to find, that he thinks, what I said there, was very right; but he said at the same time, that though my letter was very long, I had not been quite plain enough, about one thing, for, he said, we should be careful not to give a bit more power to our rulers than we could

well help; for they would always find a way to get more fast enough, and they knew how to keep it when they once had it, so that we could never get any part of it back again; and to prove what he said, he put me in mind, that the convention was only sent to amend the old constitution, yet they sat about making a new one, though they had no power to do that at all, besides he made some other remarks which I will now mention to you, for we think very much alike about the business; he agrees with me, that very little dependence can be put on the president-general, and the senate, that they are to be appointed in a very odd manner, and would be so far above the common people, that they will care little about them, and when they get themselves fairly fixed in the saddle, there will be no such thing as to get them out again; but he seems to think, that the assemblymen, if there was enough of them, and if we could be sure that they would be honest and faithful, might give the others a deal of trouble, and hinder them from doing much mischief for a good while; but there are so very few of them, and the chance of getting good ones so little, from the manner which may be contrived by this new government, for making choice of them, that we cannot have much dependence from this quarter. We do not see but that they may order the election to be held in New-York city; I am sure; if they do, there is not one in a hundred of us country people, will be at the expence and trouble of attending there, to give our votes, except it should happen in the fall, just when we take our truck to market, and then a few of us might by chance, if we could get time give a vote, so that your mayor, and other great folks, may put in who they please, and, I believe, there is little doubt, but they will put in such folks as Mr. Beccaria speaks of, that will love to increase their own power, and keep down the common people;[4] besides, if the election should be ordered to be held at any other place, lords of manors, and other great folks will attend, and be able to divide these places among themselves, in spite of all the common people can do; indeed, my neighbour tells me, he has often heard some of these great people say (for you know many of them think a good deal of him, and tell their minds very freely to him) that we were very wrong to send to our present congress, some people that we sent there, that although they were honest, and men of good enough sense, yet they could do us little or no good there, for they were unacquainted with the world; and that no man could be of service, if he was not very rich, and had large family connections, and knew how to dance, and dress well. Now, I suppose it will be the same case in this new government; and if so, I am sure, we would lean upon a broken reed, if we rely upon the assemblymen a bit more than upon the others.

There is another thing, in this new constitution, that my neighbour and me, have talked a good deal about; it is what is called in the writings you sent me, article 9th, section 1st. Indeed, we hardly know what they will be at by this; for fear you should mistake me, I believe I had better write it down; they say, "the migration, or importation of such persons, as any of 6.7.5

the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year 1808, but a tax, or duty may be imposed on such importation, not exceeding ten dollars for each person."[5]

6.7.6 Now we think it very hard, if that is their meaning, that they should make every man, that comes from the old countries here, pay ten dollars to the new government. A great many of us, have our relations in the North of Ireland, and other places, that were very good friends to us all the war, and gave a great deal of trouble to the British, and I believe, partly upon our accounts, who might wish to come and settle here, among us; and I am sure they would be of great service to us, but do not you think it would be a hard matter for them to pay for their passages, besides their other expences, ten hard dollars for themselves, and each person in their families, when they get to this country. But our old neighbour from Pennsylvania, says, that it is thought among them, to mean worse than this, that its true meaning, is to give leave to import negroes from Guinea, for slaves, to work upon the rich men's plantations, to the southward; but that it is not mentioned plainly on purpose, because the quakers, and a great many other good religious people, are very much against making slaves of our fellow-creatures, and especially, against suffering any more to be brought into the country, and this, if it was known, might make them all against the new government: now, if this is really the case, it is to be sure, much worse than my neighbour and me first thought it to be; for all good christians must agree, that this trade is an abomination to the Lord, and must, if continued, bring down a heavy judgment upon our land. It does not seem to be justice, that one man should take another from his own country, and make a slave of him; and yet we are told by this new constitution, that one of its great ends, is to establish justice; alas! my worthy friend, it is a serious thing to trifle with the great God; his punishments are slow, but always sure; and the cunning of men, however deep, cannot escape them. I well remember, that our congress (and I believe, as I mentioned before, that they were honest, good men who meant as they said) when they declared independence, solemnly said, that "all men were created equal; and that they were endowed by their creator with certain unalienable rights; and that among them, are these, life, liberty, and the pursuit of happiness." They also talked much about the sacredness of a trial by jury; and complained loudly, that the old government tried to hinder the peopleing of this country, by discourageing people to come here from the old countries; and for these, and other causes, they went to war, after making a solemn appeal to God, for the rectitude of their intentions; and even the infidel must confess, that God was remarkably with us, watched over us in the hour of danger, fought our battles, and subdued our enemies, and finally gave us success. Alas! my good friend, it is a terrible thing to mock the almighty, for how can we expect to merit his favor, or escape his vengeance; if it should appear, that we were not serious in our professions, and that they were mere devices to gratify our pride and ambi-

tion, we ought to remember, he sees into the secret recesses of our hearts, and knows what is passing there. It becomes us then to bear testimony against every thing which may be displeasing in his sight, and be careful that we incur not the charge mentioned by the prophet Hosea, "ye have plowed wickedness, ye have reaped iniquity; ye have eaten the fruit of lies, because thow didst trust in they ways, in the multitude of thy mighty men."[6] Here I shall finish this present letter; and when I find a little more leisure, I will continue to write to you again.

I remain,
Honoured Sir,
Your real friend,
And humble servant,
A Countryman.

III

20 December 1787

Worthy Sir,

My neighbour and me have been busy almost every evening, since I wrote to you last, and sometimes we set up very late, still trying all we could to find out the real meaning of this new constitution; but really, as I said before, we find it a hard matter to come at it. We cannot be reconciled to it, that people who may wish to come here from the old countries, to get clear of the oppression of great folks there, should be obliged to pay ten dollars, besides their passage and other expences, for leave to do it—and we cannot help still thinking it a very pitiful thing, in this new government, to give leave to make slaves of our fellow creatures, for the sake of a triffling sum of money:—these things set very heavy upon our mind, for we believe, that they are establishing wickedness instead of justice, let some folks pretend to what they will. We see that this new government will have power to levy and collect taxes, duties, imposts and excises upon us; now, with respect to the duties and imposts, we suppose that is money that is to be raised upon goods and liquors, that may be brought from abroad to this country, and we are very easy about it, for we are sure the less that is brought, the better it will be for us, for the less we will have to pay for; but as to excises, some of our neighbours from the old countries, where they say, they are as common as Mayweed—tell us that they will go to almost every thing—and, that if they set to work at this, they will make us pay more for the small beer and cyder we drink, than they would fetch, if we were to sell them and drink water in their stead. As for taxes, I will warrant you, we are at no loss about the meaning of that word, for we have learned by experience to understand

6.7.7

it pretty well—indeed many of us have been driven to our last shifts, to pay what has been demanded of us already by our own state—and, I am sure, if this new government sets about this work too, between both, we shall be sadly hampered, and ten to one, if not only our stocks, but our farms too, will be sold to satisfy the collectors: but this is not all, it seems there is to be a new sort of tax, which we have not before heard of, called a capitation-tax; I should never have found out what was meant by it, if it had not been for my neighbour, who tells me, it is a tax upon the head, and that a poor man's head, though he is not worth a groat in the world, must pay as much, as a rich man's head, let him be ever so wealthy;—now this appears to me very little more like justice, than the affair about the poor blacks, though it may not be quite so wicked; for, although a poor man may have as good a head and as much brains in it, as a rich man, and be as honest and as wise a man; yet, where there are any good things a going (such as any place, by which there is a deal of money or honor to be had) the rich man's head is always best then, and, by one means or another, he finds out ways to get these things to himself; so that I think his head ought to be taxed more than the poor man's, for it is an old and true saying, pay alike share alike: besides, he has more of the good things of this world, and is better able to pay.

6.7.8 There is one thing, worthy Sir, that has given us a deal of trouble; we have seen on reading the constitution through the first time, that there were some things mentioned which, it is said, this new government should not do—and, we thought it very right, that they should not, for to be sure they were such things, as we would not like to see done; but upon reading it over and over again, and attending to it still more carefully, we began to think between ourselves, what could be the reason of saying they should not do these things, because, as we had understood matters at first, there was no power given to this new government to do them;[7] one of these matters I mean, is, where they say, "No title of nobility shall be granted by the United States," now it is very plain to me, if there was no power given to this new government to grant titles of nobility, (I suppose what it means is to make lords) then there was no occasion to say that they should not do it, because it would be very foolish to say, that they should not do a thing which they could not do; this, as I said before, made us examine it again, and that very closely, and to be sure, to our great surprise, we found out some clauses, and some big words that we had not before taken notice of, appear to carry with them a very broad meaning, and though they did not just mention any thing about making lords, or (as it is called) granting titles of nobility, yet it very well may be, that these clauses give them power to do every thing, only, what it is said, they should not do—and my neighbour who understands what he reads better than me, thinks this must be the case, for he can't believe that such wise men, as they say, the convention was made up of, and a great many of them judges and lawyers too, would have ever taken so much pains to guard against this new government's doing things, which

they would have had no power to do. But, as this seemed to us a matter of no little consequence, and we did not like to be in a mistake about it—my neighbour, who stands well with the young lawyers, and lads who are looking out for public employments, asked me to come over the next evening to his house, for he would have a parcel of them there, and we would try whether we could not find out their opinion about this matter; I accordingly went the next evening to my neighbour's, and there, as he promised, he had a number of them—he soon began to talk with them about the new constitution, and mentioned several of the difficulties we had met with to understand it, and some things in it which appeared to us not to be right; such as the taking away the trial by jury, head-tax business, and encouraging the making slaves of our fellow-creatures; but we found they did not like to speak much about it, and that they were very loth to say a word against it, they seemed indeed, to think there might be some small things in it which might have been as well left out; but, upon the whole, they said it would do very well, and that when we once got it agoing, we could mend it; and that something must be done, or we will all git into anarchy (as they called it) and confusion; my neighbour asked them, whether it would not be the best and safest way to mend it first, for fear if we once parted with so much power, as was given to this new government, we could never git it back again, and put them in mind of what Mr. Beccaria and other great men (whose names I do not remember) had said about giving more powers than were necessary to rulers; but, they did not like this and said, if we once began to alter, we should never agree about it, and get a quarrelling with one another. Indeed, good sir, I have but very indifferent thoughts (to say no worse) about these young men, for though I hear that in other places many of their cloth are very honest, and think very right about matters, yet those among us appear to be guided entirely by their own interest; they hold themselves above their neighbours, and seem to think themselves better and wiser than every body else, and I have heard that they do not scruple saying in private, that this new government would be a fine thing for them; that it will make a great deal more law business; that they will git higher costs; and that it will not be in the power of the country-members to keep lowering them as they have done lately, for the state legislatures will have nothing to do with these grand courts or any thing else of consequence, for which, they say, they are not fit. It is even said, that some of the young men who are looking for places, are so taken in with the notion of a standing army, that they have already bespoke cloth at the shop-keepers for regimentals. Now for my share, I am fully of my neighbours opinion, that it would be best to mend this new government before we agree to take it, for if we cannot agree to make it good now without quarrelling, I do not see how we will agree to do it afterwards—indeed, I think, it will be much harder; for those that have once got the power, I am afraid, will be very unwilling to part with it—they tell me it is no common thing, nay, some go so far as to say, it has never been

known to happen. I should think it a very unwise thing to pull down an old house, in which I lived very comfortably for many years, and which had sheltered me and my family, and move into a new house, just to gratify the pride and vanity of the children, because it was larger and appeared finer, on the outside, when I knew at the same time, that it was not well finished within, that the foundation was bad, the chimnies smoky, the roof leaky, and many of the posts rotten, so as to make it dangerous to go in it, and that it would cost me more than I was worth in the world to furnish and keep it in repair, and I am apt to believe if I got ruined by it, I should meet with few to pity me; and yet it is strange, we are told if we do not do something as foolish as this about the new government, we shall get a quarrelling; but let them quarrel that will, I am for continuing peaceably in the old house, and for mending it now and then, as it stands in need of it. I observe from the papers you sent me, that those who are warmly in favor of this new government, say, that it will make us able to pay our debts, establish our credit, and make us respectable abroad; but I cannot see how it is to do all these good things, and they have not undertaken to tell us; I think it but a poor way to pay debts by getting a more costly government, and I cannot see that it will establish our credit, by being fickle and changing every day from one thing to another; I am sure an unsteady whimsical man, is but illy trusted by his neighbors, for few will put any dependence upon him; and I believe it will be pretty much the case with a government, that is always changing, for though it might be something this year, that we liked very well, and were very fond of, next year it might be changed into something else that we did not like at all, and could not bear to live under; and I can hardly think, it would make us very respectable abroad, when the people in the old countries found out, that we could not be contented, neither with the one thing or the other, and did not know what we would be at ourselves; besides, for my own part, I think we ought first to make ourselves happy at home, and I believe that will be found the best way to make people abroad think well of us. O my good friend, we ought carefully to guard against the pride and vanity of our hearts, which are always taking us from the good old way, and leading of us into new schemes and devices, and are dangerous enemies to our happiness both here, and hereafter; if our great men were oftener to read their bibles, they would find many lessons on this head, which might be of great service to them, and fit them better for the high places to which they are called; they might profit much on the present occasion by attending to the history of the Children of Israel, as recorded in that holy book; they did not trust in the promises, which were made them by their heavenly father through his holy prophets; they were restless under the government, which was appointed over them by the Almighty; they were fickle and fond of changing; they were ambitious, and wanted to appear respectable abroad; they must be like all the nations, have a king to judge them, and to go out

before them, and fight their battles; notwithstanding, that good prophet Samuel protested solemnly against it, by the command of our maker, and shewed them the manner of the king that should reign over them, yet they would have a new government, and they got Saul the son of Kish for a king; the history of whose wicked reign I need not relate to you. O my dear sir, we ought to be much in prayer with God, least the same temper which seems to prevail too much at this day among many of us, should bring down upon our land also some heavy judgment; for to me it appears as if there was a rod in soak for us.

I remain,
Honoured Sir,
Your real friend,
And humble servant.
A Countryman.

IV
10 January 1788

Worthy Sir,

Since I wrote to you last, I have been giving the new constitution another reading, though, in truth, I got almost sick of it; and, I find by one clause, which I had not taken so much notice of before, that all laws, treaties, etc. made by this new government, is to be the supreme law of the land, the state constitutions, or any of their laws, to the contrary notwithstanding;—now besides, the powers it takes away, in so many words, from our state governments, and to be sure it takes so much, as to leave them, in my poor opinion, very little; its laws and treaties may take away more, and so alter and change what little is left, that no body among us, except the lawyers, will be able to know any thing about our own state constitution and laws—and, I do not believe, they themselves will understand them; I will warrant you, they will not like it the worse for that, for they will always give it such a meaning, as will best suit their own purposes. I find too, that all our state officers are to take an oath or affirmation to support this new constitution—now as they are bound by an oath to support our state constitution too—and as it is almost impossible to find out the meaning of the new constitution, and how much power would be taken away from the state governments in the first place, and altogether uncertain how much more may hereafter be taken away by laws and treaties which may be made under the new government, I cannot, for my share, see how an honest man will be able ever to take such an oath; for one day he may be bound by oath to 6.7.9

observe a law made by his own government, and the next day out comes a law or treaty from the general government, by which he is obliged by oath to do the contrary; and if he doubts the right of the general government to make such a law or treaty, to be sure, he will be in a very disagreeable situation. Indeed, my good sir, it is a serious thing to trifle with an oath; and, I think, they ought to have mentioned clearly and plainly, how much power they meant to give to the new government, and how much they meant to leave with the states, before they required oaths of people; and, I believe, it is very certain, that if this general government takes place, they will never get an honest man to serve in either;—for no man but he that has a conscience that will stretch like a tripe, will swear to perform a duty that he cant understand.

6.7.10 I observe, that, by the new constitution, they have guarranteed to the respective states a republican form of government—now I conclude this was, because it was thought the best form and most pleasing to the people; but I cannot find, at the same time, that they have made any engagements, that this new government shall continue to be republican; and I see, they have contrived a way to change it into what they please, without giving themselves the trouble to consult the people about it: as they have taken away almost all powers from the state governments, I think this guarrantee to them of a republican form of government will be of very little use, for what good can the mere form or shadow do, when the substance is lost?

6.7.11 Indeed, worthy sir, according to my weak judgment, this new constitution is a very bad one, and if ever it should be agreed to, I am afraid we shall have reason to rue it. It appears very strange to me, that some people who were lately fighting for liberty, should so soon turn tail, and now endeavour to establish a tyranny over their country: and I think, it is not uncharitable to conclude, that instead of contending with the old government for the sake of liberty, they were contending for power—which, no doubt, they will have plenty of, when the new constitution takes place: however, I hope, they will be disappointed, for I can assure you, there is not a man in our parts, but what thinks of it exactly as I do, and is determined at all hazards, to have nothing to do with it; for it would be vain and foolish, indeed, to spend so much blood and treasure to rid ourselves of one tyranny and set up a worse.

6.7.12 I am greatly indebted to you, for putting yourself to the trouble of sending me so many papers about this matter—and as they must be attended with some expence to you, I beg you will send me no more of them; for I have seen enough to convince me very fully, that the new constitution is a very bad one, and a hundredfold worse than our present government; and I do not perceive, that any of the writers in favour of it (although some of them use a vast many fine words, and shew a great deal of learning) are able to remove any of the objections which are made against it. Mr. Wilson, indeed, speaks very highly of it; but we have only his word for its goodness; and nothing is more natural than for a mother to speak well of her own bantling,

however ordinary it may be. He seems, however, to be pretty honest in one thing—where he says, "It is the nature of man to pursue his own interest, in preference to the public good"[8]—for they tell me he is a lawyer, and his interest then makes him for the new government, for it will be a noble thing for lawyers; besides, he appears to have an eye to some high place under it, since he speaks with great pleasure of the places of honour and emolument, being diverted to a new channel, by this change of system. As to Mr. Publius,[9] I have read a great many of his papers, and I really cannot find out what he would be at; he seems to me as if he was going to write a history, so I have concluded to wait and buy one of his books, when they come out. The only thing I can understand from him, as far as I have read, is, that it is better to be united than divided—that a great many people are stronger than a few—and that Scotland is better off since the union with England than before; and I think, he proves too, very clearly, that the fewer nations there are in the world, the fewer disputes will be about the law of nations—and the greater number that are joined in, one government, the abler will they be to raise ships and soldiers, and the less need for fighting; but I do not learn that any body denies these matters, or that they have any thing to do with the new constitution. Indeed I am at a loss to know, whether Mr. Publius means to persuade us to return back to the old government, and make ourselves as happy as Scotland has by its union, or to accept of the new constitution, and get all the world to join with us, so as to make one large government—it would certainly, if what he says is true, be very convenient for Nova-Scotia and Canada, and, for ought I know, his advice will have great weight with them. I have also read several other of the pieces, which appear to be wrote by some other little authors, and by people of little consequence, though they seem to think themselves men of importance, and take upon them grand names, such as Curtius, Caesar, and the like.[10] Now Mr. Caesar do not depend so much on reasoning as upon bullying—he abuses the people very much, and if he spoke in our neighbourhood as impudently as he writes in the newspapers, I question whether he would come off with whole bones: from the manner he talks of the people, he certainly cannot be one of them himself; I imagine he has lately come over from some old country, where they are all Lords and no common people—if so, it would be as well for him to go back again, as to meddle himself with our business, since he holds such a bad opinion of us. I have already gave you a great deal of trouble, honoured Sir, with my long letters—I shall therefore conclude, hoping if any thing new is stiring, that you would be kind enough, now and then, to drop me a line, and let me know how things are going in your city.

I remain with great respect,
Your assured friend and
Humble servant,
A Countryman.

V
17 January 1788

Worthy Sir,

6.7.13 I might have saved myself a world of trouble, in searching to find out the meaning of the new constitution, if I had only attended a little more closely at first, to that clause, which says, the Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence, and general welfare of the United States—and the other clause, which gives them power to make all laws, that shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers, vested by this constitution, in the government of the United States, or in any department, or officer thereof. The first gives them power to do any thing at all, if they only please to say, it is for the common welfare, for they are the only judges of this—and, my neighbour is clearly of opinion, that they have power, under these clauses, even to ring and yoke all the hogs in the country; and a great many people, who have much meadow-lands, and who have them often rooted up and spoiled by the swine, think it would be for the general welfare; for they suppose, in this way, and in their[11] corn-fields, if it was all reckoned up, they do more damage than they are worth, when they are fit for the knife—so, if this is the case, it would certainly be for the general welfare, not to let them run at large at all. By the last of these clauses, it would appear, that there are some powers vested in this government, besides what are mentioned in it, since it speaks of the aforegoing, and all other powers: now I do not think it worth while to waste any time, in finding out what these other powers are, for those which are mentioned, will take in every thing, but the two or three little matters, they have excepted.[12] As I said before, though I did not like the whole constitution, I was pleased to find that this new government would be prevented from making lords, and ex post facto laws; but I begin to doubt, whether these things were not put in on purpose to shew, they would have had authority to do them, if they had not excepted[13] them—and to confirm more strongly their power of doing every thing else; howsomever, my old neighbour from Pennsylvania tells me, that this ex post facto law business was put in, not because it was a bad thing, but to place it out of our power of calling to account, people who have the public monies in their hands—for, by this means, there will be no such thing as getting at them, and indeed I think it is very likely, that this may be the case, for if they were really honest, and meant to hinder the doing of a bad thing, why did they not also say, that the Congress should never take away, the rights of conscience, trial by jury, and liberty of the press? These are all rights we hold very dear, and yet we have often read, and heard of governments, under various pretences, breaking in upon them—and upon the rights of conscience particu-

larly; for in most of the old countries, their rulers, it seems, have thought it for the general welfare to establish particular forms of religion, and make every body worship God in a certain way, whether the people thought it right or no, and punish them severely, if they would not: now, as it is known, that there has been a great deal of mischief done by rulers in these particulars, and as I have never read or heard of any great mischief being done by ex post facto laws, surely it would have been of more importance, to have provided against Congress, making laws to take away liberty of conscience, trial by jury, and freedom of the press, than against their passing ex post facto laws, or even their making lords. I conclude therefore, that there may be a great deal of truth, in what my neighbour from Pennsylvania says, about this matter.

By this new constitution, there are several things, which it is declared the state governments shall not do, such as emitting bills of credit, making any thing but gold or silver coin a tender in payment of debts, and passing laws for the impairing the obligation of contracts, etc.—but I do not find, that this new government are hindered from doing these things, and yet if they are bad things, it appears proper that they ought to be hindered from doing them, as well as the state governments—for I do not see, why we are to expect honester men in the general government, than in the state governments; there will be a great many there, that we never heard of or know any thing about; and I am sure we have suffered more by the paper money made by Congress than we have by that made by our own assembly. Indeed, Worthy Sir, take the new constitution all together, it is an odd jumbled kind of business, and yet some people say, they were very wise, honest men, who made it—though I have no doubt some of them might have been very honest, but I am widely mistaken, if the bulk of them were both honest and wise. 6.7.14

I am,
Honored Sir,
Your real friend, and
Humble servant,
A Countryman.

1. *Journals of the Continental Congress* I, 106. The address, published in 1774, quotes from the Introduction to Beccaria's *Essay on Crimes and Punishments*. See Federal Farmer VII, 2.8.97 n. 61.
2. This is a paraphrase or summary of the Congress's discussion of trial by jury. *Journal of the Continental Congress* I, 107. For other Anti-Federalist discussions of trial by jury, see Plebeian 6.11.15 n. 13; for Federalist views see Federal Farmer II, 2.8.19 n. 16, Old Whig III, 3.3.16 n. 17.
3. On the confusion of names see Martin 2.4.43 n. 12.
4. See above, n. 1.
5. For other discussions of this clause see Martin 2.4.65 n. 24.
6. Hosea 10:13.
7. See Brutus II, 2.9.30 n. 22.

8. McMaster and Stone 148.
9. This is of course the author of *The Federalist*.
10. For the essays of Caesar, see Ford, *Essays* 279–91. See Cato 2.6. intro. n. 6. I have not found Curtius.
11. The original reads, "they."
12. The original reads, "accepted."
13. The original reads, "accepted." See Brutus II, 2.9.30 n. 22.

Essays by Sidney

ALBANY GAZETTE
February–March 1788

"Sidney" describes himself at one point as "a compiler rather than an author"; and while his own arguments are routine and sketchy, his essays are a rich source of characteristic Anti-Federalist authorities. The first two essays present a confused and fragmentary account of the illegitimacy of the Constitutional Convention and the dangers lurking in the new Constitution. Sidney goes on to contend that the new Constitution is not necessary to regulate trade, or to maintain the glory and credit of the United States, or to revive an alleged indifference of the people with respect to government (essay 3). He shows, finally, that Americans have as much reason to distrust their rulers as Europeans do (essay 4). These essays first appeared in the *Albany Gazette* in the winter of 1788, but in the absence of surviving copies of some issues of that journal, some of them are reprinted here from the *Country Journal and the Poughkeepsie Advertiser.* According to Linda Grant DePauw, the Sidney essays were probably written by Abraham Yates.[1]

1. *The Eleventh Pillar* 131 n. 45, 291.

I

(POUGHKEEPSIE) COUNTRY JOURNAL
5 February 1788[1]

"I Aim at reformation, not satire; as I mean no invidious reflections, but only to give my sentiments with that honest freedom to which every American *is entitled by birthright: I shall just state from Polybius, the means by which all mixed governments have originally deviated from the first principles, which were the basis of their rise and grandeur; how by this deviation, they tended towards their decline, and that those means, acquiring additional force from that very decline, necessarily produced those evils which accelerated the destruction of every free people."* Montague.[2]

6.8.1 The discussions heretofore published, in favour of the requisitions of Congress, of the 3d February, 1781, and 18th April, 1783, for vesting that hon. body with power to levy an impost of five per cent.[3] have appeared under the favourable aspect of a mere regulation, necessary and proper for the satisfaction of the public creditors and the support of national faith; as if, by investing Congress with a revenue, to be collected by officers of their own appointment, and laws of their own making, the public creditors would be sooner paid, and the national faith better preserved; but to [. . .] in its progression, it has assumed another form; we are now soon (perhaps too soon, for we have got into a habit of doing business either in secret or in haste) to be called upon to change the very principles of our government:[a] contrary to the opinion of former authors, and to adopt that reposted by the Convention, lately assembled at Philadelphia; in which the United States are to be consolidated, so as to become one republic, of upwards of four thousand miles[b] in circumference; Congress invested with legislative and judicial powers, and with it to decide whether we shall establish a strong executive, as well as to surrender an actual for a virtual representation.

6.8.2 The Dutch have made experiments in both. By the one, they have entirely lost the right[c] of representation; by the other, they have embarrassed themselves with a stadtholder[d] (a strong executive whose mal-administration, within the space of forty years, has become so intolerable that the inhabitants, to get rid of him, are this day on the brink of ruin).

a. "It is proper also (says Bacon) not to try new experiments in the political body, unless the necessity be urgent, and the utility evident; and take care that the desire of reformation, may occasion the change—and not the desire of the change plead for the reformation. Again, let all novelty, though it cannot perhaps be rejected, yet be held suspected: and lastly, as the scripture directs, Let us stand up on the old paths, and see and ask for the good way, and walk therein." 2 Bacon 154.[4]

"Polybius having traced government up to its first origin, explains the principle by which different governments arise (?) to the summit of their power and grandeur, and proves that they sunk to ruin, by a more or less rapid progress, in proportion as they receded more or less from the first principles on which the 6 were originally founded." *Montague 363*[5]

b. "Political societies, like the human body, have their limits circumscribed, which they cannot exceed without disturbing their œconomy. An overgrown republic can only be saved from despotism, by subdividing it into a number of confederate republics. Marquis Becaria.[6]

"It is natural (says the great Montesquieu) for a republic to have only a small territory, otherwise it cannot long subsist," etc.[7]

c. "The magistrates of a certain city in Holland, so ordered the business, that the people in a general assembly, gave up the right of election; since which time, the senators have filled up all vacancies in their own body; and this example has been followed by all the other towns in the provinces." 1 Bowen 547.[8]

d. "This office in a manner supercedes the constitution. The stadtholder is president of the states of every province; and such is his power and influence, that he can change the deputies, magistrates and officers in every province and city: by this, he has the moulding of the assembly of the states general, though he has no voice in it; in short, though he has not the title he has more real power and authority than some kings." Guth. Gram. 418.[9]

In these discussions, those who opposed the measures, and were for adhering to the confederation (as if words had lost their meaning) were distinguished by the appellation of "anti federal," and those who were for altering the confederation and investing Congress with an independent revenue, assumed the epithet of "federal men"; and notwithstanding the late Convention, in their letter of the 17th September, have decided, viz. "that the *impropriety* of delegating such *extensive* trusts to one body of men is *evident*," still the delusion is carried on, they call themselves federalists, when, in the same breath, they do not hesitate to say, they mean entirely to destroy the confederation![10] 6.8.3

Misrepresentations, equally delusive, have been made in attempting to induce the several legislatures to invest Congress with the above mentioned revenue, with those, now daily propagated to establish the new constitution. While the former was in agitation, the papers were filled with accounts that several of the States had agreed to the impost system, and at last they went so far as to assert, that it had been adopted by eleven states, and that there were but two that had refused; and what is astonishing, gentlemen in distinguished stations, attempted to confirm those misrepresentations; it was however discovered, when the laws of the different states, respecting that system, were published, in the year 1786, that it was doubtful whether two, of the thirteen, had fully adopted it.[11] 6.8.4

When the late Convention was sitting (and under an injunction of secrecy) scarce a newspaper appeared, without a recommendation of the government in expectancy—That a government to be agreed to and countenanced by General Washington and Doctor Franklin, would be such as all good men ought to approve, and none but bad men would disapprove; and those who refused to give it their approbation, until they should have an opportunity of examining it, were treated as infidels in politics—and threatened, should they withhold their assent, to be insulted, tarred and feathered, and even in the late discussions, we meet with observations, tending to impress an opinion, that the consent of General Washington and Dr. Franklin, is not only a conclusive argument, to induce the people at large to determine in favour of the constitution, but that even to suppose they have erred or been imposed upon, is an impeachment of their understanding and integrity. A most extravagant way of reasoning.[12] For when we calmly consider we shall find, that to err is inseparable to human nature; to be sure, to suppose that there was ever a general who understood military government better than the one, or any philosopher better acquainted with the powers of electricity than the other, would be justly reprehensible; but that they (admitting that they are not therefore the [. . .]) should therefore be considered better, and even infallible judges of civil government (and that too, when they differ with Montesquieu, Locke, Sidney, and many other celebrated authors upon government) is inadmissible. 6.8.5

When this new constitution was reported, and suffered by Congress 6.8.6

barely in its passage to go on to the several legislatures, without their approbation; it was represented in the papers as having passed Congress with unanimous consent: now for a while we have been entertained with stories, how acceptable it is to the people in the several states—how readily the legislatures order conventions—and how those are insulted and their conduct reprobated, who are opposed to it; and I shall not wonder, hereafter, to see it asserted in the papers, that it has been adopted by eleven states; when again, upon enquiry it may not have been fully adopted by two states.

6.8.7 This *kind* of management is not uncommon after revolutions. Goldsmith mentions, that after the battle of La Houge (within four years after king William ascended the throne of England) "patriotism began to be ridiculed as an idle virtue—the practice of bribing a majority in parliament became universal: the example of the great was caught up by the vulgar, principle and every decency was gradually banished—talents lay uncultivated, and the ignorant and profligate, were received into favour. That to remove the evil, parliament were diligent in restraining the universal corruption, that seemed to prevail over the whole kingdom—they were assiduously employed in bringing those to *justice* who were *grown wealthy* by *public plunder,* and encreasing the number of laws which restrained the art of peculation."[13]

In the mean time Addison and Steele, in allusion to the doctrine, then propagated by Sacherveral and others, engrafted upon the policy of the cabal; "who were for establishing such a perpetual and extensive fund of revenue, to advance the prerogative, as would render parliaments useless," tried to open the eyes of the people.[14]

6.8.8 "I have frequently (says Addison) wondered to see men of probity, who would scorn to utter a falsehood for their own particular advantage, give so readily into a lie, when it becomes the voice of their faction, notwithstanding they are thoroughly sensible of it as such." "Some tell us (says the same author) we ought to make our government upon earth, like that in heaven; which, say they, is altogether monarchical and unlimitted; was man like his Creator in goodness and justice, I should be for following this great model; but where goodness and justice are not essential to the rule, I would by no means put myself into his hands, to be disposed of according to his particular will and pleasure.

6.8.9 "Where the prince is a man of virtue, it is indeed happy for his people that he is absolute; but since in the common run of mankind, for one that is wise and good, you find ten of a contrary character, it is very dangerous for a nation to stand to its chance, or to have its public happiness or misery depend on the virtues and vices of a single man."[15]

6.8.10 Steele, under the figure of two dancers, represents the operation of the two forms of government, viz. absolute power, and the representation of a free state.[16] In the first, he introduces absolute power, in the person of a tall man, with a hat and feather, who gives his first minister, that stands just

before him, an huge kick—the minister gives the kick to the next below, and so to the end of the stage. In this moral and practical jest, you are made to understand, that there is, in an absolute government, no gratification but giving the kick you receive from one above you to one below you; this is performed to a grave and melancholy air; but, on a sudden the tune moves quicker, and the whole company fall into a circle and take hands, and then at a certain sharp note, they move round and kick as kick can. This latter performance, he makes to be the representation of a free state; where, if you all mind your steps, you may go round and round very jollily, with a motion pleasant to yourselves and those you dance with; nay, if you put yourselves out, at the worst, you only kick and are kicked, like friends and equals.

The two following paragraphs, taken from DeWitt's political maxims,[17] contain a concise history of the management in the United Netherlands, after their revolution. 6.8.11

"It appears (he says, page 7, 415) that the inhabitants of a republic are infinitely more happy, than subjects of a land governed by one supreme head; yet the contrary is always thought in a country where a prince is already reigning, or in republics, where one supreme head is ready to be accepted.

"For not only officers, courtiers, idle gentry, and soldiery, but also all those that would be such, knowing, that under the worst Government they use to fare best, because they hope that with impunity they may plunder and rifle the citizens and country people, and so by the corruption of the government enrich themselves, or attain to grandeur, they cry upon monarchical government, for their private interest, to the very heaven: although God did at first mercifully institute no other but a commonwealth government, and afterwards in his wrath appointed one sovereign over them. Yet for all this, those bloodsuckers of the state, and indeed of mankind, dare to speak of republics with the utmost contempt, make a mountain of every mole hill, discourse of the defects of them at large, and conceal all that is good in them, because they know none will punish them for what they say.

"The matter being thus, we must say, that all persons who for their particular interest do wilfully introduce such a monarchical government into our native country, will commit a crime which afterwards can never be remedied, but like Adam's original sin be derived from father to son to perpetuity, and produce such pernicious effects that all the good order and laws of these provinces, whether civil or ecclesiastical, must at length be subverted. And, seeing *crimen magistratis* is properly committed against the laws of the sovereign power, namely either to assult the legislator himself, or to endeavour to alter the sovereign government; we must therefore conclude that the said inhabitants will by so doing make themselves guilty of *crimen magistratis and pas duellionis non fluxem sed permanens ni deternum,* the most grievious, most durable and endless treason against this country."

6.8.12 I shall add an observation of Sallust that happened after the revolution[18] at Rome, for he affirms, "that after the expulsion of the King, as long as the fear of Tranquin and the burthensome war with the Etrurians kept the Romans in suspense, the government was administered with equity and moderation. But as soon as ever the dread of those impending dangers was removed, the senate begun to domineer over the people and treat them as slaves; inflicting death or scouring after thè arbitrary manner of dispotic tyrants; expelling them from their lands, and arrogating the whole government to themselves without communicating the least share of it to the Plebians." Thus, "the people, before the creation of this magistracy, were amused with the name of liberty, whilst in fact they had only changed the tyranny of one for the more galling yoke of threehundred. But the tribunital power proved an invincible obstacle to the arbitrary schemes of the aristocratic faction, and at last introduced that due admixture of democracy, which is so essentially necessary to the constitution of a well regulated republic."

6.8.13 To conclude for my own part, at this day when the matter has been discussed, and the dangers so fully pointed out; and, considering how zealous we have been in the cause of human nature, to counteract the kidnaping, and to secure the Africans, and their posterity from slavery; it is with difficulty I can suppose, persons of information recommending the adoption of this new constitution serious. It makes its appearance, in a worse point of view, than the carriage, after the horses have taken a start, and disengaged themselves from the reins; for there you may follow the track, and find the vehicle, which though abused, the owner may at his leisure repair. But upon the start of the late convention, when they refused to be guided by their credentials (which expressly confined their powers to be *for the sole purpose of revising and amending the confederation)* and presuming to recommend to the people this new instrument, is more like the horse-hunter, who after having used every contrivance to trap, and ensnare, has recourse to wheedling, and cajoiling, he goes up to the horse, and invites him to a [ ], and while he perceives that the animal is apprehensive that he will deprive him of his liberty, scratches his ears, tries to make him believe, that he will not do like other horse hunters, and abuse him; but if he will suffer him to put on the halter, he will give the animal usage as he likes and such as will be better for him than Liberty, or at the option of the animal set him at liberty again; but no sooner has he the halter well fixed, and the horse shews an inclination to disengage himself, he tells him, I have you fast now, and do what you can I shall not let you go, and you shall do what I order you, I will rid, whip, and spur you, and you shall have no more rest nor food than is sufficient to keep your skin and bones together; and when you are no longer fit to do my work, I will sell you, or if you die, I will sell your skin.

Sidney

II
21 February 1788

"Let Cicero then live in submission and servitude, since he is capable of it; and neither his age nor his honors nor his past actions, make him ashamed to suffer it: For my own part, no condition of slavery, how honorable soever it may appear, shall hinder me from declaring war against tyranny, against decrees irregularly made, against unjust dominion, and every power that would set itself above the laws." Brutus.[19]

The dangers of adopting the new Constitution having been pointed out, I shall now proceed to consider, whether it would be necessary and proper; and, whether Americans have any good reason to put more confidence in their rulers than Europeans. 6.8.14

It is, admitted, that it has been matter of dispute, at all times, whether a monarchical, aristocratical or democratical government is the best. It was the case in the time of Samuel, and in the council of the seven princes of Persia: this was also the case with the Dutch upon their revolt from Philip the second—with the English after the death of Charles the first, and the Americans during the late revolution.

It is, however, established by the experience of all ages, that, in the two first, there is no security for the rights of the people; in the last, no dispatch.—"That the two first are too strong, encroach too much upon liberty, and incline too much to tyranny; the last too weak, delivers people too much to themselves, and tends to confusion and licentiousness."[20] 6.8.15

These were the rocks we had to avoid, when, in 1777, we agreed to a republican government.

"In political arithmetic, it is necessary to substitute a calculation of probabilities, to mathematical exactness. That force which continually impels us to our own private interests, like gravity, acts incessantly, unless it meets an obstacle to oppose it."[21] 6.8.16

"A perfect government (says Rollin) would be that which should unite in itself, all the advantages of the three former, and avoid the dangers and inconveniences they include";[22] and then it is called a republican or mixed government. Such, even in their present state, are the English and the Dutch.

But a difficulty remained, what proportion of ingredients should be taken out of each; or, in the words of Montesquieu, "to combine the several powers, to regulate, temper and set them in motion—to give as it were ballast to the one, in order to enable it to resist the other";[23] (the English and the Dutch have missed it in their compound, by adopting, the first, too great a proportion of the monarchical—the Dutch, too much of the aristocratical ingredient) and even then, all the difficulties would not be removed, as the fundamental principles they act upon are so different. 6.8.17

6.8.18 In a monarchy, the king* rules in duplicity and partiality, and makes himself *respectable* among the *nations* of the earth, by *luxury, extravagance*† and *dissipation;* when, on the contrary, in a republic there is no king except the LORD OF HOSTS, the pillars of whose government are righteousness** and truth; and to them and them only, ought all nations upon earth to look for respecticability. In considering the rules of propriety, the principal object with the one is, how to be generous; the other how to be just. And in respect to the public burthens, the former considers how much he can spend—the latter, how much they can save: That, how much the people can bear—this how little may do—The Congress at Philadelphia (a body of men, in the words of Mr. Pitt, "that for solidity of reasoning, force of sagacity, and wisdom of conclusion, no nation or body of men stand in preference to")[30] upon the greatest deliberation and circumspection, unanimously agreed to a republican form: wherein, they have united all the advantages of the three former, and, as much as possible, avoided the dangers and inconveniencies of each (the objection of Maryland was not to the form of government, but to the soil and jurisdiction of all the western lands—not foreseeing, as they now do or soon will, the dangerous tendency it would have to the liberty and property of the old states) not that I suppose it perfect: for I hold, that there never was nor ever will be a government perfect, so as not to be open to corruption (unless at Millenium) but I am persuaded, that every person who has considered the difference between the condition of the people in Europe, compared with those of the United States of America, will agree with Doctor Franklin; who says, "whoever has travelled through the various parts of Europe, and observed, how small is the proportion of people in affluence or easy circumstances there, compared to those in poverty and misery; the few haughty landlords, with the multitude of poor, abject, rack-rented, to the paying tennants and half paid, and half starved ragged laborers; and views here the happy mediocrity, that so generally prevails thro'out these states—where the cultivator works for himself, and supports his family with decent plenty, will see abundant rea-

*"Kings hate virtuous men who oppose their unjust designs, but caress the wicked who favor them." 2 Burlamaqui 67.[24] Montague 276.[25]

"In monarchies, the actions of men are judged not as *virtuous* but as shining—not as *just* but as great—not as *reasonable* but as extraordinary." 1 Montesquieu 36.[26]

"In monarchies, policy effects great things by as little virtue as possible, if there should chance to be some unlucky, honest man, Cardinal Richlieu, in his political testament, seems to hint, that a prince should take care not to employ him: so true it is that virtue is not the main-spring of this Government." 3 Montesquieu 28, 30.[27]

†"Luxury is absolutely necessary in monarchies; hence arises a very natural reflection—Republics end with luxury, monarchy with poverty." Ibid. 124.[28]

**"There is no great share of probity necessary to the support of monarchical or despotic government; but in a popular state one spring more is necessary, namely virtue: When virtue is banished, ambition invades the hearts of those that are disposed to receive it, and avarice possesses the whole community." 1 Montesquieu, 24, 25.[29]

son to bless Providence, for the evident and great difference in our favor, and be convinced, that no nation, known to us, enjoys a greater share of human felicity."[31]

6.8.19 The good opinion I have of the frame and composition as well of the Confederation as the several state Constitutions; and that they are, if administered upon republican principles, the greatest blessings we enjoy; and the danger I apprehend of the one proposed is, that it will become the greatest curse, and be the means of destroying ours; as the like measures ever have destroyed the liberties of every people that have attempted to do so; has led me into the following discussions; conceiving it not only the duty of a patriot to enquire, like Daniel, *Whose footsteps are these?* but to call out like Paul, *Stand fast in the liberty, be not entangled with the yoke of bondage*.[32] "What? in a quarrel (says Vattal) that is going to decide forever their most valuable interests, and their very safety, are the people to stand by as tranquil spectators? as a flock of sheep is to wait till it be determined, whether they are to be delivered to the butcher or restored to the shepherd's care."[33]

6.8.20 For my own part, I adopt the sentiments of Sidney: "While I live I shall endeavor to preserve my liberty, or at least not consent to the destroying of it: I hope I shall die in the same principle in which I lived, and will no longer live than they can preserve me."[34]

6.8.21 In my discussions on this subject, I do not mean to ascribe every bad consequence, that may appear to flow necessarily from certain measures, to the evil intentions of ALL those that advocate the measure, nor to every member of Congress; for I am well assured, that there have been at all times members in that hon. body, and even among the wealthy, that have disapproved of the measures and acted the worthy patriots, and others, that deserve no more blame, than those who in their innocence accompanied Absalom in his treasonable practices: it being even a hard fate that the burthen of the proof was turned upon them, without an evil intent—And as it will require to point out the reprehensible conduct of the public officers, which will sometimes also apply to their superiors, I shall endeavour to do it with as much delicacy as I am able, consistent with truth—and "truth (says Montague) will never offend the honest and well meaning, for the plain dealing remonstrances of a friend differ as widely from the rancor of an enemy, as the friendly probe of a physician from the dagger of an assassin"—[35] Yet, in sentiment with Hardwhic[h], "that there is a decency required in tracing the faults of past times; we may look for information and warning, and even reproof, but not invective."[36]

6.8.22 Nor shall I attempt to palm my own opinion upon the public (a mode too prevalent now a days) under a cloak that the example of other countries will not apply, because the rulers in America would not be so liable to abuse their power: what I shall advance, I intend to support by the best and most approved authorities, which I mean to follow rather as a compiler than an

author, and that too as much as possible in their own words; for in the words of Montague, "unhappily the resemblance between the manners of those ancient *republics* in the *most degenerate periods* is, in many respects, so striking, that unless the words in the original were produced as vouchers, any well meaning reader, unacquainted with those histories, would be apt to treat the description of those periods, which he may frequently meet with, as licentious and undistinguished satire upon the present time,"[37] therefore all the reader will have to do (tyrants do not read)[38] will be to examine the facts stated and the authorities referred to, and see *whether these things were so.* I hope I shall not be blamed on account of the repetitions, "for it can never be superfluous to repeat again and again those truths of which mankind have not yet profited."[39]

Sidney.

III

(POUGHKEEPSIE) COUNTRY JOURNAL
11 March 1788

"As tyranny that governs by the sword, has few friends but men of the sword, but legal tyranny (where the people are only called to confirm iniquity with their own voices) has on its side, the rich, the timid, the lazy, those that know the law and get by it, ambitious Churchmen, and all those whose livelihood depend upon the great pleasure of affairs." 3 Burg 5.[40]

6.8.23 After this introduction, I shall go on to the first part, and enquire whether the adoption of the proposed Constitution is either necessary or proper.

It is asserted that this dangerous step is become unavoidable in the present situation of things, for want of the necessary powers in Congress.—"The friends of our country (say the Convention) have long seen and desired, that the power of making war, peace and treaties—that of *levying money* and regulating *commerce,* and the correspondent *executive* and *judicial* authorities should be fully and effectually vested in the general government of the Union: but the impropriety of delegating such extensive trust to one body of men is evident. Hence results the necessity of a different organization."[41]

6.8.24 The defects and their consequences are more particularly enumerated in a certain celebrated oration, where the orator describes Congress, as a "nerveless council, united by imaginary ties, brooding over ideal decrees, which caprice or fancy is at pleasure to annul or execute—(then observes) I see trade languish, *public credit* expire, and that *glory,* which is not less necessary to the prosperity of a nation, than *reputation* is to individuals, a

victim of opprobrium and disgrace." Those in this State, he supposes "occasioned by the negligence of the people, who, after violent agitation, have sunk into such a state of torpor and indifference with respect to government, as to be careless into what hands they trust their dearest rights, as if experience, application, genius and education, are unnecessary to those, who are to frame laws for the government of the States."[42]

I shall consider these articles separately, and first the situation of *trade*, then that of *glory* and *credit* and lastly the *indifference* of the people.

6.8.25 It is astonishing to find how much the public have been imposed upon respecting trade: If the reader will take the trouble of turning up the Journals of Congress, of the 3d March and 23d October, 1786, he will find that Congress, if not already vested with full power to regulate trade, might long since have had such power, according to their wishes.[43] The history of which is, that the measures of Britain, soon after the peace, in respect to her commerce, alarmed the merchants, and made Congress apprehensive that their powers were not sufficient to command reciprocal advantages in trade, they therefore called upon the States, the 30th of April, 1784, to be invested with additional powers for the term of fifteen years: but, either from the novelty of the matter, or the resolution of Congress not being sufficiently explicit; Congress judged it expedient on the 3d of March, 1786, to explain the resolutions made on that subject, and to urge a compliance. On the 23d of October following, the committee to whom this business was referred, in their report observe, "That from a review of the acts, passed by the several States, in consequence of the said recommendation, it appears that, though in order to make the duration of the powers equal, it will be necessary, for the States of Connecticut, Pennsylvania, Maryland and South Carolina, so far to amend their acts, as to permit the authorities therein granted, to commence their operation at the time Congress shall begin to exercise them—yet, the powers granted by them and by the States of Massachusetts, Rhode Island, New York, New Jersey, Delaware, Virginia and Georgia, are otherwise in such compliance with the recommendations, that if the States of New Hampshire and North Carolina had conformed their acts to the said resolution, agreeable to the urgent recommendation of Congress, of the 3d of March last, the powers therein required might immediately begin to operate; the committee however are of opinion, that the acts of the States of New-Hampshire and North-Carolina, manifest too liberal a disposition, to grant the necessary powers upon the subject, that their not having complied with the recommendation of March last, must be attributed to other reasons than a disinclination in them to adopt measures similar to their sister States."

6.8.26 As trade seems to have been reserved, as a pretence to get Congress invested, first with an independent revenue, and since with legislative and judicial powers—I beg leave here to call the readers particular attention: whether (if Congress are not already vested with this power) it stands on

such a footing, as to dispair of the two legislatures agreeing to it: and whether this ought to induce us to discard a good government, and adopt another so full of the seeds of tyranny.

6.8.27 As to the other part respecting *glory & public credit,* I will readily admit that *reputation;* that is, to be considered a man of *truth, honesty* and *œconomy,* is necessary to an *individual,* and to *virtue, righteousness* and *truth;* to the *prosperity, exaltation* and *glory* of a republic.

6.8.28 But if by this *glory* and *public credit,* is meant, that we are like to loose the benefit of obtaining *new loans of money,* abroad?—I differ so widely, that I am confident, it would have been a happy circumstance, to the Federal Union; if that sort of *glory* and *credit,* had expired the 30th November, 1782, when the provisional treaty was signed: because, then less money would have been taken up in Europe, and less money squandered in America. Besides, I am apprehensive, unless the power of taking up loans in Europe is restricted, that not a dollar of the principal (if the interest) of the foreign debt, will ever be paid; for if Congress, or as it is called, *the nerveless council etc.* with no other resources, but those obtained by loans abroad, or by requisitions at home, have been enabled with their servants to manage matters, as to be now in the exercise of *levying armies* in time of profound peace, establishing *governments,* granting *pensions* and *sinecures,* and imposing *oaths of secrecy* on all their officers—who, among other things, swear, "that I will not disclose or reveal any thing that shall come to my knowledge in the execution of the said office, or from the confidence I may thereby acquire which in my judgement or by the injunction of my superiors ought to be kept a secret."[44] I say, if those abuses have been committed under the present powers and resources, would not greater powers and more resources, have enabled them to have committed still greater abuses—to have involved the country in still greater confusion? and rendered it a still greater victim of opprobrium and disgrace? Indeed it may be a very serious question, what would have been our situation, if Congress in 1781, had been invested with the power of levying the impost of five per cent etc. and, that it was not intended to stop here, will appear from the letter of the Financier, of the 27th of September, 1782.[45]

6.8.29 "The requisition (he says) of a five per cent impost made on the 3d February, 1781, had not yet been complied with by the State of Rhode Island; but as there is reason to believe that their compliance is not far off, this revenue may be considered as being *already granted.* It will however be very inadequate for the purposes intended.* If goods be imported and the

*About the same time, he was advising Doctor Franklin, that the sum of three million livres understood to be granted as a donation, should be acknowledged as a debt, and included in the obligation given to the court of France, for money borrowed, and assigned as a reason that this country ought not to lay under any obligation to any foreign power for money given.[46]

prizes introduced to the amount of 12,000,000 dollars annually, the five per cent would be 600,000 dollars, from which, at least one sixth part must be deducted, as well for the cost of collection, as for the various defalcations, which will necessarily happen and which it is unnecessary to insinuate. It is not safe therefore to estimate this revenue at more than half a million; for though it may produce more, yet probably it may not so much.

"It was in consequence of this, that on the 27th of February last, I took the liberty to submit the propriety of asking the States for a land tax of one dollar for every hundred acres of land, and a poll-tax of one dollar on all free men and all male slaves between sixteen and sixty (excepting such as are in the federal army, and such as are by wounds or otherwise rendered unfit for service) and an excise of one eighth of a dollar per gallon upon all distilled spiritous liquors."

In regard to the last, to wit, the *torper* and *indifference* of the people with respect to government. 6.8.30

This remark has no reference to the confederation, but is entirely confined to the people of the States; if not those of the State of New York only, and is not even mentioned as a fault in the constitution: for the gentleman observes, "*all the ends of government are answered so far as they depend upon the constitution.*" But his complaint is of the indifference of the people, "*that not one in ten tenders his vote etc.*"[47]

I will admit, that when it is left to the people to chose whom they please, and especially when there is no great opposition, they are too indifferent, and too few go to the poll to tender their votes; while at other times, when there is opposition, measures are taken, which in strictness are not justifiable—and I will also admit there are some who are led by whim and caprice to prefer one candidate before another. "Distinctions raised by vanity among families (says Montesquieu) under pretence that they are more *noble* or *antient;* pretentions of this nature ought to be ranked among the weaknesses of private persons."[48] 6.8.31

It is notwithstanding in civil, as it is in religious transactions, people generally choose men (like those shepherds of old, who fed their flock instead of themselves) who they suppose will serve them best, so did Paul, when he sent Timothy to the Philippians; for, after reprobating their strife and vain glory, he tells them "you are not to look every one on his *own things,* but every man also on the things of others. I therefore send you Timothy, for I have no one like minded, who will naturally care for your state, for all seek their own."[49] 6.8.32

Bacon has the same sentiment clothed in another dress, and represents it as being wise in the *general* and being wise for ones self, the one (he says) seems to move as from the *centre* to the *circumference* and the other from the *circumference* to the *centre*.[50]

Sidney.

IV
13 March 1788

"The liberal and humane philosopher, the honest benevolence of whose heart, is not corrupted by the crooked politics of princes and their ministers, will feel it overflow with compassion, on surveying the miserable lot of mankind, who are the restless victims of the ambition and rapacity of a few, by whose iniquitous perversion, the beneficent intention of providence to promote virtue and happiness, is in many instances rendered subservient to the encouragement of vice, and the production of misery.—But, what indignation must arise in his bosom, when he hears that these oppressors consider it as a favor, that they allow their fellow creatures to be plundered by none except themselves, and call on them to be grateful for that protection; in return for which, above half of their substance is extorted from them." Preface to Abbe D'Mabley.[51]

6.8.33 Having pointed out the danger, and shewn, that it is neither necessary or proper to adopt the new Constitution, I shall now proceed to enquire, by way of contrast, whether Americans have any good reason, to put more confidence in their rulers, than Europeans. I do not mean to insinuate, that *every* iniquity which occasioned the ruin of other states is practiced among us; or, that Americans would be worse than others. "Men in general, have ever been agitated by the same kind of restless spirit and tumultuous passions. They have been guilty of the same vices and follies, and liable to the same calamities, from their first original to this day";[52] and as Montague observes, "as the same causes will, by stated laws of sublunary affairs, sooner or later, invariably produce the same effects; so whenever we see the same maxims of government prevail, the same measures pursued, and the same coincidences of circumstances happen in our country, which brought on, and attended the subversion of those states, we may plainly read our own fate in their catastrophe; unless we apply speedy and effectual remedies before our case is past recovery—it is the best way to learn wisdom, in time, from the fate of others; and if examples will not instruct and make us wiser, I confess myself utterly at a loss to know what will."[53]

6.8.34 But, although *all* the same causes which contributed to the ruin of other states, do not operate among us, still such do, as perhaps never entered the list of contrivances before, and probably as destructive, as that of the priests of Bell and the Dragon, the South sea and Mississippi Bubbles (it is true the South sea Bubble was voted in the house of Lords—"a villanous artifice; and that the directors, so far as their estates would [ ], should make good the losses the company had sustained by their fraudulent management,")[54] for, although their measures were founded in fraud and inquity, they had not in view to overset the government.

I suppose, therefore, that it will cast light upon the subject, to look back into the history of former times; where it will be found, that ever since the days of Pharaoh, it has been a principle with tyrants and usurpers, when they conceive themselves in danger of losing, or mean to usurp a power; to distress, distract, and impoverish the people: for (says Montesquieu) "a man poor and impoverished, is in the condition of a man weakened by sickness, who is without passions, because he is without strength."[55] 6.8.35

In the prosecution whereof, they generally have the rich and overbearing usurpers (perhaps not always with that design) to play into their hands: for in times of distress and calamity, although their objects, like that of the heads of the foxes of Sampson, are in different directions; the concentrating of their tails admit of a motion to obtain the object each had in view; and to such a length was it carried among the children of Israel, and so at Athens, that they were permitted, after all their oppression and extortion, when they had got the spoil of the poor into their possession, to sell the insolvent! Nehemiah redressed the one, Solon the other.[56] 6.8.36

This, however, effects liberty and property only; but, when a crown is the object, life is equally precarious—Cesar resolving "to rule and lord it over all the rest, at any rate, had the verses of Euripides, continually in his mouth, which insinuate, that if the greatest crimes were to be committed, it was when a crown was the motive."[57] This is also verified in the histories of Abimelech, Jerubaal, Jehu, Ahab, Atheliah, Artaxerxes and Alexander. 6.8.37

It is remarked, that several of the princes of Orange, as well as the earl of Leicester, and the duke of Anjou, have at certain times suffered the enemy to lay waste* the country in order to induce a belief in the inhabitants, that it would be best to invest them with absolute power: and almost upon every reverse of fortune they complained, that their powers [ ] sufficient to protect the people. 6.8.38

Against the operation of these dreadful practices the parliamentary power in England, has ever been proof, which has been the occasion of one continued struggle. The kings, on the one hand, from time to time, have bent their whole strength, either in force or fraud, to enervate this parliamentary check; the parliament, on the other; have been, from time to time exceedingly tenacious to guard against these inlets of violence and corruption; and, have embraced every opportunity to recover, or re-establish the rights of the people. The parliament in the reign of Edward the third supposed, that 6.8.39

*Such was the case in the dispute between the government and the assembly of Pennsylvania in the beginning of the late French war: whether Penn's estate, should be taxed in common with others, was the question? The assembly passed a tax bill, to raise money for an army, to defend the frontiers: the governor refused to give his assent, unless the estate of Mr. Penn was exempted from paying taxes (while the frontiers were laid waste by the Indians) until the earl of London his superior in 1756 ordered him to pass the bill, else it was apprehended that the legislature would have been obliged (like the mother before Solomon) to give up their right, to save the country from destruction.

the statute then made, would, have effectually prevented the evils they apprehended; but they found their mistake: he pursued the scene of fraud and corruption, the remainder of his reign whilst, he confirmed MAGNA CHARTA not less than ten times, nor was there ever a law made, or an oath framed, sufficient to prevent it.

6.8.40 In the reign of Charles the second the people were relieved, and a stop was put to an evil that had been of an old standing, and exceeding dangerous: "The king might at his pleasure, encrease the number of members in both houses of parliament, by creating more barons, and bestowing the privilege upon any other towns to send members."[58]

This relief however was not extended to America, for in the reign of James the second, this prerogative was exercised in the colonies; and the privilege annexed not only to towns, and boroughs, but to patents for large tracts of land, some erected into manors, the extent of whose mischief has already been felt on several occasions and their bad tendency will probably be experienced with additional force at present.

Sidney.

1. This essay, which first appeared in a now lost issue of the *Albany Gazette*, is an extended version of an essay by Sidney published in the *New York Journal* (Extraordinary) on 18 October 1787.

2. Edward Wortley Montagu, *Reflections on the Rise and Fall of the Ancient Republics Adapted to the Present State of Great Britain* IX, "Of Revolutions in Mixed Governments."

Instead of this Montagu quotation, Sidney began the earlier *New York Journal* version with a characteristic quotation from James Burgh, *Political Disquisitions* I, bk. 3, ch. 5. "To take the character of man, from history, he is a creature capable of any thing, the most infernally cruel and horrid when actuated by interest, or what is more powerful than interest, passion, and not in immediate fear of punishment from his fellow creatures; for, damnation out of sight, who would trust such a mischievous monkey with superfluous power?

"*Simia quam similis turpissimi bestia nobis?* Ovid.

"The love of power is natural; it is insatiable; it is whetted, not cloyed, by possession. All men possessed of power may be expected to endeavour to prolong it beyond the due time, and to increase it beyond the due bounds; neither of which can be attempted without danger to liberty. Yet we find that men in all ages, and nations have shewn an astonishing credulity, in their faithless fellow-creatures; they have hoped against hope; they have believed against the sight of their own eyes."

3. *Journals of the Continental Congress, 1774–1789* XIX, 110–13; XXIV, 256–62.

4. Francis Bacon, *Essays or Counsels, Civil and Moral* XXIV, "Of Innovations."

5. Montagu, *Reflections* ch. 9.

6. Beccaria, *Essay on Crimes and Punishments*, "Of Family Spirit."

7. *The Spirit of Laws* VIII, ch. 16.

8. Emmanuel Bowen, *A Complete System of Geography* (London 1747) I, 547.

9. William Guthrie, *A Geographical, Historical, and Commercial Grammar, Exhibiting the Present State of the World* pt. 2, "Europe; Holland."

10. Farrand II, 666. On the confusion of names see Martin 2.4.43 n. 12.

11. See *The Resolutions of Congress of the 18th of April 1783: Recommending the States to Invest Congress with the Power to Levy an Impost, for the Use of the States; and the Laws of the Respective States, Passed in Pursuance of the Said Recommendation* (New York 1787) (Evans, *Early American Imprints* no. 20783).

12. See references in Federal Republican 3.6.5 n. 4; on the framers, see Centinel I, 2.7.5 n. 2.
13. Oliver Goldsmith, *The History of England* ch. 38, "William III."
14. The source of this quotation has not been found.
15. Joseph Addison, Richard Steele, et al., *The Spectator* no. 507, 11 October 1712; no. 287, 29 January 1712.
16. This reference has not been located.
17. John DeWitt et al., *The True Interest and Political Maxims of the Republick of Holland and West-Friedland* (London 1702) 7–8, 485–86.
18. The first quotation is from Sallust's *Fragments* (See "Fragments of the History of Sallust," *Sallust, Florus, and Velleius Paterculus* [trans. John Selby Watson, London 1852] 216–49). I have not found the second.
19. *Letters of Brutus* [Marcus Junius Brutus] I, 17.
20. The source of this quotation has not been found.
21. Beccaria, *Essay on Crimes and Punishments*, "Proportion between Crimes and Punishments."
22. Charles Rollin, *The Ancient History of the Egyptians, Carthaginians, Assyrians, Babylonians, Medes and Persians, Grecians and Macedonians* X, ch. 1.
23. *The Spirit of Laws* V, ch. 14.
24. Jean Jacques Burlamaqui, *The Principles of Natural and Political Law* II, ch. 2, sec. 5 (quoting Herodotus).
25. Montagu, *Reflections* V.
26. *The Spirit of Laws* IV, ch. 2. "Shining" is incorrectly printed here as "thinking."
27. Ibid. III, ch. 5. [Sidney omitted a passage between "as possible" and "if there."—M.D.]
28. Ibid. VII, ch. 4. [Sidney omitted a passage between "monarchies" and "hence."—M.D.]
29. Ibid. III, ch. 3. [Sidney omitted passages between "government" and "but in" and between "namely virtue" and "When virtue."—M.D.]
30. The quotation is from a speech in the House of Lords on a motion to withdraw troops from Boston, 20 January 1775, reprinted in "Old South Leaflet, No. 199; Lord Chatham's Speeches on the American Revolution," *Old South Leaflets* VIII (Boston).
31. "The Internal state of America," 1799, *The Writings of Benjamin Franklin*, ed. Albert H. Smyth (1907) X, 120.
32. Galatians 5:1.
33. Emmerich Vattel, *The Law of Nations or the Principles of Natural Law* I, ch. 5, sec. 66.
34. See George Wilson Meadley, *Memoirs of Algernon Sidney* (London 1813) 76–83.
35. Montagu, *Reflections*, "Introduction."
36. The source of this quotation has not been found.
37. Montagu, *Reflections*, "Preface."
38. Beccaria, *Essay on Crimes and Punishments*, "Of the Interpretation of Laws."
39. The source of this quotation has not been found.
40. James Burgh, *Political Disquisitions* III, bk. 1, ch. 1, "Importance of Manners in a State."
41. Farrand II, 666.
42. The source of this quotation has not been found.
43. *Journals of the Continental Congress, 1774–1789*, XXX, 93–94 (3 March 1786); XXXI, 907–9 (23 October 1786). See Sidney's earlier discussion of the power of Congress to regulate trade in the *New York Journal*, 13 September 1787.
44. See *Journals of the Continental Congress* VII, 193–94, 242.
45. *The Diplomatic Correspondence of the American Revolution*, ed. Jared Sparks XII, 226.
46. Ibid. 201.
47. The source of this quotation has not been found.

48. *The Spirit of Laws* V, ch. 8.
49. Philippians 2:19–21.
50. Francis Bacon, *Essays or Counsels, Civil and Moral* XXIII, "Of Wisdom for a Man's Self."
51. *Observations on the Government and Laws of the United States of America,* Translated from the French of the Abbé de Mably, with a preface by the translator (Amsterdam 1784), "The translator's preface."
52. See Montesquieu, *Considerations on the Greatness of the Romans and Their Decline,* X.
53. Montagu, *Reflections,* "Introduction."
54. See *The History and Proceedings of the House of Lords* (London 1742) III, 132–33; Anno 7 Georgii II. Cap I (p. 299) and Anno 7 Georgii I. Cap XXVIII (p. 354).
55. *The Spirit of Laws* XIX, ch. 27.
56. These references have not been located.
57. The source of this quotation has not been found.
58. The source of this quotation has not been found.

Address by Sydney

NEW YORK JOURNAL
13 and 14 June 1788

This address, which appeared in the *New York Journal and Daily Patriotic Register* on 13 and 14 June 1788, compares, in an extremely loose way, the proposed Constitution with the constitution of New York. Describing a long-standing plot to subvert the Confederation, "Sydney" contends that the new Constitution "does not originate from a pure source" (6.9.2). He attempts to justify the absence of a bill of rights from the New York constitution, frequently pointed to by Federalists as precedent (6.9.4). His general argument is that the states are considered mere dependencies under the new Constitution (6.9.5). In the course of the discussion he takes up the subjects of regulation of Indian affairs (6.9.9), the wide powers of the proposed legislature (6.9.12–13), the regulation of elections (6.9.17–23), the trial by jury (6.9.23), the executive powers (6.9.24–27), the judiciary (6.9.28), religious guarantees (6.9.29), and naturalization (6.9.30). He seeks to show that some provisions of the New York constitution are rendered nugatory, some are enervated, and some are left to depend on the discretion of the general government. The distinctions are not clearly drawn, and the argument is frequently lost in obscurity.

According to Paul L. Ford, who reprints this essay, Sydney was "a favorite pseudonym of Robert Yates and was so well known as his pen name by his contemporaries that it was hardly intended as a mask." He had, Ford remarks, already contributed the very able series of letters under "Brutus" (see above, 2.9), written to influence the people; Sydney, written after the elections, was meant to influence the convention. "A year later, when Yates was nominated for governor by the Federalists, quotation from these articles was one of the favorite modes of attacking him used by the anti-federalists."[1] If the author is indeed Robert Yates, it was a far poorer or hastier Yates than the author of the Brutus series. This lends strength to Linda Grant De Pauw's contention, which seems sound, that it is fairly clear that *Abraham* Yates was the author.[2]

1. Ford, *Essays* 295. I have not found any such criticisms.
2. De Pauw, *The Eleventh Pillar* 131 n. 45.

To the Citizens of the State of New York.

6.9.1 Although a variety of objections to the proposed new constitution for the government of the United States have been laid before the public by men of the best abilities, I am led to believe that representing it in a point of view which has escaped their observation may be of use, that is, by comparing it with the constitution of the State of New York.

The following contrast is therefore submitted to the public, to show in what instances the powers of the state government will be either totally or partially absorbed, and enable us to determine whether the remaining powers will, from those kind of pillars, be capable of supporting the mutilated fabric of a government, which even the advocates for the new constitution admit excels "the boasted models of Greece or Rome, and those of all other nations, in having precisely marked out the power of the government and the rights of the people."[1]

6.9.2 It may be proper to premise that the pressure of necessity and distress (and not corruption) had a principal tendency to induce the adoption of the state constitutions and the existing confederation, that power was even then vested in the rulers with the greatest caution, and that, as from every circumstance we have reason to infer that the new constitution does not originate from a pure source, we ought deliberately to trace the extent and tendency of the trust we are about to repose, under the conviction that a re-assumption of that trust will at least be difficult, if not impracticable. If we take a retrospective view of the measures of Congress who have their secret journals, the conduct of their officers, at home and abroad, acting under an oath of secrecy, as well as of individuals who were intimately connected with them, from the year 1780 to the last convention, who also acted under an injunction of secrecy (and whose journals have not been published even to this day, but will no doubt continue buried in the dark womb of suspicious secrecy), we can scarcely entertain a doubt but that a plan has long since been framed to subvert the confederation; that that plan has been matured with the most persevering industry and unremitted attention, and that the objects expressed in the preamble to the constitution, that is "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity," were merely the ostensible, and not the real reasons of its framers. That necessity and danger have been the moving causes to the establishment of the confederation will appear from the words of Congress recommending its formation to the several legislatures which are "under a conviction of the absolute necessity of uniting all our councils and all our strength to maintain our common liberties. Let them be examined with liberality becoming brethren and fellow-citizens, surrounded by the same iminent dangers, contending for the same illustrious prize, and deeply interested in being forever bound and connected together by the ties the most intimate and indissoluble."[2]

That these principles equally applied to the formation of our state constitution no person can seriously doubt who recollects the rapid progress of the British troops in this state and in Jersey in the year 1776, and the despondence which prevailed among the people on that occasion. The convention of this state, about that period, in explaining to the people the justice of the American cause, addressed them as follows: "You and all men were created free and authorised to establish civil government for the preservation of our rights against civil oppression, and the security of that freedom which God had given you, against the rapacious hand of tyranny and lawless power. If then God hath given us freedom, are we not responsible to him for that as well as other talents? If it is our birth-right, let us not sell it for a mess of pottage, nor suffer it to be torn from us by the hand of violence."[3] 6.9.3

The omission of a bill of rights in this State has given occasion to an inference that the omission was equally warrantable in the constitution for the United States. On this it may be necessary to observe that while the constitution of this State was in agitation, there appeared doubts upon the propriety of the measure, from the peculiar situation in which the country then was; our connection with Britain dissolved, and her government formally renounced—no substitute devised—all the powers of government avowedly temporary, and solely calculated for defence; it was urged by those in favor of a bill of rights that the power of the rulers ought to be circumscribed, the better to protect the people at large from the oppression and usurpation of their rulers. The English petition of rights, in the reign of Charles the First, and the bill of rights in the reign of king William, were mentioned as examples to support their opinions. Those in opposition admitted that in established governments, which had an implied constitution, a declaration of rights might be necessary to prevent the usurpation of ambitious men, but that was not our situation, for upon the declaration of independence it had become necessary that the exercise of every kind of authority "under the former government should be totally suppressed, and all the power of government exerted under the authority of the people of the colonies"; that we could not suppose that we had an existing constitution or form of government, express or implied, and therefore our situation resembled a people in a state of nature, who are preparing "to institute a government, laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness," and as such, the constitution to be formed would operate as a bill of rights.[4] 6.9.4

These and the like considerations operated to induce the convention of New York to dismiss the idea of a bill of rights, and the more especially as the legislative state officers being elected by the people at short periods, and thereby rendered from time to time liable to be displaced in case of malconduct. But these reasons will not apply to the general government, be- 6.9.5

cause it will appear in the sequel that the state governments are considered in it as mere dependencies, existing solely by its toleration, and possessing powers of which they may be deprived whenever the general government is disposed so to do. If then the powers of the state governments are to be totally absorbed, in which all agree, and only differ as to the mode, whether it will be effected by a rapid progression, or by as certain, but slower, operations: what is to limit the oppression of the general government? Where are the rights, which are declared to be incapable of violation? And what security have people against the wanton oppression of unprincipled governors? No constitutional redress is pointed out, and no express declaration is contained in it, to limit the boundaries of their rulers; beside which the mode and period of their being elected tends to take away their responsibility to the people over whom they may, by the power of the purse and the sword, domineer at discretion; nor is there a power on earth to tell them, What does thou? or, Why dost thou so?

6.9.6 I shall now proceed to compare the constitution of the state of New York with the proposed federal government, distinguishing the paragraphs in the former, which are rendered nugatory by the latter; those which are in a great measure enervated, and such as are in the discretion of the general government to permit or not.[5]

The 1st and 37th paragraphs of the constitution of the state of New York.

The 1st "Ordains, determines, and declares that no authority shall on any pretence whatever be exercised over the people or members of this State, but such as shall be derived from and granted by them."

The 37th, "That no purchases or contracts for the sale of lands [. . .] with or of the Indians within the limits of this state, shall be binding on the Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this state."

6.9.7 I beg here to observe that the whole history of this spurious constitution for the government of the United States, from its origin to the present day, and the measures taken by Congress respecting the Indian affairs in this state, are a series of violations of these paragraphs, and of the 13th article of the confederation.[6]

It was a violation of the state constitution for the senate and assembly, on the 19th of February, 1787, to instruct their members to move in Congress for an act recommending a convention; and it was also a violation of the 13th article of the confederation for Congress, on the 21st day of February, to recommend a convention to the several legislatures. It was a further violation of the constitution of this state, by the senate and assembly, on the 27th day of March, to join and to appoint delegates to meet in convention, and it being done in that hasty, if not surreptitious manner, by joint resolutions, when acts of the least consequence, even for the yoking of hogs, require to be passed under the formalities of a law, makes it more glaringly so.

It was an outrageous violation in the convention on the 17th of September, 1787, to attempt a consolidation of the union, and utterly destroy the confederation and the sovereignty of particular states, when their powers were restricted "to the sole and express purpose of revising and amending the confederation." 6.9.8

It was again an infringement of the 13th article in the confederation, for Congress, on the 28th of September, not to arrest and prevent its being transmitted to the several legislatures; nor was the legislature of this state less culpable, in the beginning of February, 1788, who, in the course of three hours, took up and concluded the measure of calling a convention without apprising their constituents of the danger.

It is notorious that the right of regulating Indian affairs, especially with the five nations, has been in the colony of New York since the year 1664, and before that period, from the year 1614, whilst it was called New Nederland under the Dutch. That by the confederation, although Congress are invested with the power of regulating the trade and managing all affairs with the Indians, that they are restricted to those Indians "not members of any of the states, and a special proviso that the legislative rights of any state within its own limits be not infringed or violated."[7] It therefore was a violation of the confederation and of the rights of the state for the congressional commissioners of Indian affairs to treat, at fort Stanwix, with and thereat to make a purchase from the five nations without the authority or consent of the legislature of this state. It was an infraction of the rights of the citizens of this state, and an insult on their government, for those commissioners to wrest private property from individuals, imprison their persons, set at defiance the civil authority of the county of Montgomery, and violently to resist the execution of legal process. Nor was the ordinance of the 7th of August, 1786, for the regulation of Indian affairs, less so, namely, that "the Indian department be divided into two districts, viz.: the southern, which shall comprehend within its limits all the nations in the territory of the United States, who reside to the southward of the Ohio; and the northern, which shall comprehend all the nations within the said territory, and westward, not of lake Ontario, but of Hudson's river; that a superintendent for the northern districts shall have authority to appoint two deputies to reside in such places as shall best facilitate the regulation of the Indian trade; that no person, citizen or other, under the penalty of five hundred dollars, shall reside among or trade with any Indian or Indian nations within the territory of the United States, without a licence for that purpose first obtained from the superintendent of the district, or of one of the deputies, who is hereby directed to give such licence to every person who shall produce from the supreme executive of any state a certificate under the seal of the state, that he is of good character and suitably qualified and provided for that employment, for which licence he shall pay for one year the sum of fifty dollars to 6.9.9

the said superintendent for the use of the United States."[8] If this was the conduct of Congress and their officers, when possessed of powers which were declared by them to be insufficient for the purposes of government, what have we reasonably to expect will be their conduct when possessed of the powers "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," when they are armed with legislative, executive and judicial powers, and their laws the supreme laws of the land—and when the states are prohibited, without the consent of Congress, to lay any "imposts or duties on imports," and if they do they shall be for the use of the treasury of the United States—and all such laws subject to the revision and controul of Congress.

6.9.10 It is therefore evident that this state, by adopting the new government, will enervate their legislative rights, and totally surrender into the hands of Congress the management and regulation of the Indian trade to an improper government, and the traders to be fleeced by iniquitous impositions, operating at one and the same time as a monopoly and a poll-tax. The deputy by the above ordinance, has a right to exact yearly fifty dollars from every trader, which Congress may increase to any amount, and give it all the operation of a monopoly; fifty dollars on a cargo of 10,000 dollars' value will be inconsiderable, on a cargo of 1000 dollars burthensome, but on a cargo of 100 dollars will be intolerable, and amount to a total prohibition, as to small adventurers.

II, III, IX, XII, and XXXI.

6.9.11 The second paragraph provides "that the supreme legislative power within this state shall be vested in two separate and distinct bodies of men, the one to be called the assembly, and the other to be called the senate of the state of New York, who together shall form the legislature."

The ninth provides "that the assembly shall be the judge of their own members, and enjoy the same privileges, and proceed in doing business in like manner as the assembly of the colony of New York of right formerly did."

The twelfth paragraph provides "that the senate shall, in like manner, be judges of their own members," etc.

The 31st describes even the stile of laws—that the stile of all laws shall be as follows: "Be it enacted by the people of the state of New York represented in senate and assembly," and that all writs and proceedings shall run in the name of the people of the state of New York, and tested in the name of the chancellor or the chief judge from whence they shall issue.

The third provides against laws that may be hastily and inadvertently passed, inconsistent with the spirit of the constitution and the public good, and that "the governor, the chancellor and judges of the supreme court, shall revise all bills about to be passed into laws, by the legislature."

The powers vested in the legislature of this state by these paragraphs will be weakened, for the proposed new government declares that "all legislative powers therein granted shall be vested in a congress of the United States, which shall consist of a senate and a house of representatives," and it further prescribes, that "this constitution and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding; and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution." 6.9.12

Those who are full of faith, suppose that the words in pursuance thereof are restrictive, but if they reflect a moment and take into consideration the comprehensive expressions of the instrument, they will find that their restrictive construction is unavailing, and this is evinced by 1st art., 8 sect., where this government has a power "to lay and collect all taxes, duties, imposts and excises, to pay the debts, and provide for the common defence and general welfare of the United States," and also "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this constitution in the government of the United States, or in any department or office thereof." 6.9.13

Art 1st, sect. 7, provides a qualified negative, that is, that "every bill which shall be passed [by] the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States."

To conclude my observations on this head, it appears to me as impossible that these powers in the state constitution and those in the general government can exist and operate together, as it would be for a man to serve two masters whose interests clash, and secure the approbation of both. Can there at the same time and place be and operate two supreme legislatures, executives, and judicials? Will a "guarantee of a republican form of government to every state in the union" be of any avail, or secure the establishment and retention of state rights? 6.9.14

If this guarantee had remained, as it was first reported by the committee of the whole house, to wit, . . . "that a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States," it would have been substantial; but the changing the word *constitution* into the word *form* bears no favorable appearance.[9] 6.9.15

IV, V, XII, XVI.

The fourth provides, "that the assembly of the state of New York shall consist of at least seventy members, to be annually chosen in the several 6.9.16

counties in certain proportions." The 5th, 12th and 16th, declare that a census shall be taken every seven years, to regulate the augmentation of the number seventy, so as not to exceed three hundred. Here seventy members are divided among the several counties, and consequently into at least as many poles and sets of members to be annually chosen. If this is contrasted with the constitution for the federal government—the constitutional assembly or house of representatives will be found to consist of sixty-five members divided among thirteen states, to be chosen every second year. Six for the state of New York; not distributed among the counties, but by all the counties. And, although "the times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof," yet, as it provides that "Congress may at any time by law, make or alter those regulations, except as to places of chusing senators"—the power in the state government to prescribe rules in those cases will be superseded by the executive of the general government, perhaps to the great inconvenience of the people.

FROM THE VITH TO THE XIITH.

6.9.17 The sixth paragraph recites that "an opinion hath long prevailed among divers of the good people of this state that the voting at the election by ballot would tend more to preserve the liberty and equal freedom of the people than voting viva voce; to the end, therefore, that a fair experiment be made which of these two methods of voting is to be preferred, it declares that after the war elections shall be by ballot.

The seventh and eighth regulate the freeholds, and what property shall entitle a man to vote; the ninth, the mode of conducting business in the assembly, and their privileges; the tenth, eleventh, and twelfth, the number of the senate, and how and by whom they shall be elected.

As these clauses regulate the mode of elections and qualifications of the voters of senate and assembly, a relation of what gave rise to the provisions for voting by ballot and that of the value of the freehold, will help to unravel what otherwise may appear mysterious.

6.9.18 In respect to the first it may be necessary to observe that under the colonial government there existed violent parties, not known by the name of whig or tory—republicans and aristocrats. Those who were in the employments of government, or the *ins*, were for extending the prerogative of the crown, while the *outs* were checks to it. Many of the leaders on both sides were under strong expectations that sooner or later that branch of colonial government called the king's council would be erected into a hereditary house of lords. The *ins* being nearest to the disposition of the offices of honor and profit, and in the way of obtaining patents for vacant lands, and being from time to time joined by other crown officers and dependents, who flocked to and settled in this colony since the year 1763, had

the means of making use of undue influence to retain their situations, which made the *outs* at last dispair of ever having a turn, unless the elections were by ballot. This opinion was propagated in every part of the colony before and at the time of the revolution, and so strongly did it operate upon the committee that were ordered to consider of and report the constitution, that at one time they had the whole system interwoven in the draft; but either because it would have made it too lengthy, or that one of the parties were then reduced, and not likely to rise again into importance, about the time the draft was reported, it was struck out and was left by the constitution to the legislature to decide, as experience on the exercise of both principles should suggest.

Sydney.

To the Citizens of the State of New York.

(Concluded from yesterday's paper.)

As to the value of the freeholds, there has been great diversity of opinions, for notwithstanding all agreed that the rights and liberties of a country were ever in danger from the rich and poor, and their safety in the middle sort or yeomanry of the country, still the difficulty occurred in establishing the mean. 6.9.19

While the convention, in 1776, was setting at Harlem, the outlines of a constitution were handed about, to try, it was supposed, the temper of the members, in which it was proposed to have a governor, lieutenant governor, senate, and assembly; the qualification of the governor, lieutenant governor, and senate, to be that each should possess real estate to the value of 10,000 pounds, and to be elected by freeholders possessing freeholds to the value of 1,000 pounds. Although this was not attended with bad effects, yet the qualifications of the electors gave rise to various arguments, and, among others, that as taxation and representation ought to go together, so the right of electing shall be in proportion to the value of each man's estate. To exemplify this, a man of £100 estate had one vote; a man of £1000 should have ten, and a man of ten thousand pounds a hundred, and so on in the same ratio. Others on the contrary supposed that there ought to be no other criterion than the age of twenty-one, a citizen born and resident in this country; out of the two extremes was produced the present system of election and qualification, both admitted to be as secure and consistent rights as any that have been contrived. 6.9.20

It is apprehended, from the duplicity in the wording of 1st art., 4th sec., that seemingly to leave in the power of the respective legislatures to regulate the elections, and still, that Congress may at any time by law make or alter 6.9.21

such regulations; and the undesigned wording of the sixth article, that the constitution and laws of the United States which shall be made in pursuance thereof shall be the law of the land, anything in the constitution or laws of any State to the contrary notwithstanding, will render the whole system ineffectual, if not nugatory, and a new system as destructive to the liberties of the citizens as that of the ratio of voices to the ratio of property introduced. Besides being liable to have the whole State erected into one district, and consequently may give rise to the inconveniences I mentioned before.

VII, SEC. 6; VIII, SEC. 6; IX, SEC. 6; X, SECTION 6; XI, SEC. 6; XII, SEC. 2, 6; XVI, SEC. 6; XIII, XXXV, XLI.

6.9.22 By the 13th paragraph "no member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of the State by this constitution, unless by the law of the land, or judgment of its peers."

The 35th adopts, under certain exceptions and modifications, the common law of England, the statute law of England and Great Britain, and the acts of the legislature of the colony, which together formed the law on the 19th of April, 1775.

The 41st provides "that the trial by jury remain inviolate forever; that no acts of attainder shall be passed by the legislature of this State for crimes other than those committed before the termination of the present war. And that the legislature shall at no time hereafter institute any new courts but such as shall proceed according to the course of the common law.

6.9.23 There can be no doubt that if the new government be adopted in all its latitude, every one of these paragraphs will become a dead letter: nor will it solve any difficulties, if the United States guarantee "to every state in the union a republican form of government"; we may be allowed the form and not the substance, and that it was so intended will appear from the changing the word *constitution* to the word *form* and the omission of the words, *and its existing laws*. And I do not even think it uncharitable to suppose that it was designedly done; but whether it was so or not, by leaving out these words the jurisprudence of each state is left to the mercy of the new government. By 1st art., 8th sec., 1st clause, "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States."

By the 9th clause of the same section, "To constitute tribunals inferior to the court."

By the 18th clause, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department thereof."

The 3d art., 1st sec., "The judicial power of the United States shall be

vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish."

By sec. 2nd, "The judicial power shall extend to all cases in law and equity." To have in various instances an original and exclusive, in others a concurrent jurisdiction, and the supreme court in many cases an appellate jurisdiction, both as to law and fact. It provides, indeed, that the trial for crimes shall be by jury, but has left the trial in civil matters to the mercy of construction and their own legislative sovereign will and pleasure.

By the 3d art., 3d sec., "The Congress shall have power to declare the punishment of treason, but no attainder shall work a corruption of blood or forfeiture, except during the life of the person attainted. By 1st art., 9th sec., 3d clause, "No bill of attainder or ex post facto law shall be passed."

XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XL.

6.9.24 The 17th orders "That the supreme executive power and authority of this State shall be vested in a governor."[10] By the 18th he is commander-in-chief of the militia and admiral of the navy of the State; may grant pardons to all persons convicted of crimes; he may suspend the execution of the sentence in treason or murder.

By the 19th paragraph he is to see that the laws and resolutions of the legislature be faithfully executed.

By the 27th he is president of the council of appointment, and has a casting vote and the commissioning of all officers.

The 20th and 21st paragraphs give the lieutenant-governor, on the death, resignation, removal from office, or impeachment of the governor, all the powers of a governor.

The 40th paragraph orders that the militia at all times, both in peace and war, shall be armed and disciplined, and kept in readiness; in what manner the Quakers shall be excused; and that a magazine of warlike stores be forever kept at the expence of the State, and by act of the legislature, established, maintained, and continued in every county in the State.

6.9.25 Whoever considers the following powers vested in the government, and compares them with the above, must readily perceive they are either all enervated or annihilated.

By the 1st art., 8th sec., 15th, 16th and 17th clauses, Congress will be empowered to call forth the militia to execute the laws of the union, suppress insurrections and repel invasions; to provide for organizing, arming and disciplining the militia, for the governing such part of them as may be employed in the service of the United States, and for the erection of forts, magazines, etc.

And by the 2nd art., 2d sec., "The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into actual service of the United States. And he shall

have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."

And by the 6th art., "The members of the several state legislatures, and all the executive and judicial officers; both of the United States, and of the several states, shall be bound by oath or affirmation to support the constitution." Can this oath be taken by those who have already taken one under the constitution of this state?

XVIII, SEC. 17; XIX, SEC. 17; XX, SEC. 17; XXI, SEC. 17; XXIII, SEC. 17; XXII TO XXX INCLUSIVE.

6.9.26 These paragraphs regulate the election, appointment, construction and duration of all the state, county and district officers, including the delegates to Congress, and how they severally are to be created and commissioned.

The 22d directs that the treasurer shall be appointed by act of the legislature to originate with the assembly. The 23d establishes a council to appoint the officers.

The 24th directs that the military officers shall be, during the pleasure of the council, the chancellor, judges of the supreme court, the first judge in every county until the age of 60.

Twenty-five and 28, which offices are incompatible, and the tenure and duration of such officers.

Twenty-six, that sheriffs and coroners be annually appointed, and shall not continue more than four years.

Twenty-seven, that the officers of the court be appointed by the respective courts, except the attorneys, by the first judge of every court.

Twenty-nine, provides that town clerks, supervisors, assessors, constables and collectors, and all other officers heretofore elegible by the people, shall always continue to be so elegible.

Thirty, directs the mode how the delegates to represent this state in the general Congress of the United States shall be elected.

6.9.27 I apprehend that the paragraphs aforesaid will be compleatly rendered unoperative by the following articles in the new constitution:

Second article, second section, second clause, the president "shall have power, and by and with the advice and consent of the Senate, shall appoint embassadors, other public ministers and consuls, judges of the supreme court, and all officers of the United States where appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the power of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments." By the 1st art., 8 section, 9, 18 clauses, Congress have power "to constitute tribunals inferior to the supreme court, to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

By the third article, 2d section, there is an extensive federal power as above-mentioned.

By the 2d article, 2d section, the president "shall take care that the laws be faithfully executed, and shall commission all the officers of the United States."

From these powers lodged in Congress and the powers vested in the states, it is clear that there must be a government within a government, two legislative, executive and judicial powers. The power of raising an army in time of peace, and to command the militia, will give the president ample means to enforce the supreme laws of the land.

XXIII, SEC. 21; XXIV, SEC. 21; XXV, SEC. 21; XXVI, SEC. 21; XXVII, SEC. 21; XXVIII, SEC.21; XXIX, SEC.21; XXX, SEC.21; XXXI, SEC. 2; XXXII, XXXIII, XXXIV.

The 32d paragraph orders, "That a court shall be instituted for the trial of impeachments and the correction of errors under the regulations which shall be established by the legislature, and to consist of the president of the senate for the time being, and the senators, chancellors and judges of the supreme court." 6.9.28

The 33d vests the power of impeaching all officers of the state for mal and corrupt practice in the representatives of the people in assembly.

The 34th allows the parties impeached or indicted for crimes and misdemeanors to have counsel.

This system is undermined and rendered nugatory by 1st art., 6th and 7th clauses, where the senate in the new constitution, have the trial and judgment on all impeachments.

By 3d art., 2d sec., 3d clause, the trial of all crimes is regulated.

By the 3d art., 3d sec., it is defined what shall be treason, the proof required, the punishment, and how the judgment in attainder shall operate.

XXXIII, SEC. 32; XXXIV, SEC. 32; XXXV, SEC. 13; XXXVII, SEC. 1; XXXVIII, XXXIX.

The 38th paragraph provides "that the free exercise and enjoyment of religious procession and worship, without discrimination or preference, shall forever hereafter be allowed within this State to all mankind, provided that the liberty of conscience hereby granted shall not excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State." 6.9.29

The 39th provides that "no minister of the gospel, or priest of any denomination whatsoever, shall at any time hereafter, under any pretence or description whatever, be eligible to or capable of holding any civil or military office or place within this state."

The first of those articles protects us from persecution in religious mat-

ters. The other excludes the clergy from enjoying any office, civil or military. Two provisions passed by in silence by the framers of the new constitution; and although possibly the leaders in both have been equally averse to a democratic system, and have had the same object, the ruin of state government, in view.

XLII.

6.9.30 This paragraph provides "that it shall be in the discretion of the legislature to naturalize all such persons and in such manner as they shall think proper."

The 1st art., 8 sec., 4th clause, give to the new government power to establish a uniform rule of naturalization.

And by the 4th art., 2d sec., "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states," whereby the clause is rendered entirely nugatory.

From this contrast it appears that the general government, when compleatly organized, will absorb all those powers of the state which the framers of its constitution had declared should be only exercised by the representatives of the people of the state; that the burthens and expence of supporting a state establishment will be perpetuated; but its operations to ensure or contribute to any essential measures promotive of the happiness of the people may be totally prostrated, the general government arrogating to itself the right of interfering in the most minute objects of internal police, and the most trifling domestic concerns of every state, by possessing a power of passing laws "to provide for the general welfare of the United States," which may affect life, liberty and property in every modification they may think expedient, unchecked by cautionary reservations, and unrestrained by a declaration of any of those rights which the wisdom and prudence of America in the year 1776 held ought to be at all events protected from violation.

In a word, the new constitution will prove finally to dissolve all the power of the several state legislatures, and destroy the rights and liberties of the people; for the power of the first will be all in all, and of the latter a mere shadow and form without substance, and if adopted we may (in imitation of the Carthagenians) say, Delenda vit Americæ.

Sydney.

1. The source of this quotation has not been found. For references to the Anti-Federalists' fear of consolidation see Plebeian 6.11.15 n. 9.

2. Official Letter from Congress Accompanying Act of Confederation, 17 November 1777, Elliot I, 69.

3. *An Address of the Convention of the State of New York to Their Constituents*, 23 December 1776 (Philadelphia 1777) (Evans *Early American Imprints* no. 15468) 3, 14.

4. The first quotation is from the Resolution of Congress, 10–15 May 1776, *Jour-*

nals of the Continental Congress IV, 357–58; the second is of course from the Declaration of Independence.

5. Constitution of the State of New York, 1777, Thorpe, *Federal and State Constitutions* V, 2623–38.

6. The thirteenth Article of Confederation provided that every state shall abide by the determination of questions duly decided by Congress, that the union shall be perpetual, and that no alteration shall be made unless agreed to in Congress and afterwards confirmed by the legislatures of every state.

7. Articles of Confederation, Art. 9., para. 4.

8. *Journals of the Continental Congress* XXXI, 490–93.

9. See Farrand I, 227 (13 June). If the author was Yates, he might have been relying on his own notes of the Convention (not published until 1821); but this information, together with much more about the Convention proceedings, had already been published by Luther Martin. See Martin 2.4.27. On the publication of the various notes of the convention, see Farrand I, xi ff.

10. Cf. the comparison by Publius of the governor of New York and the President of the United States in *The Federalist* no. 69. For references to other such comparisons, Philadelphiensis XII, 3.9.96.

Address of the Albany Antifederal Committee

(Jer. Van Rensselaer, Chairman)

NEW YORK JOURNAL
26 April 1788

This statement was issued by a committee of Albany Anti-Federalists in support of Anti-Federal lists of candidates for the New York ratifying convention and the New York legislature. The statement begins with a standard and somewhat crudely composed list of objections; the latter part takes up and rebuts in somewhat more substantial fashion certain Federalist arguments regarding the need for the new Constitution, its expense, the regulation of trade, and the question of prior amendment.

Albany, April 10, 1788

6.10.1 On the last Tuesday of April inst. delegates are to be chosen, by the people, to determine the important question, whether the proposed new constitution shall be adopted or rejected—A determination of the utmost consequence to the citizens of the state and to posterity. From an apprehension that the constitution, if adopted in its present form, would deprive the people of their dearest rights and liberties, a number of gentlemen, from different parts of this county, met for the purpose of nominating and recommending delegates for convention, and unanimously resolved on the following gentlemen:

Robert Yates, John Lansing, jun. Henry Oothoudt, Peter Vrooman, Dirck Swart, Israel Thompson, Anthony Ten Eyck.

6.10.2 As we have been informed, that the advocates for the new constitution, have lately travelled through the several districts in the county, and propogated an opinion, that it is a good system of government; we beg leave to state, in as few words as possible, some of the many objections against it.—

The convention, who were appointed for the sole and express purpose of revising and amending the confederation, have taken upon themselves the power of making a new one.

They have not formed a *federal* but a *consolidated* government, repugnant to the principles of a republican government; not founded on the preservation but the destruction of the state governments.

The great and extensive powers granted to the new government over the lives, liberties, and property of every citizen.

These powers in many instances not defined or sufficiently explained, and capable of being interpreted to answer the most ambitious and arbitrary purposes.

The small number of members who are to compose the general legislature, which is to pass laws to govern so large and extensive a continent, inhabited by people of different laws, customs, and opinions, and many of them residing upwards of 400 miles from the seat of government.

The members of the senate are not to be chosen by the people, but appointed by the legislature of each state for the term of six years. This will destroy their responsibility, and induce them to act like the masters and not the servants of the people.[1] 6.10.3

The power to alter and regulate the time, place, and manner of holding elections, so as to keep them subjected to their influence.

The power to lay poll taxes, duties, imposts, excises, and other taxes.

The power to appoint Continental officers to levy and collect those taxes.

Their laws are to be *the supreme law of the land,* and the judges in every state are to be bound thereby, notwithstanding *the constitution or laws* of any state to the contrary.—A sweeping clause, which subjects every thing to the controul of the new government. 6.10.4

Slaves are taken into the computation in apportioning the number of representatives, whereby 50,000 slaves, give an equal representation with 30,000 freemen.

The provision that the net produce of all duties and imposts, *laid by the legislature of any state,* on imports or exports, shall be for the use of the treasury of the United States.

The provision that none of the states shall coin money or emit bills of credit.

The power to raise, support, and maintain a standing army *in time of peace*. The bane of a republican government; by a standing army most of the once free nations of the globe have been reduced to bondage; and by this Britain attempted to inforce her arbitrary measures. 6.10.5

The power to call forth the militia to any part of the continent, without any limitation of time or place, under the command of the president, or such continental officers as shall be appointed over them.

Men conscienciously scrupulous of bearing arms, made liable to perform military duty.[2]

The power of the new government to establish the salaries for their own services. 6.10.6

The power with respect to the payment of the salaries to *inferior court Judges in the several states;* and which salaries the new constitution declares are not to be diminished.

Their power relative to the migration or importation of foreigners.

The not securing the rights of conscience in matters of religion, of granting the liberty of worshipping God agreeable to the mode thereby dictated; whereas the experience of all ages proves that the benevolence and humility inculcated in the gospel, are no restraint on the love of domination.

6.10.7 The vast executive power vested in one man (not elected by the people) who, though called President, will have powers equal if not superior to many European kings.

His legislative power of negativing all laws, resolutions and votes, thereby to prevent their passing unless agreed to by two thirds of both houses of the legislature.

His long continuance in office, and even at the end of four years capable of being again chosen, and continued for life.

6.10.8 The great powers granted to the grand continental supreme court, extending to all cases in law and equity, and the allowing that court original jurisdiction in certain cases.

The granting of appeals to that court on both law and fact. A powerful engine in the hands of the rich, to oppress and ruin the poor.

The power to establish inferior courts in every state.

No provision being made to prevent placemen and pensioners.

Nor for the liberty of the press, that grand palladium of liberty and scourge of tyrants.

The tryal by jury, that sacred bulwark of liberty, is not provided for in civil cases.

6.10.9 The power of appointing as many continental officers as they shall think proper in every state, and thereby extending their influence over every part of the United States.

The great additional expences of the new government, and the burthensome and heavy taxes which will thereby be occasioned.

6.10.10 The guaranteeing to the several states, not the substance, but a republican form of government, and the states left at the mercy of the general government, to allow them such a form as they shall deem proper.

They have declared, that if the conventions of nine states ratify the constitution, it shall be established between the states so ratifying the same; by which means, if all the states should not adopt it, they have laid a foundation to defeat the confederation and dissolve the union of the states. A clause dictated by the same genius of aristocracy, which prompted the convention to enjoin secresy on their members, to keep their doors shut, their journals locked up, and none of the members to take any extracts.

By the articles of confederation each state retains what is not expressly

granted to Congress;[3] but in the new constitution, there is no provision or bill of rights, to secure any of the fundamental rights and liberties of the people.

Notwithstanding so many and such powerful objections to this constitution, some of its zealous advocates, have industriously attempted to persuade the people to adopt it. Is it for the sake of poor and common people, that the rich and well born are so indefatigable? or is it because they and their friends and connections expect to possess some of the many lucrative offices under the new government? 6.10.11

They have asserted, that the present confederation is defective and will tend to anarchy and confusion.

That the expences of the new government will be less.

That the value of produce will be raised.

That the concurrence of nine states will bind the whole.

That the constitution may hereafter be amended.

As to the first, it is the weakest of all weak reasons, to adopt a bad constitution because the present one is defective.—A person of a sickly habit or constitution might as well put an end to his existence, for fear that his sickness or infirmity would be the cause of his death.—As to the second, a man must be very credulous and ignorant indeed, who can suppose that the new government will not be more expensive.—Will not the raising and supporting an army and navy, in time of peace, create additional expence? Can the multitude and variety of the salaries of the continental supreme court judges, the continental inferior court judges in the different states, and other civil officers in the judicial department, be paid without great additional expence? Can a federal town for the seat of the national government, be built without additional expence? Will not the furniture necessary for the continental president, vice-president, secretaries, treasurers, comptrollers, ministers, &c. &c. to grace their tables and adorn the rooms of their stately palaces, be costly and expensive? Can all these things, with many others, be accomplished without great additional expence, and without laying heavy and burthensome taxes on the people? As well might the Israelites of old, have made brick without straw. 6.10.12

With respect to the regulation of trade, this may be vested in Congress under the present confederation, without changing the fundamental principles of the general as well as all the state governments; nor is it probable, that if the new constitution should be adopted, the value of produce would be thereby increased—as well might it be said, that our soil will be better and our lands more fruitful. 6.10.13

The assertion, that the adoption of the constitution by nine states will bind every state, is not true. This falsehood is contradicted by the express words of the last clause; and the threats given out that the dissenting states will be 6.10.14

compelled to adopt it, is the language of tyrants, and an insult on the understandings of a free people.

6.10.15 With regard to amendments, some of the strongest and most zealous advocates for the new constitution, at first, and for a long time, affect to hold it up as a good system of government; but after various and repeated journies into the country (having discovered that the people were generally opposed to the constitution, and that they can and will judge on a matter of such consequence to themselves and their posterity) these same zealous advocates have since changed their ground, and altered their plan of operations: They now acknowledge it to be defective but endeavour to prevail on the people, first to adopt it, and afterwards (like Massachusetts) trust to a recommendation for future amendments. Would it be prudent or safe for the people to surrender their dearest rights and liberties, to the discretionary disposal of their future rulers? First to make a surrender and afterwards ask for terms of capitulation.

6.10.16 The free men of America have fought and bled to oppose the oppression and usurpation of Great-Britain; and shall they now resign these rights and privileges, to a government which, if possible, may be still more arbitrary and despotic? Sacred as well as profane history afford abundant examples to prove that the most strenuous assertors of liberty, in all ages, after having successfully triumphed over tyranny, have themselves become tyrants, when intrusted by the people with unlimited and uncontroulable powers.

6.10.17 No amendments can be obtained without the consent of three fourths of the states; is it probable that such consent will ever be obtained, to amendments which will tend to abridge the powers of the new government? is it not rather more probable, that if any amendments are made, they will rather enlarge those powers? will not those in power have influence sufficient at all times, to prevent more than one-fourth of the states to consent to future amendments? From this source then, amendments are not to be expected, nor is it to be presumed, that if the people once resign such great and extensive powers, they will ever be enabled to wrest them from a national government having the command of the purse as well as the sword.

The 5th article of the constitution points out a mode to obtain amendments, after it is adopted, which is to call a convention for the purpose; and we conceive that a convention may be called to amend the constitution, before it is adopted with so many material and radical defects.

6.10.18 These, among many others, are the reasons that have induced us to oppose the new constitution in its present form. A constitution destructive of the fundamental principles of the general as well as all the state governments; dangerous to the rights and liberties of the people, and which, if adopted without previous amendments, will, in our opinion, terminate in slavery.

If therefore you entertain the like sentiments, relative to this constitution,

we beg leave to request your vote and interest in favor of the above delegates, whose opinions, we have reason to conclude, agree with ours on this important subject.

We are, Gentlemen,
your most humble servants.

By order of the
Committee,
Jer. Van Rensselaer, Chairman.
Mat. Visscher, Clerk.

The subscribers being of opinion, that the reasons abovementioned, are conclusive against adopting the new constitution without previous amendments, recommend the above named gentlemen, as candidates for members of convention, and the following, for members of senate and assembly: to wit, Peter Van Ness, for senator; John Lansing, jun. Jeremiah Van Rensselaer, Cornelius Van Dyck, John Duncan, John Thompson, Henry K. Van Rensselaer, and John Younglove, for assemblymen.

Jacob C. Ten Eyck,	Robert Lansing,
John R. Bleecker,	John Price,
Gerrit Lansing, jun.	Arie Lagrange,
Cornelius K. Van Den Berg,	Henry Lansing,
Abraham Yates, jun.	Jacob G. Lansing,
Gysbert Fonda,	John W. Wendell,
Cornelius Wendell,	Abm. Bloodgood,
Volkert A. Douw,	Gysbert Marselus,
Abraham Cuyler,	Peter W. Yates,
Henry Ten Eyck,	Dirck B. Van Schoonhoven,
Henry Wendell,	Jacob Roseboom,
Peter W. Douw,	Richard Lush,
Wm. Mancius,	Peter Sharp.

1. See Cincinnatus IV, 6.1.27 n. 21.
2. The New York Constitution of 1777, Sec. XL, provided for a payment of money in lieu of military service for "all such of the inhabitants of this state being of the people called Quakers as, from scruples of conscience, may be averse to the bearing of arms . . . . " Thorpe, *Federal and State Constitutions* V, 2637.
3. Articles of Confederation, Art. 2.

Address by A Plebeian

New York, 1788

The address by A Plebeian is aimed at showing the necessity of making amendments to the Constitution prior to adoption. Although somewhat routine, the essay nevertheless contains some substantial sections. There is a good Anti-Federal account of the circumstances of the country, the evils of which are not primarily due to bad government and not in any case sufficient to require hasty action (6.11.5–7); there is a good reply to the Federalist prediction of civil war if the Constitution is not ratified (6.11.8–10); there is a better than average statement of the reasons for procuring amendments before adoption, while the people are still alert to the issues (6.11.1–4, 11); there is a solid defense of the essential agreement among the critics of the Constitution and a list of the essential criticisms (6.11.12–17); finally there is a strong warning that the economic difficulties of the country will not be solved by the new Constitution but by frugality and industry (6.11.18–23). A Plebeian urges the people of New York to choose as delegates to their convention men who have consistently opposed the Constitution in its present form (6.11.24–27). In a postscript, he replies briefly to the Address by A Citizen of New York, dealing particularly with that author's criticism of the government under the Articles of Confederation, provision for the liberty of the press, the need for a bill of rights, and the character and abilities of the framers (6.11.28–33).

This address appeared as a pamphlet published in New York in 1788, probably in the early spring.[1] The author is identified by Ford as Melancton Smith, one of the best minds among the New York Anti-Federalists,[2] although the pamphlet falls below the level of Smith's performance in the New York convention.[3]

1. The pamphlet was reviewed in Noah Webster's *American Magazine* in April 1788, and a reprint appeared in the Philadelphia *Independent Gazetteer* in May.

2. Ford, *Pamphlets* 87. No evidence for this attribution is given by Ford, nor has any been discovered by the present editor.

3. See 6.12.

Friends and Fellow Citizens,

The advocates for the proposed new constitution, having been beaten off the field of argument, on its merits, have now taken new ground. They admit it is liable to well-founded objections—that a number of its articles ought to be amended; that if alterations do not take place, a door will be left open for an undue administration, and encroachments on the liberties of the people; and many of them go so far as to say, if it should continue for any considerable period, in its present form, it will lead to a subversion of our equal republican forms of government.—But still, although they admit this, they urge that it ought to be adopted, and that we should confide in procuring the necessary alterations after we have received it. Most of the leading characters, who advocate its reception, now profess their readiness to concur with those who oppose it, in bringing about the most material amendments contended for, provided they will first agree to accept the proffered system as it is. These concessions afford strong evidence, that the opposers of the constitution have reason on their side, and that they have not been influenced, in the part they have taken, by the mean and unworthy motives of selfish and private interests with which they have been illiberally charged.—As the favourers of the constitution, seem, if their professions are sincere, to be in a situation similiar to that of Agrippa, when he cried out upon Paul's preaching—"almost thou persuadest me to be a christian," I cannot help indulging myself in expressing the same wish which St. Paul uttered on that occasion, "Would to God you were not only almost, but altogether such an one as I am."[1] But alas, as we hear no more of Agrippa's christianity after this interview with Paul, so it is much to be feared, that we shall hear nothing of amendments from most of the warm advocates for adopting the new government, after it gets into operation. When the government is once organized, and all the offices under it filled, the inducements which our great men will have to support it, will be much stronger than they are now to urge its reception. Many of them will then hold places of great honour and emolument, and others will be candidates for such places. It is much harder to relinquish honours or emoluments, which we have in possession, than to abandon the pursuit of them, while the attainment is held in a state of uncertainty.—The amendments contended for as necessary to be made, are of such a nature, as well tend to limit and abridge a number of the powers of the government. And is it probable, that those who enjoy these powers will be so likely to surrender them after they have them in possession, as to consent to have them restricted in the act of granting them? Common sense says—they will not. 6.11.1

When we consider the nature and operation of government, the idea of receiving a form radically defective, under the notion of making the necessary amendments, is evidently absurd. 6.11.2

Government is a compact entered into by mankind, in a state of society, for the promotion of their happiness. In forming this compact, common

sense dictates, that no articles should be admitted that tend to defeat the end of its institution. If any such are proposed, they should be rejected. When the compact is once formed and put into operation, it is too late for individuals to object. The deed is executed—the conveyance is made—and the power of reassuming the right is gone, without the consent of the parties.—Besides, when a government is once in operation, it acquires strength by habit, and stability by exercise. If it is tolerably mild in its administration, the people sit down easy under it, be its principles and forms ever so repugnant to the maxims of liberty.—It steals, by insensible degrees, one right from the people after another, until it rivets its powers so as to put it beyond the ability of the community to restrict or limit it.[2] The history of the world furnishes many instances of a people's increasing the powers of their rulers by persuasion, but I believe it would be difficult to produce one in which the rulers have been persuaded to relinquish their powers to the people. Wherever this has taken place, it has always been the effect of compulsion. These observations are so well-founded, that they are become a kind of axioms in politics; and the inference to be drawn from them is equally evident, which is this,—that, in forming a government, care should be taken not to confer powers which it will be necessary to take back; but if you err at all, let it be on the contrary side, because it is much easier, as well as safer, to enlarge the powers of your rulers, if they should prove not sufficiently extensive, than it is to abridge them if they should be too great.[3]

6.11.3 It is agreed, the plan is defective—that some of the powers granted, are dangerous—others not well defined—and amendments are necessary. Why then not amend it? why not remove the cause of danger, and, if possible, even the apprehension of it? The instrument is yet in the hands of the people; it is not signed, sealed, and delivered, and they have power to give it any form they please.

6.11.4 But it is contended, adopt it first, and then amend it. I ask, why not amend, and then adopt it? Most certainly the latter mode of proceeding is more consistent with our ideas of prudence in the ordinary concerns of life. If men were about entering into a contract respecting their private concerns, it would be highly absurd in them to sign and seal an instrument containing stipulations which are contrary to their interests and wishes, under the expectation, that the parties, after its execution, would agree to make alterations agreeable to their desires.—They would insist upon the exceptionable clauses being altered before they would ratify the contract. And is a compact for the government of ourselves and our posterity of less moment than contracts between individuals? certainly not. But to this reasoning, which at first view would appear to admit of no reply, a variety of objections are made, and a number of reasons urged for adopting the system, and afterwards proposing amendments.—Such as have come under my observation, I shall state, and remark upon.

1.[4] It is insisted, that the present situation of our country is such, as not to admit of a delay in forming a new government, or of time sufficient to deliberate and agree upon the amendments which are proper, without involving ourselves in a state of anarchy and confusion. 6.11.5

On this head, all the powers of rhetoric, and arts of description, are employed to paint the condition of this country, in the most hideous and frightful colours. We are told, that agriculture is without encouragement; trade is languishing; private faith and credit are disregarded, and public credit is prostrate; that the laws and magistrates are contemned and set at nought; that a spirit of licentiousness is rampant, and ready to break over every bound set to it by the government; that private embarrassments and distresses invade the house of every man of middling property, and insecurity threatens every man in affluent circumstances: in short, that we are in a state of the most grievous calamity at home, and that we are contemptible abroad, the scorn of foreign nations, and the ridicule of the world.[5] From this high-wrought picture, one would suppose, that we were in a condition the most deplorable of any people upon earth. But suffer me, my countrymen, to call your attention to a serious and sober estimate of the situation in which you are placed, while I trace the embarrassments under which you labour, to their true sources. What is your condition? Does not every man sit under his own vine and under his own fig-tree, having none to make him afraid? Does not every one follow his calling without impediments and receive the reward of his well-earned industry? The farmer cultivates his land, and reaps the fruit which the bounty of heaven bestows on his honest toil. The mechanic is exercised in his art, and receives the reward of his labour. The merchant drives his commerce, and none can deprive him of the gain he honestly acquires; all classes and callings of men amongst us are protected in their various pursuits, and secured by the laws in the possession and enjoyment of the property obtained in those pursuits. The laws are as well executed as they ever were, in this or any other country. Neither the hand of private violence, nor the more to be dreaded hand of legal oppression, are reached out to distress us.[6]

It is true, many individuals labour under embarrassments, but these are to be imputed to the unavoidable circumstances of things, rather than to any defect in our governments. We have just emerged from a long and expensive war. During its existence few people were in a situation to encrease their fortunes, but many to diminish them. Debts contracted before the war were left unpaid while it existed, and these were left a burden too heavy to be borne at the commencement of peace. Add to these, that when the war was over, too many of us, instead of reassuming our old habits of frugality and industry, by which alone every country must be placed in a prosperous condition, took up the profuse use of foreign commodities. The country was deluged with articles imported from abroad, and the cash of the country has 6.11.6

been sent out to pay for them, and still left us labouring under the weight of a huge debt to persons abroad. These are the true sources to which we are to trace all the private difficulties of individuals: But will a new government relieve you from these? The advocates for it have not yet told you how it will do it—And I will venture to pronounce, that there is but one way in which it can be effected, and that is by industry and œconomy; limit your expences within your earnings; sell more than you buy, and every thing will be well on this score. Your present condition is such as is common to take place after the conclusion of a war. Those who can remember our situation after the termination of the war preceding the last, will recollect that our condition was similar to the present, but time and industry soon recovered us from it. Money was scarce, the produce of the country much lower than it has been since the peace, and many individuals were extremely embarrassed with debts; and this happened, although we did not experience the ravages, desolations, and loss of property, that were suffered during the late war.[7]

6.11.7 With regard to our public and national concerns, what is there in our condition that threatens us with any immediate danger? We are at peace with all the world; no nation menaces us with war; Nor are we called upon by any cause of sufficient importance to attack any nation. The state governments answer the purposes of preserving the peace, and providing for present exigencies. Our condition as a nation is in no respect worse than it has been for several years past. Our public debt has been lessened in various ways, and the western territory, which has always been relied upon as a productive fund to discharge the national debt, has at length been brought to market, and a considerable part actually applied to its reduction. I mention these things to shew, that there is nothing special, in our present situation, as it respects our national affairs, that should induce us to accept the proffered system, without taking sufficient time to consider and amend it. I do not mean by this, to insinuate, that our government does not stand in need of a reform. It is admitted by all parties, that alterations are necessary in our federal constitution, but the circumstances of our case do by no means oblige us to precipitate this business, or require that we should adopt a system materially defective. We may safely take time to deliberate and amend, without in the mean time hazarding a condition, in any considerable degree, worse than the present.

6.11.8 But it is said, that if we postpone the ratification of this system until the necessary amendments are first incorporated, the consequence will be a civil war among the states.[8] On this head weak minds are alarmed with being told, that the militia of Connecticut and Massachusetts on the one side, and of New-Jersey and Pennsylvania on the other, will attack us with hostile fury; and either destroy us from off the face of the earth, or at best divide us between the two states adjoining us on either side. The apprehension of

danger is one of the most powerful incentives to human action, and is therefore generally excited on political questions: But still, a prudent man, though he foreseeth the evil and avoideth it, yet he will not be terrified by imaginary dangers. We ought therefore to enquire what ground there is to fear such an event?—There can be no reason to apprehend, that the other states will make war with us for not receiving the constitution proposed, until it is amended, but from one of the following causes: either that they will have just cause to do it, or that they have a disposition to do it. We will examine each of these:—That they will have no just cause to quarrel with us for not acceding, is evident, because we are under no obligation to do it, arising from any existing compact or previous stipulation. The confederation is the only compact now existing between the states: By the terms of it, it cannot be changed without the consent of every one of the parties to it. Nothing therefore can be more unreasonable than for part of the states to claim of the others, as matter of right, an accession to a system to which they have material objections. No war can therefore arise from this principle, but on the contrary, it is to be presumed, it will operate strongly the opposite way.—The states will reason on the subject in the following manner: On this momentuous question, every state has an indubitable right to judge for itself: This is secured to it by solemn compact, and if any of our sister states disagree with us upon the question, we ought to attend to their objections, and accommodate ourselves as far as possible to the amendments they propose.

As to the inclination of the states to make war with us, for declining to accede, until it is amended, this is highly improbable, not only because such a procedure would be most unjust and unreasonable in itself, but for various other reasons. 6.11.9

The idea of a civil war amongst the states is abhorrent to the principles and feelings of almost every man of every rank in the union. It is so obvious to every one of the least reflection, that in such an event we should hazard the loss of all things, without the hope of gaining any thing, that the man who should entertain a thought of this kind, would be justly deemed more fit to be shut up in Bedlam, than to be reasoned with. But the idea of one or more states attacking another, for insisting upon alterations in this system, before it is adopted, is more extravagant still; it is contradicting every principle of liberty which has been entertained by the states, violating the most solemn compact, and taking from the state the right of deliberation. Indeed to suppose, that a people, entertaining such refined ideas of the rights of human nature as to be induced to wage war with the most powerful nation on earth, upon a speculative point, and from the mere apprehension of danger only, should so far be lost to their own feelings and principles, as to deny to their brethren, who were associated with them in the arduous conflict, the right of free deliberation on a question of the first importance to

their political happiness and safety, is equally an insult to the character of the people of America, and to common sense, and could only be suggested by a vicious heart and a corrupt mind.

6.11.10 The idea of being attacked by the other states, will appear visionary and chimerical, if we consider that tho' several of them have adopted the new constitution, yet the opposition to it has been numerous and formidable. The eastern states from whom we are told we have most to fear, should a civil war be blown up, would have full employ to keep in awe those who are opposed to it in their own governments. Massachusetts, after a long and dubious contest in their convention, has adopted it by an inconsiderable majority, and in the very act has marked it with a stigma in its present form. No man of candour, judging from their public proceedings, will undertake to say, on which side the majority of the people are. Connecticut, it is true, have acceded to it, by a large majority of their convention; but it is a fact well known, that a large proportion of the yeomanry of the country are against it:—And it is equally true, that a considerable part of those who voted for it in the convention, wish to see it altered. In both these states the body of the common people, who always do the fighting of a country, would be more likely to fight against than for it: Can it then be presumed, that a country, divided among themselves, upon a question where even the advocates for it, admit the system they contend for needs amendments, would make war upon a sister state, who only insist that that should be done before they receive it, which it is granted ought to be done after, and where it is confessed no obligation lies upon them by compact to do it. Can it, I say, be imagined, that in such a case they would make war on a sister state? The idea is preposterous and chimerical.

6.11.11 It is further urged, we must adopt this plan because we have no chance of getting a better. This idea is inconsistent with the principles of those who advance it. They say, it must be altered, but it should be left until after it is put in operation. But if this objection is valid, the proposal of altering, after it is received, is mere delusion.

6.11.12 It is granted, that amendments ought to be made; that the exceptions taken to the constitution, are grounded on just principles, but it is still insisted, that alterations are not to be attempted until after it is received: But why not? Because it is said, there is no probability of agreeing in amendments previous to the adoption, but they may be easily made after it. I wish to be informed what there is in our situation or circumstances that renders it more probable that we shall agree in amendments better after, than before submitting to it? No good reason has as yet been given; it is evident none can be given: On the contrary, there are several considerations which induce a belief, that alterations may be obtained with more ease before, than after its reception, and if so, every one must agree, it is much the safest. The importance of preserving an union, and of establishing a government equal to the purpose of maintaining that union, is a sentiment deeply impressed on

the mind of every citizen of America. It is now no longer doubted, that the confederation, in its present form, is inadequate to that end: Some reform in our government must take place. In this, all parties agree: It is therefore to be presumed, that this object will be pursued with ardour and preseverance, until it is attained by all parties. But when a government is adopted that promises to effect this, we are to expect the ardour of many, yea, of most people, will be abated;—their exertions will cease, or be languid, and they will sit down easy, although they may see, that the constitution which provides for this, does not sufficiently guard the rights of the people, or secure them against the encroachments of their rulers. The great end they had in view, the security of the union, they will consider effected, and this will divert their attention from that which is equally interesting, safety to their liberties. Besides, the human mind cannot continue intensely engaged for any great length of time upon one object. As after a storm, a calm generally succeeds, so after the minds of a people have been ardently employed upon a subject, especially upon that of government, we commonly find that they become cool and inattentive: Add to this, that those in the community who urge the adoption of this system, because they hope by it to be raised above the common level of their fellow citizens; because they expect to be among the number of the few who will be benefitted by it, will more easily be induced to consent to the amendments before it is received than afterwards. Before its reception, they will be inclined to be pliant and condescending; if they cannot obtain all they wish, they will consent to take less. They will yield part to obtain the rest. But when the plan is once agreed to, they will be tenacious of every power, they will strenuously contend to retain all they have got; this is natural to human nature, and it is consonant to the experience of mankind. For history affords us no examples of persons once possessed of power, resigning it willingly.

The reasonings made use of to persuade us, that no alterations can be 6.11.13
agreed upon previous to the adoption of the system, are as curious as they are futile. It is alledged, that there was great diversity of sentiments in forming the proposed constitution; that it was the effect of mutual concessions and a spirit of accommodation, and from hence it is inferred, that farther changes cannot be hoped for. I should suppose that the contrary inference was the fair one. If the convention, who framed this plan, were possessed of such a spirit of moderation and condescension, as to be induced to yield to each other certain points, and to accommodate themselves to each other's opinions, and even prejudices, there is reason to expect, that this same spirit will continue and prevail in a future convention, and produce an union of sentiments on the points objected to. There is the more reason to hope for this, because the subject has received a full discussion, and the minds of the people much better known than they were when the convention sat. Previous to the meeting of the convention, the subject of a new form of government had been little thought of, and scarcely written

upon at all. It is true, it was the general opinion, that some alterations were requisite in the federal system. This subject had been contemplated by almost every thinking man in the union. It had been the subject of many well-written essays, and was the anxious wish of every true friend to America. But it never was in the contemplation of one in a thousand of those who had reflected on the matter, to have an entire change in the nature of our federal government—to alter it from a confederation of states, to that of one entire government, which will swallow up that of the individual states. I will venture to say, that the idea of a government similar to the one proposed, never entered the mind of the legislatures who appointed the convention, and of but very few of the members who composed it, until they had assembled and heard it proposed in that body: much less had the people any conception of such a plan until after it was promulgated. While it was agitated, the debates of the convention were kept an impenetrable secret, and no opportunity was given for well informed men to offer their sentiments upon the subject. The system was therefore never publicly discussed, nor indeed could be, because it was not known to the people until after it was proposed. Since that, it has been the object of universal attention—it has been thought of by every reflecting man—been discussed in a public and private manner, in conversation and in print; its defects have been pointed out, and every objection to it stated; able advocates have written in its favour, and able opponents have written against it. And what is the result? It cannot be denied but that the general opinion is, that it contains material errors, and requires important amendments. This then being the general sentiment, both of the friends and foes of the system, can it be doubted, that another convention would concur in such amendments as would quiet the fears of the opposers, and effect a great degree of union on the subject?—An event most devoutly to be wished. But it is farther said, that there can be no prospect of procuring alterations before it is acceded to, because those who oppose it do not agree among themselves with respect to the amendments that are necessary. To this I reply, that this may be urged against attempting alterations after it is received, with as much force as before; and therefore, if it concludes any thing, it is, that we must receive any system of government proposed to us, because those who object to it do not entirely concur in their objections. But the assertion is not true to any considerable extent. There is a remarkable uniformity in the objections made to the constitution, on the most important points. It is also worthy of notice, that very few of the matters found fault with in it, are of a local nature, or such as affect any particular state; on the contrary, they are such as concern the principles of general liberty, in which the people of New-Hampshire, New-York, and Georgia are equally interested.

6.11.14 It would be easy to shew, that in the leading and most important objections that have been made to the plan, there has been, and is an entire

concurrence of opinion among writers, and in public bodies throughout the United States.

I have not time fully to illustrate this by a minute narration of particulars; but to prove that this is the case, I shall adduce a number of important instances.

It has been objected to the new system, that it is calculated to, and will effect such a consolidation of the States, as to supplant and overturn the state governments. In this the minority of Pennsylvania, the opposition in Massachusetts, and all the writers of any ability or note in Philadelphia, New-York, and Boston concur.[9] It may be added, that this appears to have been the opinion of the Massachusetts convention, and gave rise to that article in the amendments proposed, which confines the general government to the exercise only of powers expressly given.[10] 6.11.15

It has been said, that the representation in the general legislature is too small to secure liberty, or to answer the intention of representation. In this there is an union of sentiments in the opposers.[11]

The constitution has been opposed, because it gives to the legislature an unlimited power of taxation, both with respect to direct and indirect taxes, a right to lay and collect taxes, duties, imposts, and excises of every kind and description, and to any amount. In this, there has been as general a concurrence of opinion as in the former.[12]

The opposers to the constitution have said that it is dangerous, because the judicial power may extend to many cases which ought to be reserved to the decision of the State courts, and because the right of trial by jury is not secured in the judicial courts of the general government, in civil cases. All the opposers are agreed in this objection.[13]

The power of the general legislature to alter and regulate the time, place, and manner of holding elections, has been stated as an argument against the adoption of the system. It has been urged, that this power will place in the hands of the general government, the authority, whenever they shall be disposed, and a favorable opportunity offers, to deprive the body of the people, in effect, of all share in the government. The opposers to the constitution universally agree in this objection, and of such force is it, that most of its ardent advocates admit its validity, and those who have made attempts to vindicate it, have been reduced to the necessity of using the most trifling arguments to justify it.[14] 6.11.16

The mixture of legislative, judicial, and executive powers in the senate;[15] the little degree of responsibility under which the great officers of government will be held;[16] and the liberty granted by the system to establish and maintain a standing army, without any limitation or restriction,[17] are also objected to the constitution; and in these, there is a great degree of unanimity of sentiment in the opposers.

From these remarks it appears, that the opponents to the system accord in 6.11.17

the great and material points on which they wish amendments. For the truth of the assertion, I appeal to the protest of the minority of the convention of Pennsylvania, to all the publications against the constitution, and to the debates of the convention of Massachusetts. As a higher authority than these, I appeal to the amendments proposed by the Massachusetts [convention]; these are to be considered as the sense of that body upon the defects of the system.[18] And it is a fact, which I will venture to assert, that a large majority of that convention were of opinion, that a number of additional alterations ought to be made. Upon reading the articles which they propose as amendments, it will appear, that they object to indefinite powers in the legislature—to the power of laying direct taxes—to the authority of regulating elections—to the extent of the judicial powers, both as it respects the inferior courts and the appellate jurisdiction—to the smallness of the representation, &c.—It is admitted, that some writers have advanced objections that others have not noticed—that exceptions have been taken by some, that have not been insisted upon by others, and it is probable, that some of the opponents may approve what others will reject. But still these difference are on matters of small importance, and of such a nature as the persons who hold different opinions will not be tenacious of. Perfect uniformity of sentiment on so great a political subject is not to be expected. Every sensible man is impressed with this idea, and is therefore prepared to make concessions and accommodate on matters of small importance. It is sufficient that we agree in the great leading principles, which relate to the preservation of public liberty and private security. And on these I will venture to affirm we are as well agreed, as any people ever were on a question of this nature. I dare pronounce, that were the principal advocates for the proposed plan to write comments upon it, they would differ more in the sense they would give the constitution, than those who oppose it do, in the amendments they would wish. I am justified in this opinion, by the sentiments advanced by the different writers in favour of the constitution.

6.11.18 It is farther insisted, that six states have already adopted the constitution; that probably nine will agree to it; in which case it will be put in operation. That it is unreasonable to expect that those states which have acceded to it, will reconsider the subject in compliance with the wishes of a minority.

6.11.19 To perceive the force of this objection, it is proper to review the conduct and circumstances of the states which have acceded it. It cannot be controverted, that Connecticut and New-Jersey were very much influenced in their determinations on the question, by local considerations. The duty of impost laid by this state, has been a subject of complaint by those states. The new constitution transfers the power of imposing these duties from the state to the general government, and carries the proceeds to the use of the union, instead of that of those [the?] state. This is a very popular matter with the people of those states, and at the same time, is not advanced by the sensible opposers to the system in this state as an objection to it.—To excite

in the minds of the people of these states an attachment to the new system, the amount of the revenue arising from our impost has been magnified to a much larger sum than it produces; it has been stated to amount to from sixty to eighty thousand pounds lawful money: and a gentleman of high eminence in Connecticut has lent the authority of his name to support it.[19] It has been said, that Connecticut pays a third of this sum annually for impost, and Jersey nearly as much. It has farther been asserted, that the avails of the impost were applied to the separate use of the state of New-York. By these assertions the people have been grossly imposed upon, for neither of them are true.

The amount of the revenue from impost for two years past, has not exceeded fifty thousand pounds currency, per annum, and a draw-back of duties is allowed by law, upon all goods exported to either of the beforementioned states, in casks or packages unbroken. 6.11.20

The whole of this sum, and more, has been paid into the federal treasury for the support of the government of the union. All the states therefore have actually derived equal benefit with the state of New-York, from the impost. It may be said, I know, that this state has obtained credit for the amount, upon the requisitions of Congress: It is admitted; but still it is a fact, that other states, and especially those who complain, have paid no part of the monies required of them, and have scarcely made an effort to do it. The fact therefore is, that they have received as much advantage from the impost of this state, as we ourselves have. The proposed constitution directs to no mode, in which the deficiencies of states on former requisitions, are to be collected, but seems to hold out the idea, that we are to start anew, and all past payments be forgotten. It is natural to expect, that selfish motives will have too powerful an influence on men[']s minds, and that too often, they will shut the eyes of a people to their best and true interest. The people of those states have been persuaded to believe, that this new constitution will relieve them from the burden of taxes, by providing for all the exigencies of the union, by duties which can be raised only in the neighbouring states. When they come to be convinced, that this promise is a mere delusion, as they assuredly will, by finding the continental tax-gatherer knocking at their doors, if not before, they will be among the first to urge amendments, and perhaps the most violent to obtain them. But nothwithstanding the local prejudices which operate upon the people of these states, a considerable part of them wish for amendments. It is not to be doubted, that a considerable majority of the people of Connecticut wish for them, and many in Jersey have the same desires, and their numbers are increasing: It cannot be disputed, that amendments would accord with the sentiments of a great majority in Massachusetts, or that they would be agreeable to the greater part of the people of Pennsylvania: There is no reason to doubt but that they would be agreeable to Delaware and Georgia—If then, the states who have already ratified the constitution, are desirous to have alterations made in it,

what reason can be assigned why they should not cordially meet with overtures for that purpose from any state, and concur in appointing a convention to effect it? Mankind are easily induced to fall upon measures to obtain an object agreeable to them. In this case, the states would not only be moved by this universal principle of human nature, but by the strong and powerful motive of uniting all the states under a form of government agreeable to them.

6.11.21 I shall now dismiss the consideration of objections made to attempting alterations previous to the adoption of the plan, but before I close, I beg your indulgence, while I make some remarks on the splendid advantages, which the advocates for this system say are to be derived from it.—Hope and fear are two of the most active principles of our nature: We have considered how the latter is addressed on this occasion, and with how little reason: It will appear that the promises it makes, are as little to be relied upon, as its threatenings. We are amused with the fair prospects that are to open, when this government is put into operation—Agriculture is to flourish, and our fields to yield an hundred fold—Commerce is to expand her wings, and bear our productions to all the ports in the world—Money is to pour into our country through every channel—Arts and manufactures are to rear their heads, and every mecanic find full employ—Those who are in debt, are to find easy means to procure money to pay them—Public burdens and taxes are to be lightened, and yet all our public debts are soon to be discharged.—With such vain and delusive hopes are the minds of many honest and well meaning people fed, and by these means are they led inconsiderately to contend for a government, which is made to promise what it cannot perform; while their minds are diverted from contemplating its true nature, or considering whether it will not endanger their liberties, and work oppression.

6.11.22 Far be it from me to object to granting the general government the power of regulating trade, and of laying imposts and duties for that purpose, as well as for raising a revenue: But it is as far from me to flatter people with hopes of benefits to be derived from such a change in our government, which can never be realized. Some advantages may accrue from vesting in one general government, the right to regulate commerce, but it is a vain delusion to expect any thing like what is promised. The truth is, this country buys more than it sells: It imports more than it exports. There are too many merchants in proportion to the farmers and manufacturers. Until these defects are remedied, no government can relieve us. Common sense dictates, that if a man buys more than he sells, he will remain in debt; the same is true of a country.—And as long as this country imports more goods than she exports—the overplus must be paid for in money or not paid at all. These few remarks may convince us, that the radical remedy for the scarcity of cash is frugality and industry. Earn much and spend little, and you will be

enabled to pay your debts, and have money in your pockets; and if you do not follow this advice, no government that can be framed, will relieve you.[20]

As to the idea of being relieved from taxes by this government, it is an affront to common sense, to advance it. There is no complaint made against the present confederation more justly founded than this, that it is incompetent to provide the means to discharge our national debt, and to support the national government. Its inefficacy to these purposes, which was early seen and felt, was the first thing that suggested the necessity of changing the government; other things, it is true, were afterwards found to require alterations; but this was the most important, and accordingly we find, that while in some other things the powers of this government seem to be in some measure limitted, on the subject of raising money, no bounds are set to it. It is authorised to raise money to any amount, and in any way it pleases. If then, the capital embarrassment in our present government arises from the want of money, and this constitution effectually authorises the raising of it, how are the taxes to be lessened by it? Certainly money can only be raised by taxes of some kind or other; it must be got either by additional impositions on trade, by excise, or by direct taxes, or what is more probable, by all together. In either way, it amounts to the same thing, and the position is clear, that as the necessities of the nation require more money than is now raised, the taxes must be enhanced. This you ought to know, and prepare yourself to submit to.—Besides, how is it possible that the taxes can be decreased when the expences of your government will be greatly advanced? It does not require any great skill in politics, or ability at calculation to shew, that the new government will cost more money to administer it, than the present. I shall not descend to an estimate of the cost of a federal town, the salaries of the president, vice-president, judges, and other great officers of state, nor calculate the amount of the pay the legislature will vote themselves, or the salaries that will be paid the innumerable revenue and subordinate officers. The bare mention of these things is sufficient to convince you, that the new government will be vastly more expensive than the old: And how is the money to answer these purposes to be obtained? It is obvious, it must be taken out of the pockets of the people, by taxes, in some mode or other. 6.11.23

Having remarked upon the arguments which have been advanced, to induce you to accede to this government, without amendments, and I trust refuted them, suffer me to close with an address dedicated by the affection of a brother, and the honest zeal of a lover of his country. 6.11.24

Friends, countrymen, and fellow citizens,

The present is the most important crisis at which you ever have arrived. You have before you a question big with consequences, unutterably important to yourselves, to your children, to generations yet unborn, to the cause 6.11.25

of liberty and of mankind; every motive of religion and virtue, of private happiness and public good, of honour and dignity, should urge you to consider cooly and determine wisely.

6.11.26 Almost all the governments that have arisen among mankind, have sprung from force and violence. The records of history inform us of none that have been the result of cool and dispassionate reason and reflection: It is reserved for this favoured country to exhibit to mankind the first example.—This opportunity is now given us, and we are to exercise our rights in the choice of persons to represent us in convention, to deliberate and determine upon the constitution proposed: It will be to our everlasting disgrace to be indifferent on such a subject, for it is impossible, we can contemplate any thing that relates to the affairs of this life of half the importance.

6.11.27 You have heard that both sides on this great question, agree, that there are in it great defects; yet the one side tell you, choose such men as will adopt it, and then amend it—while the other say, amend previous to its adoption.—I have stated to you my reasons for the latter, and I think they are unanswerable.—Consider you the common people, the yeomanry of the country, for to such I principally address myself, you are to be the principal losers, if the constitution should prove oppressive. When a tyranny is established, there are always masters as well as slaves; the great and the well-born are generally the former, and the middling class the latter—Attempts have been made, and will be repeated, to alarm you with the fear of consequences; but reflect, there are consequences on both sides, and none can be apprehended more dreadful, than entailing on ourselves and posterity a government which will raise a few to the height of human greatness and wealth, while it will depress the many to the extreme of poverty and wretchedness. Consequences are under the controul of that all-wise and all-powerful being, whose providence directs the affairs of men: Our part is to act right, and we may then have confidence that the consequences will be favourable. The path in which you should walk is plain and open before you; be united as one man, and direct your choice to such men as have been uniform in their opposition to the proposed system in its present form, or without proper alterations: In men of this description you have reason to place confidence, while on the other hand, you have just cause to distrust those who urge the adoption of a bad constitution, under the delusive expectation of making amendments after it is acceded to. Your jealousy of such characters should be the more excited, when you consider that the advocates for the constitution have shifted their ground. When men are uniform in their opinions, it affords evidence that they are sincere: When they are shifting, it gives reason to believe, they do not change from conviction. It must be recollected, that when this plan was first announced to the public, its supporters cried it up as the most perfect production of human wisdom: It was represented either as having no defects, or if it had, they were so trifling and inconsiderable, that they served only, as the shades in a

fine picture, to set off the piece to the greater advantage. One gentleman in Philadelphia went so far, in the ardour of his enthusiasm in its favour, as to pronounce, that the men who formed it were as really under the guidance of Divine Revelation, as was Moses, the Jewish lawgiver.[21] Their language is now changed; the question has been discussed; the objections to the plan ably stated, and they are admitted to be unanswerable. The same men who held it almost perfect, now admit it is very imperfect; that it is necessary it should be amended. The only question between us, is simply this: Shall we accede to a bad constitution, under the uncertain prospect of getting it amended, after we have received it, or shall we amend it before we adopt it? Common sense will point out which is the most rational, which is the most secure line of conduct. May heaven inspire you with wisdom, union, moderation and firmness, and give you hearts to make a proper estimate of your invaluable privileges, and preserve them to you, to be transmitted to your posterity unimpaired, and may they be maintained in this our country, while Sun and Moon endure.

A Plebeian.

POSTSCRIPT.

Since the foregoing pages have been put to the press, a pamphlet has appeared, entitled, "An address to the people of the state of New-York, on the subject of the new constitution, &c."[22] Upon a cursory examination of this performance (for I have not had leisure to give it more than a cursory examination) it appears to contain little more than declamation and observations that have been often repeated by the advocates of the new constitution. 6.11.28

An attentive reader will readily perceive, that almost every thing deserving the name of an argument in this publication, has received consideration, and, I trust, a satisfactory answer in the preceding remarks, so far as they apply to prove the necessity of an immediate adoption of the plan, without amendments.

I shall therefore only beg the patience of my readers, while I make a few very brief remarks on this piece.

The author introduces his observations with a short history of the revolution, and of the establishment of the present existing federal government. He draws a frightful picture of our condition under the present confederation. The whole of what he says on that head, stripped of its artificial colouring, amounts to this, that the existing system is rather recommendatory than coercive, or that Congress have not, in most cases, the power of enforcing their own resolves. This he calls "a new and wonderful system."[23] However "wonderful" it may seem, it certainly is not "new." For most of the *federal governments* that have been in the world, have been of the same nature.—The United Netherlands are governed on the same 6.11.29

plan. There are other governments also now existing, which are in a similar condition with our's, with regard to several particulars, on account of which this author denominates it "new and wonderful."—The king of Great-Britain "may make war, but has not power to raise money to carry it on." He may borrow money, but is without the means of repayment," &c.[24] For these he is dependent on his parliament. But it is needless to add on this head, because it is admitted that the powers of the general government ought to be increased in several of the particulars this author instances. But these things are mentioned to shew, that the outcry made against the confederation, as being a system new, unheard of, and absurd, is really without foundation.

6.11.30 The author proceeds to depicture our present condition in the high-wrought strains common to his party.—I shall add nothing to what I have said on this subject in the former part of this pamphlet, but will only observe, that his imputing our being kept out of the possession of the western posts, and our want of peace with the Algerines, to the defects in our present government, is much easier said than proved.[25] The British keep possession of these posts, because it subserves their interest, and probably will do so, until they perceive that we have gathered strength and resources sufficient to assert our rights with the sword. Let our government be what it will, this cannot be done without time and patience. In the present exhausted situation of the country, it would be madness in us, had we ever so perfect a government, to commence a war for the recovery of these posts.—With regard to the Algerines, there are but two ways in which their ravages can be prevented. The one is, by a successful war against them, and the other is by treaty. The powers of Congress under the confederation are completely competent either to declare war against them, or to form treaties. Money, it is true, is necessary to do both these. This only brings us to this conclusion, that the great defect in our present government, is the want of powers to provide money for the public exigencies. I am willing to grant *reasonable* powers on this score, but not unlimited ones; commercial treaties may be made under the present powers of Congress. I am persuaded we flatter ourselves with advantages which will result from them, that will never be realized. I know of no benefits that we receive from any that have yet been formed.

6.11.31 This author tells us, "it is not his design to investigate the merits of the plan, nor of the objections made to it."[26] It is well he did not undertake it, for if he had, from the specimen he has given, the cause he assumes would not have probably gained much strength by it.

He however takes notice of two or three of the many objections brought against the plan.

"We are told, (says he) among other strange things, that the liberty of the press is left insecure by the proposed constitution, and yet that constitution says neither more nor less about it, than the constitution of the state of

New-York does. We are told it deprives us of trial by jury, whereas the fact is, that it expressly secures it in certain cases, and takes it away in none, &c. it is absurd to construe the silence of this, or of our own constitution relative to a great number of our rights into a total extinction of them; silence and a blank paper neither grant nor take away anything."[27]

6.11.32 It may be a strange thing to this author to hear the people of America anxious for the preservation of their rights, but those who understand the true principles of liberty, are no strangers to their importance. The man who supposes the constitution, in any part of it, is like a blank piece of paper, has very erroneous ideas of it. He may be assured every clause has a meaning, and many of them such extensive meaning, as would take a volume to unfold. The suggestion, that the liberty of the press is secure, because it is not in express words spoken of in the constitution, and that the trial by jury is not taken away, because it is not said in so many words and letters it is so, is puerile and unworthy of a man who pretends to reason. We contend, that by the indefinite powers granted to the general government, the liberty of the press may be restricted by duties, &c. and therefore the constitution ought to have stipulated for its freedom. The trial by jury, in all civil cases is left at the discretion of the general government, except in the supreme court on the appellate jurisdiction, and in this I affirm it is taken away, not by express words, but by fair and legitimate construction and inference; for the supreme court have expressly given them an appellate jurisdiction, in every case to which their powers extend (with two or three exceptions) both as to *law and fact*. The court are the judges; every man in the country, who has served as a juror, knows, that there is a distinction between the court and the jury, and that the lawyers in their pleading, make the distinction. If the court, upon appeals, are to determine both the law and the fact, there is no room for a jury, and the right of trial in this mode is taken away.

6.11.33 The author manifests equal levity in referring to the constitution of this state, to shew that it was useless to stipulate for the liberty of the press, or to insert a bill of rights in the constitution. With regard to the first, it is perhaps an imperfection in our constitution that the liberty of the press is not expressly reserved; but still there was not equal necessity of making this reservation in our State as in the general Constitution, for the common and statute law of England, and the laws of the colony are established, in which this privilege is fully defined and secured. It is true, a bill of rights is not prefixed to our constitution, as it is in that of some of the states; but still this author knows, that many essential rights are reserved in the body of it; and I will promise, that every opposer of this system will be satisfied, if the stipulations that they contend for are agreed to, whether they are prefixed, affixed, or inserted in the body of the constitution, and that they will not contend which way this is done, if it be but done. I shall add but one remark, and that is upon the hackneyed argument introduced by the author, drawn from the character and ability of the framers of the new constitution.[28] The

favourers of this system are not very prudent in bringing this forward. It provokes to an investigation of characters, which is an inviduous task. I do not wish to detract from their merits, but I will venture to affirm, that twenty assemblies of equal number might be collected, equally respectable both in point of ability, integrity, and patriotism. Some of the characters which compose it I revere; others I consider as of small consequence, and a number are suspected of being great public defaulters, and to have been guilty of notorious peculation and fraud, with regard to public property in the hour of our distress. I will not descend to personalities, nor would I have said so much on the subject, had it not been in self defence. Let the constitution stand on its own merits. If it be good, it stands not in need of great men's names to support it. If it be bad, their names ought not to sanction it.

1. Acts 26:28, 29.

2. Cf. *The Federalist* no. 27, 172–74; Federal Farmer IV, 2.8.58 n. 44.

3. This is the Anti-Federalist counterpart to the Federalist maxim that in granting power to government the means should be proportionate to the end. See *The Federalist* nos. 23 and 31; Brutus VI–VII, 2.9.63–91.

4. The numbering is not continued.

5. See *The Federalist* no. 15; Centinel IV, 2.7.91 n. 43.

6. For similar views see Centinel I, 2.7.26; Brutus, Jr. 6.3.9 ff.; Henry 5.16.2–4; Citizen 6.5.4–5.

7. "That we have to encounter embarrassments, and are distressed for want of money, is undoubted; but causes which could not be controlled by any system of government, have principally contributed to embarrass and distress us. On the termination of war, which operated to exhaust our resources, we launched into every species of extravagance, and imported European goods to an amount far beyond our ability to pay. The difficulties which arose from this and several other causes, equally uninfluenced by the system of government, were without hesitation attributed to its want of energy." Hon. John Lansing, New York ratifying convention, Elliot II, 218; see also John Williams, ibid. 240–41. See 6.11.21–22. For examples of the Anti-Federalist argument that American problems will be solved by industry and frugality, not new constitutions, see Candidus 4.9.18 n. 6.

8. For arguments to this effect see references Centinel IV, 2.7.91 n. 47. Cf. the different premises on which Publius chooses to treat this subject in *The Federalist* nos. 6–8.

9. See Federal Farmer I, 2.8.1 and passim; Brutus I, 2.9.1 ff; Federal Republican 3.6.25; Philadelphiensis IX, 3.9.60; Pennsylvania Convention Minority 3.11.13; [Pennsylvania] Farmer 3.14.6 ff; Agrippa III, 4.6.11; IV, 4.6.16–17; VI, 4.6.22; Republican Federalist 4.13.10; Impartial Examiner 5.14.13; Mason 5.17.1; Brutus, Jr. 6.3.9–11.

10. Elliot II, 177. See also Ford, *Essays* 288 (Caesar).

11. References to the main Anti-Federalist discussions of representation are collected in Federal Farmer II, 2.8.15 n. 11.

12. See for example Brutus V–VI, 2.9.55–82; Centinel IV–V, 2.7.79–101; Henry 5.16.15–16.

13. Among the more prominent examples are Brutus XI, 2.9.130 ff; Federal Farmer II, 2.8.19; IV, 2.8.54–55; Old Whig III, 3.3.16; [Maryland] Farmer IV, 5.1.63 ff; Lee 5.6.2–3; Impartial Examiner 5.14.9; Cincinnatus I, 6.1.7; II–III, 6.1.13–20; Countryman 6.7.2.

14. See Vox Populi 4.4.2–8 and n. 1.

15. See for example Mason 2.2.8–10; Centinel I, 2.7.9; Brutus XVI, 2.9.202–4; Officer of the Late Continental Army 3.8.3; Pennsylvania Convention Minority 3.11.35–37; Brutus [Virginia] 5.15.1; Cincinnatus IV, 6.1.26 ff; Clinton 6.13.

16. See Federal Farmer VIII, 2.8.110 n. 72; see also Centinel I, 2.9.1–27.
17. See Brutus VIII, 2.9.96–97 and n. 66.
18. For the Pennsylvania Convention Minority, see 3.11; for the amendments proposed by the Massachusetts convention see Elliot II, 176–77.
19. In the Connecticut debates, Oliver Ellsworth complained: "The state of New York raises 60 or £80,000 a year by impost. Connecticut consumes about one third of the goods upon which this impost is laid, and consequently pays one third of this sum to New York. If we import by the medium of Massachusetts, she has an impost, and to her we pay a tribute." Elliot II, 189; argument repeated, 192.
20. See above, n. 7.
21. Benjamin Rush asserted in his last speech before the Pennsylvania ratifying convention "that he as much believed the hand of God was employed in this work, as that God had divided the Red Sea to give a passage to the children of Israel, or had fulminated the ten commandments from Mount Sinai!" McMaster and Stone 420. Other Federalists made more or less explicit suggestions to similar effect. See Cassius, Ford, *Essays* 20; Caesar, Ford, *Essays* 228; A Republican (Charles Pinckney), Ford, *Essays* 412; Benjamin Franklin's letter to the *Federal Gazette* 8 April 1788, *Documentary History of the Constitution* IV, 571. See the satire on this claim by Democritus in the *New York Journal* 28 December 1787.
22. A Citizen of New York [John Jay], "An Address to the People of the State of New York on the Subject of the Constitution Agreed upon at Philadelphia . . . " 1788, Ford, *Pamphlets* 67–86.
23. "It is a pity that the expectations which actuated the authors of the existing confederation, neither have nor can be realized:—accustomed to see and admire the glorious spirit which moved all ranks of people in the most gloomy moments of the war, observing their steadfast attachment to Union, and the wisdom they so often manifested both in choosing and confiding in their rulers, those gentlemen were led to flatter themselves that the people of America only required to know what ought to be done, to do it. This amiable mistake induced them to institute a national government in such a manner, as though very fit to give advice, was yet destitute of power, and so constructed as to be very unfit to be trusted with it. They seem not to have been sensible that more advice is a sad substitute for laws; nor to have recollected that the advice even of the allwise and best of Beings, has been always disregarded by a great majority of all the men that ever lived." Ford, *Pamphlets* 71.
24. In these words, A Citizen of New York had characterized the Congress under the Articles of Confederation, which was, in contrast to the British king, the whole of the government. Ford, *Pamphlets* 72.
25. Ford, *Pamphlets* 73.
26. Ibid. 77.
27. Ibid. 76.
28. Ibid. 78–80.

Speeches by Melancton Smith

Delivered in the Course of Debate by the Convention of the State of New York on the Adoption of the Federal Constitution

June 1788

The debates of the New York ratifying convention rival those in Virginia for the excellence of their discussion of the Constitution. Perhaps the questions were publicly *debated* more fully here than anywhere else, and in none of the conventions is the essential question of representation so thoroughly discussed on both sides. On the Federalist side the main argument was carried, easily and brilliantly, by Alexander Hamilton. He was met by the solid, often deep, and scarcely less able objections of Melancton Smith. A prominent businessman of New York City and Poughkeepsie, Smith had served in the first Provincial Congress of New York, in the Continental Congress, and as sheriff of Dutchess County.[1]

The five speeches of Smith printed here fall into three parts: the constitution of the House of Representatives, the constitution of the Senate, and the congressional power to tax. The speeches were given on 20, 21, 23, 25 and 27 June, and are taken here from the original 1788 publication.[2]

Smith begins with a series of general introductory remarks, including an affirmation of attachment to both Union and liberty (6.12.1–2), an acknowledgment of the defects of the Articles of Confederation (6.12.3–4), a reemphasis of his opponent's admission that the new Constitution was a radical change in the Articles (6.12.5–6), and a warning against innovations, especially in a government resting on the opinion of the people (6.12.7). He then proceeds to his objections to the constitution of the House of Representatives, especially that the representation is too small. This leads Smith into a discussion of the origin and true principles of representation, which is one of the major Anti-Federalist statements on this subject (see esp. 6.12.8–25). It is interesting and important to compare Smith's theoretical aim (a representative body that "resembles" the body of the people) and his practical aim (a representative body that will include a due proportion of the middling classes, along with the natural aristocracy, which will inevitably make up a large part of the representation). Like Lee, Smith is concerned that the spirit of liberty, on which the Federalists profess to rely, should be

supported and maintained by congenial laws. And, like Lee, Smith concedes that an adequate representation is not possible in any government for the whole United States and that therefore, while the representation must be improved, the powers of the federal government must be carefully limited and checked.

In his discussion of the Senate, Smith admits the need for such a body to stabilize the government; but he insists that a system of rotation and recall is both feasible and consistent with republican principles and that the Federalists exaggerate the danger of state influence (6.12.27–32). It is interesting, in view of the previous argument on representation, that here Smith relies on the argument that the state legislatures are not mere reflectors of the whims of the people but "select bodies" (6.12.30).

The last speech (6.12.36–40) contains Smith's major argument regarding the unlimited power of federal taxation. Here Smith is supporting a limitation on the federal taxing power, without which he believes that the states will ultimately be destroyed as significant parts of the system. Against the Hamiltonian argument that the means must be proportionate to the end and that the end of the federal government is unlimitable, Smith attempts to set the substantial accomplishments of the state and federal governments under the Confederation and the imprudence of radical change.

1. There is no biography of Smith. See Julian P. Boyd, "Melancton Smith," *Dictionary of American Biography* XVII, 319–20. Smith is traditionally identified as the author of the Plebeian essays, see 6.11.

2. *The Debates and Proceedings of the Convention of the State of New York,* Assembled at Poughkeepsie, on the 17th June 1788 (New York: Francis Childs, 1788). Footnote references to these debates are made, as usual, to the more accessible Elliot.

[*The debate having been opened by Chancellor Robert R. Livingston and John Lansing, on the 19th and 20th of June 1788, the Convention turned, at Melancton Smith's suggestion, to a paragraph-by-paragraph consideration of the proposed Constitution. Article I, section 1, was read and passed by without discussion. Section 2, providing for the constitution of the House of Representatives, was discussed at length. The discussion consisted largely in a debate between Smith and Alexander Hamilton, a debate which is one of the high points of the controversy over the Constitution.*]

20 June 1788

Mr. *Smith* again rose—He most heartily concurred in sentiment with the honorable gentleman who opened the debate yesterday, that the discussion of the important question now before them ought to be entered on with a 6.12.1

spirit of patriotism; with minds open to conviction; with a determination to form opinions only on the merits of the question, from those evidences which should appear in the course of the investigation.

How far the general observations made by the honorable gentleman accorded with these principles, he left to the House to determine.

It was not, he said, his intention to follow that gentleman through all his remarks—he should only observe, that what had been advanced did not appear to him to apply to the subject under consideration.

6.12.2 He was as strongly impressed with the necessity of a Union, as any one could be: He would seek it with as much ardor. In the discussion of this subject, he was disposed to make every reasonable concession, and indeed to sacrifice every thing for a Union, except the liberties of his country, than which he could contemplate no greater misfortune.[1] But he hoped we were not reduced to the necessity of sacrificing or even endangering our liberties to preserve the Union. If that was the case, the alternative was dreadful. But he would not now say that the adoption of the Constitution would endanger our liberties; because that was the point to be debated, and the premises should be laid down previously to the drawing of any conclusion. He wished that all observations might be confined to this point; and that declamation and appeals to the passions might be omitted.

6.12.3 Why, said he, are we told of our weaknesses?[2] Of the defenceless condition of the southern parts of our state? Of the exposed situation of our capital? Of Long-Island surrounded by water, and exposed to the incursions of our neighbours in Connecticut? Of Vermont having separated from us and assumed the powers of a distinct government; And of the North-West part of our state being in the hands of a foreign enemy?—Why are we to be alarmed with apprehensions that the Eastern states are inimical, and disinclined to form alliances with us? He was sorry to find that such suspicions were entertained. He believed that no such disposition existed in the Eastern states. Surely it could not be supposed that those states would make war upon us for exercising the rights of freemen, deliberating and judging for ourselves, on a subject the most interesting that ever came before any assembly. If a war with our neighbour was to be the result of not acceding, there was no use in debating here; we had better receive their dictates, if we were unable to resist them. The defects of the Old Confederation needed as little proof as the necessity of an Union: But there was no proof in all this, that the proposed Constitution was a good one. Defective as the Old Confederation is, he said, no one could deny but it was possible we might have a worse government. But the question was not whether the present Confederation be a bad one; but whether the proposed Constitution be a good one.[3]

6.12.4 It had been observed, that no examples of Federal Republics had succeeded.[4] It was true that the ancient confederated Republics were all destroyed—so were those which were not confederated; and all antient

Governments of every form had shared the same fate. Holland had undoubtedly experienced many evils from the defects in her government; but with all these defects, she yet existed; she had under her Confederacy made a principal figure among the nations of Europe, and he believed few countries had experienced a greater share of internal peace and prosperity. The Germanic Confederacy was not the most pertinent example to produce on this occasion:—Among a number of absolute Princes who consider their subjects as their property, whose will is law, and to whose ambition there are no bounds, it was no difficult task to discover other causes from which the convulsions in that country rose, than the defects of their Confederation. Whether a Confederacy of States under any form be a practicable Government, was a question to be discussed in the course of investigating this Constitution.

He was pleased that thus early in the debate, the honorable gentleman had himself shewn, that the intent of the Constitution was not a Confederacy, but a reduction of all the states into a consolidated government.[5] He hoped the gentleman would be complaisant enough to exchange names with those who disliked the Constitution, as it appeared from his own concession that they were Federalists, and those who advocated it Anti-Federalists.[6] He begged leave, however, to remind the gentleman, that Montesquieu, with all the examples of modern and antient Republics in view, gives it as his opinion, that a confederated Republic has all the internal advantages of a Republic, with the external force of a Monarchical Government.[7] He was happy to find an officer of such high rank recommending to the other officers of Government, and to those who are members of the Legislature, to be unbiassed by any motives of interest or state importance.[8] Fortunately for himself, he was out of the verge of temptations of this kind, not having the honor to hold any office under the state. But then he was exposed, in common with other gentlemen of the Convention, to another temptation, against which he thought it necessary that we should be equally guarded:—If, said he, this constitution is adopted, there will be a number of honorable and lucrative offices to be filled, and we ought to be cautious lest an expectancy of some of them should influence us to adopt without due consideration. 6.12.5

We may wander, said he, in the fields of fancy without end, and gather flowers as we go: It may be entertaining—but it is of little service to the discovery of truth:—We may on one side compare the scheme advocated by our opponents to *golden images, with feet part of iron and part of clay;* and on the other, *to a beast dreadful and terrible, and strong exceedingly, having great iron teeth, which devours, breaks in pieces, and stamps the residue with his feet:* And after all, said he, we shall find that both these allusions are taken from the same *vision;* and their true meaning must be discovered by sober reasoning. 6.12.6

He would agree with the honorable gentleman, that perfection in any 6.12.7

system of government was not to be looked for. If that was the object, the debates on the one before them might soon be closed.—But he would observe that this observation applied with equal force against changing any systems—especially against material and radical changes.—Fickleness and inconstancy, he said, was characteristic of a free people; and in framing a Constitution for them, it was, perhaps the most difficult thing to correct this spirit, and guard against the evil effects of it—he was persuaded it could not be altogether prevented without destroying their freedom—it would be like attempting to correct a small indisposition in the habit of the body, by fixing the patient in a confirmed consumption.—This fickle and inconstant spirit was the more dangerous in bringing about changes in the government.[9] The instance that had been adduced by the gentleman from sacred history, was an example in point to prove this: The nation of Israel having received a form of civil government from Heaven, enjoyed it for a considerable period; but at length labouring under pressures, which were brought upon them by their own misconduct and imprudence, instead of imputing their misfortunes to their true causes, and making a proper improvement of their calamities, by a correction of their errors, they imputed them to a defect in their constitution; they rejected their Divine Ruler, and asked Samuel to make them a King to judge them, like other nations. Samuel was grieved at their folly; but still, by the command of God, he hearkened to their voice; tho' not until he had solemnly declared unto them the manner in which the King should reign over them. "This, (says Samuel) shall be the manner of the King that shall reign over you. He will take your sons and appoint them for himself, for his chariots, and for his horsemen, and some shall run before his chariots; and he will appoint him captains over thousands, and captains over fifties, and will set them to ear his ground, and to reap his harvest, and to make his instruments of war, and instruments of his chariots. And he will take your daughters to be confectionaries, and to be cooks, and to be bakers. And he will take your fields, and your vine yards, and your olive yards, even the best of them, and give them to his servants. And he will take the tenth of your seed, and of your vineyards, and give to his officers and to his servants. And he will take your men servants and your maid servants, and your goodliest young men, and your asses, and put them to his work. He will take the tenth of your sheep: And ye shall be his servants. And ye shall cry out in that day, because of your King which ye have chosen you; and the Lord will not hear you in that day."[10]—How far this was applicable to the subject he would not now say; it could be better judged of when they had gone through it.—On the whole he wished to take up this matter with candor and deliberation.

6.12.8 He would now proceed to state his objections to the clause just read, (section 2 of article I, clause 3.) His objections were comprised under three heads: 1st the rule of apportionment is unjust; 2d. there is no precise number fixed on below which the house shall not be reduced; 3d. it is inadequate. In

the first place the rule of apportionment of the representatives is to be according to the whole number of the white inhabitants, with three fifths of all others; that is in plain English, each state is to send Representatives in proportion to the number of freemen, and three fifths of the slaves it contains. He could not see any rule by which slaves are to be included in the ratio of representation: The principle of a representation, being that every free agent should be concerned in governing himself, it was absurd to give that power to a man who could not exercise it—slaves have no will of their own: The very operation of it was to give certain privileges to those people who were so wicked as to keep slaves. He knew it would be admitted that this rule of apportionment was founded on unjust principles, but that it was the result of accommodation; which he supposed we should be under the necessity of admitting, if we meant to be in union with the Southern States, though utterly repugnant to his feelings. In the second place, the number was not fixed by the Constitution, but left at the discretion of the Legislature; perhaps he was mistaken; it was his wish to be informed. He understood from the Constitution, that sixty-five Members were to compose the House of Representatives for three years; that after that time a census was to be taken, and the numbers to be ascertained by the Legislature on the following principles: 1st, they shall be apportioned to the respective States according to numbers; 2d, each State shall have one at least; 3d, they shall never exceed one to every thirty thousand. If this was the case, the first Congress that met might reduce the number below what it now is; a power inconsistent with every principle of a free government, to leave it to the discretion of the rulers to determine the number of the representatives of the people. There was no kind of security except in the integrity of the men who were entrusted; and if you have no other security, it is idle to contend about Constitutions. In the third place, supposing Congress should declare that there should be one representative for every thirty thousand of the people, in his opinion it would be incompetent to the great purposes of representation. It was, he said, the fundamental principle of a free government, that the people should make the laws by which they were to be governed: He who is controlled by another is a slave; and that government which is directed by the will of any one or a few, or any number less than is the will of the community, is a government for slaves.

The next point was, how was the will of the community to be expressed? 6.12.9
It was not possible for them to come together; the multitude would be too great: In order, therefore to provide against this inconvenience, the scheme of representation had been adopted, by which the people deputed others to represent them. Individuals entering into society became one body, and that body ought to be animated by one mind; and he conceived that every form of government should have that complexion. It was true that notwithstanding all the experience we had from others, it had not appeared that the experiment of representation had been fairly tried: there was something like

it in the ancient republics, in which, being of small extent, the people could easily meet together, though instead of deliberating, they only considered of those things which were submitted to them by their magistrates. In Great Britain representation had been carried much farther than in any government we knew of, except our own; but in that country it now had only a name. America was the only country, in which the first fair opportunity had been offered. When we were Colonies, our representation was better than any that was then known: Since the revolution we had advanced still nearer to perfection. He considered it as an object, of all others the most important, to have it fixed on its true principle; yet he was convinced that it was impracticable to have such a representation in a consolidated government. However, said he, we may approach a great way towards perfection by encreasing the representation and limiting the powers of Congress.[11] He considered that the great interests and liberties of the people could only be secured by the State Governments. He admitted, that if the new government was only confined to great national objects, it would be less exceptionable; but it extended to every thing dear to human nature. That this was the case could be proved without any long chain of reasoning:—for that power which had both the purse and the sword, had the government of the whole country, and might extend its powers to any and to every object. He had already observed, that by the true doctrine of representation, this principle was established—that the representative must be chosen by the free will of the majority of his constituents: It therefore followed that the representative should be chosen from small districts. This being admitted, he would ask, could 65 men, for 3,000,000, or 1 for 30,000, be chosen in this manner? Would they be possessed of the requisite information to make happy the great number of souls that were spread over this extensive country?—There was another objection to the clause: If great affairs of government were trusted to a few men, they would be more liable to corruption. Corruption, he knew, was unfashionable amongst us, but he supposed that Americans were like other men; and tho' they had hitherto displayed great virtues, still they were men; and therefore such steps should be taken as to prevent the possibility of corruption. We were now in that stage of society, in which we could deliberate with freedom;—how long it might continue, God only knew! Twenty years hence, perhaps, these maxims might become unfashionable; we already hear, said he, in all parts of the country, gentlemen ridiculing that spirit of patriotism and love of liberty, which carried us through all our difficulties in times of danger.—When patriotism was already nearly hooted out of society, ought we not to take some precautions against the progress of corruption?[12]

6.12.10 He had one more observation to make, to shew that the representation was insufficient—Government, he said, must rest for its execution, on the good opinion of the people, for if it was made in heaven, and had not the confidence of the people, it could not be executed:[13] that this was proved,

by the example given by the gentleman, of the Jewish theocracy. It must have a good setting out, or the instant it takes place there is an end of liberty. He believed that the inefficacy of the old Confederation, had arisen from that want of confidence; and this caused in a great degree by the continual declamation of gentlemen of importance against it from one end of the continent to the other, who had frequently compared it to a rope of sand. It had pervaded every class of citizens, and their misfortunes, the consequences of idleness and extravagance, were attributed to the defects of that system. At the close of the war, our country had been left in distress; and it was impossible that any government on earth could immediately retrieve it; it must be time and industry alone that could effect it. He said he would pursue these observations no further at present,—And concluded with making the following motion:

"*Resolved,* That it is proper that the number of representatives be fixed at the rate of one for every twenty thousand inhabitants, to be ascertained on the principles mentioned in the second section of the first article of the Constitution, until they amount to three hundred; after which they shall be apportioned among the States, in proportion to the number of inhabitants of the States respectively: And that before the first enumeration shall be made, the several States shall be entitled to chuse double the number of representatives for that purpose, mentioned in the Constitution."

21 June 1788

Mr. *M. Smith.* I had the honor yesterday of submitting an amendment to the clause under consideration, with some observations in support of it. I hope I shall be indulged in making some additional remarks in reply to what has been offered by the honorable gentleman from New-York [Alexander Hamilton]. 6.12.11

He has taken up much time in endeavouring to prove that the great defect in the old confederation was, that it operated upon states instead of individuals. It is needless to dispute concerning points on which we do not disagree: It is admitted that the powers of the general government ought to operate upon individuals to a certain degree. How far the powers should extend, and in what cases to individuals is the question. As the different parts of the system will come into view in the course of our investigation, an opportunity will be afforded to consider this question; I wish at present to confine myself to the subject immediately under the consideration of the committee. I shall make no reply to the arguments offered by the hon. gentleman to justify the rule of apportionment fixed by this clause: For though I am confident they might be easily refuted, yet I am persuaded we

must yield this point, in accommodation to the southern states. The amendment therefore proposes no alteration to the clause in this respect.

6.12.12 The honorable gentleman says, that the clause by obvious construction fixes the representation.[14] I wish not to torture words or sentences. I perceive no such obvious construction. I see clearly, that on the one hand the representatives cannot exceed one for thirty thousand inhabitants; and on the other, that whatever larger number of inhabitants may be taken for the rule of apportionment, each state shall be entitled to send one representative. Every thing else appears to me in the discretion of the legislature. If there be any other limitation, it is certainly implied. Matters of such moment should not be left to doubtful construction. It is urged that the number of representatives will be fixed at one for 30,000, because it will be the interest of the larger states to do it.[15] I cannot discern the force of this argument.—To me it appears clear, that the relative weight of influence of the different states will be the same, with the number of representatives at 65 as at 600, and that of the individual members greater. For each member's share of power will decrease as the number of the house of representatives increases.—If therefore this maxim be true, that men are unwilling to relinquish powers which they once possess, we are not to expect that the house of representatives will be inclined to enlarge the numbers. The same motive will operate to influence the president and senate to oppose the increase of the number of representatives; for in proportion as the weight of the house of representatives is augmented, they will feel their own diminished: It is therefore of the highest importance that a suitable number of representatives should be established by the constitution.

6.12.13 It has been observed by an honorable member, that the eastern states insisted upon a small representation on the principles of œconomy.—This argument must have no weight in the mind of a considerate person. The difference of expence, between supporting a house of representatives sufficiently numerous, and the present proposed one would be about 20 or 30,000 dollars per annum. The man who would seriously object to this expence, to secure his liberties, does not deserve to enjoy them. Besides, by increasing the number of representatives, we open a door for the admission of the substantial yeomanry of your country; who, being possessed of the habits of œconomy, will be cautious of imprudent expenditures, by which means a much greater saving will be made of public money than is sufficient to support them. A reduction of the number of the state legislatures might also be made, by which means there might be a saving of expence much more than sufficient for the purpose of supporting the general legislature.—For, as under this system all the powers of legislation relating to our general concerns, are vested in the general government, the powers of the state legislatures will be so curtailed, as to render it less necessary to have them so numerous as they now are.

6.12.14 But an honorable gentleman has observed that it is a problem that cannot

be solved, what the proper number is which ought to compose the house of representatives, and calls upon me to fix the number. I admit this is a question that will not admit of a solution with mathematical certainty—few political questions will—yet we may determine with certainty that certain numbers are too small or too large. We may be sure that ten is too small and a thousand too large a number—every one will allow that the first number is too small to possess the sentiments, be influenced by the interests of the people, or secure against corruption: A thousand would be too numerous to be capable of deliberating.

6.12.15 To determine whether the number of representatives proposed by this Constitution is sufficient, it is proper to examine the qualifications which this house ought to possess, in order to exercise their powers discreetly for the happiness of the people. The idea that naturally suggests itself to our minds, when we speak of representatives is, that they resemble those they represent; they should be a true picture of the people; possess the knowledge of their circumstances and their wants; sympathize in all their distresses, and be disposed to seek their true interests.[16] The knowledge necessary for the representatives of a free people, not only comprehends extensive political and commercial information, such as is acquired by men of refined education, who have leisure to attain to high degrees of improvement, but it should also comprehend that kind of acquaintance with the common concerns and occupations of the people, which men of the middling class of life are in general much better competent to, than those of a superior class. To understand the true commercial interests of a country, not only requires just ideas of the general commerce of the world, but also, and principally, a knowledge of the productions of your own country and their value, what your soil is capable of producing[,] the nature of your manufactures, and the capacity of the country to increase both. To exercise the power of laying taxes, duties and excises with discretion, requires something more than an acquaintance with the abstruse parts of the system of finance. It calls for a knowledge of the circumstances and ability of the people in general, a discernment how the burdens imposed will bear upon the different classes.

6.12.16 From these observations results this conclusion that the number of representatives should be so large, as that while it embraces men of the first class, it should admit those of the middling class of life. I am convinced that this Government is so constituted, that the representatives will generally be composed of the first class in the community, which I shall distinguish by the name of the natural aristocracy of the country.[17] I do not mean to give offence by using this term. I am sensible this idea is treated by many gentlemen as chimerical. I shall be asked what is meant by the natural aristocracy—and told that no such distinction of classes of men exists among us. It is true it is our singular felicity that we have no legal or hereditary distinctions of this kind; but still there are real differences: Every

society naturally divides itself into classes. The author of nature has bestowed on some greater capacities than on others—birth, education, talents and wealth, create distinctions among men as visible and of as much influence as titles, stars and garters. In every society, men of this class will command a superior degree of respect—and if the government is so constituted as to admit but few to exercise the powers of it, it will, according to the natural course of things, be in their hands. Men in the middling class, who are qualified as representatives, will not be so anxious to be chosen as those of the first. When the number is so small the office will be highly elevated and distinguished—the stile in which the members live will probably be high—circumstances of this kind, will render the place of a representative not a desirable one to sensible, substantial men, who have been used to walk in the plain and frugal paths of life.

6.12.17 Besides, the influence of the great will generally enable them to succeed in elections—it will be difficult to combine a district of country containing 30 or 40,000 inhabitants, frame your election laws as you please, in any one character; unless it be in one of conspicuous, military, popular, civil or legal talents. The great easily form associations; the poor and middling class form them with difficulty. If the elections be by plurality, as probably will be the case in this state, it is almost certain, none but the great will be chosen—for they easily unite their interest—The common people will divide, and their divisions will be promoted by the others. There will be scarcely a chance of their uniting, in any other but some great man, unless in some popular demagogue, who will probably be destitute of principle. A substantial yeoman of sense and discernment, will hardly ever be chosen. From these remarks it appears that the government will fall into the hands of the few and the great. This will be a government of oppression. I do not mean to declaim against the great, and charge them indiscriminately with want of principle and honesty.—The same passions and prejudices govern all men. The circumstances in which men are placed in a great measure give a cast to the human character. Those in middling circumstances, have less temptation—they are inclined by habit and the company with whom they associate, to set bounds to their passions and appetites—if this is not sufficient, the want of means to gratify them will be a restraint—they are obliged to employ their time in their respective callings—hence the substantial yeomanry of the country are more temperate, of better morals and less ambition than the great.[18] The latter do not feel for the poor and middling class; the reasons are obvious—they are not obliged to use the pains and labour to procure property as the other.—They feel not the inconveniences arising from the payment of small sums. The great consider themselves above the common people—entitled to more respect—do not associate with them—they fancy themselves to have a right of pre-eminence in every thing. In short, they possess the same feelings, and are under the influence of the same motives, as an hereditary nobility. I know the idea that

such a distinction exists in this country is ridiculed by some—But I am not the less apprehensive of danger from their influence on this account—Such distinctions exist all the world over—have been taken notice of by all writers on free government—and are founded in the nature of things. It has been the principal care of free governments to guard against the encroachments of the great. Common observation and experience prove the existence of such distinctions. Will any one say, that there does not exist in this country the pride of family, of wealth, of talents; and that they do not command influence and respect among the common people? Congress, in their address to the inhabitants of the province of Quebec, in 1775, state this distinction in the following forcible words quoted from the Marquis Beccaria. "In every human society, there is an essay continually tending to confer on one part the height of power and happiness, and to reduce the other to the extreme of weakness and misery. The intent of good laws is to oppose this effort, and to diffuse their influence universally and equally."[19] We ought to guard against the government being placed in the hands of this class—They cannot have that sympathy with their constituents which is necessary to connect them closely to their interest: Being in the habit of profuse living, they will be profuse in the public expences. They find no difficulty in paying their taxes, and therefore do not feel public burthens: Besides if they govern, they will enjoy the emoluments of the government. The middling class, from their frugal habits, and feeling themselves the public burdens, will be careful how they increase them.

But I may be asked, would you exclude the first class in the community, 6.12.18
from any share in legislation? I answer by no means—they would be more dangerous out of power than in it—they would be factious—discontented and constantly disturbing the government—it would also be unjust—they have their liberties to protect as well as others—and the largest share of property. But my idea is, that the Constitution should be so framed as to admit this class, together with a sufficient number of the middling class to controul them. You will then combine the abilities and honesty of the community—a proper degree of information, and a disposition to pursue the public good. A representative body, composed principally of respectable yeomanry is the best possible security to liberty.—When the interest of this part of the community is pursued, the public good is pursued; because the body of every nation consists of this class. And because the interest of both the rich and the poor are involved in that of the middling class. No burden can be laid on the poor, but what will sensibly affect the middling class. Any law rendering property insecure, would be injurious to them.—When therefore this class in society pursue their own interest, they promote that of the public, for it is involved in it.

In so small a number of representatives, there is great danger from cor- 6.12.19
ruption and combination. A great politician has said that every man has his price:[20] I hope this is not true in all its extent—But I ask the gentlemen to

inform, what government there is, in which it has not been practised? Notwithstanding all that has been said of the defects in the Constitution of the antient Confederacies of the Grecian Republics, their destruction is to be imputed more to this cause than to any imperfection in their forms of government. This was the deadly poison that effected their dissolution. This is an extensive country, increasing in population and growing in consequence. Very many lucrative offices will be in the grant of the government, which will be the object of avarice and ambition. How easy will it be to gain over a sufficient number, in the bestowment of these offices, to promote the views and purposes of those who grant them! Foreign corruption is also to be guarded against. A system of corruption is known to be the system of government in Europe. It is practised without blushing. And we may lay it to our account it will be attempted amongst us. The most effectual as well as natural security against this, is a strong democratic branch in the legislature frequently chosen, including in it a number of the substantial, sensible yeomanry of the country. Does the house of representatives answer this description? I confess, to me they hardly wear the complexion of a democratic branch—they appear the mere shadow of representation. The whole number in both houses amounts to 91—Of these 46 make a quorum; and 24 of those being secured, may carry any point. Can the liberties of three millions of people be securely trusted in the hands of 24 men? Is it prudent to commit to so small a number the decision of the great questions which will come before them? Reason revolts at the idea.

6.12.20 The honorable gentleman from New York has said that 65 members in the house of representatives are sufficient for the present situation of the country, and taking it for granted that they will increase as one for 30,000, in 25 years they will amount to 200. It is admitted by this observation that the number fixed in the Constitution, is not sufficient without it is augmented. It is not declared that an increase shall be made, but is left at the discretion of the legislature, by the gentleman's own concession; therefore the Constitution is imperfect. We certainly ought to fix in the Constitution those things which are essential to liberty. If any thing falls under this description, it is the number of the legislature. To say, as this gentleman does, that our security is to depend upon the spirit of the people, who will be watchful of their liberties, and not suffer them to be infringed, is absurd. It would equally prove that we might adopt any form of government. I believe were we to create a despot, he would not immediately dare to act the tyrant; but it would not be long before he would destroy the spirit of the people, or the people would destroy him. If our people have a high sense of liberty, the government should be congenial to this spirit—calculated to cherish the love of liberty, while yet it had sufficient force to restrain licentiousness. Government operates upon the spirit of the people, as well as the spirit of the people operates upon it—and if they are not conformable to each other, the one or the other will prevail.[21] In a less time than 25 years, the government

will receive its tone. What the spirit of the country may be at the end of that period, it is impossible to foretell: Our duty is to frame a government friendly to liberty and the rights of mankind, which will tend to cherish and cultivate a love of liberty among our citizens. If this government becomes oppressive it will be by degrees: It will aim at its end by disseminating sentiments of government opposite to republicanism; and proceed from step to step in depriving the people of a share in the government. A recollection of the change that has taken place in the minds of many in this country in the course of a few years, ought to put us upon our guard. Many who are ardent advocates for the new system, reprobate republican principles as chimerical and such as ought to be expelled from society. Who would have thought ten years ago, that the very men who risqued their lives and fortunes in support of republican principles, would now treat them as the fictions of fancy?—A few years ago we fought for liberty—We framed a general government on free principles—We placed the state legislatures, in whom the people have a full and fair representation, between Congress and the people. We were then, it is true, too cautious; and too much restricted the powers of the general government. But now it is proposed to go into the contrary, and a more dangerous extreme; to remove all barriers; to give the New Government free access to our pockets, and ample command of our persons; and that without providing for a genuine and fair representation of the people. No one can say what the progress of the change of sentiment may be in 25 years. The same men who now cry up the necessity of an energetic government, to induce a compliance with this system, may in much less time reprobate this in as severe terms as they now do the confederation, and may as strongly urge the necessity of going as far beyond this, as this is beyond the Confederation.—Men of this class are increasing—they have influence, talents and industry—It is time to form a barrier against them. And while we are willing to establish a government adequate to the purposes of the union, let us be careful to establish it on the broad basis of equal liberty.

23 June 1788

Honorable Mr. *Smith*. I did not intend to make any more observations on this article. Indeed, I have heard nothing to day, which has not been suggested before, except the polite reprimand I have received for my declamation. I should not have risen again, but to examine who has proved himself the greatest declaimer. The gentleman wishes me to describe what I meant, by representing the feelings of the people.[22] If I recollect right, I said the representative ought to understand, and govern his conduct by the true interest of the people.—I believe I stated this idea precisely. When he 6.12.21

attempts to explain my ideas, he explains them away to nothing; and instead of answering, he distorts, and then sports with them. But he may rest assured, that in the present spirit of the Convention, to irritate is not the way to conciliate. The gentleman, by the false gloss he has given to my argument, makes me an enemy to the rich: This is not true. All I said, was, that mankind were influenced, in a great degree, by interests and prejudices:—That men, in different ranks of life, were exposed to different temptations—and that ambition was more peculiarly the passion of the rich and great. The gentleman supposes the poor have less sympathy with the sufferings of their fellow creatures; for that those who feel most distress themselves, have the least regard to the misfortunes of others:—Whether this be reasoning or declamation, let all who hear us determine. I observed that the rich were more exposed to those temptations, which rank and power hold out to view; that they were more luxurious and intemperate, because they had more fully the means of enjoyment; that they were more ambitious, because more in the hope of success. The gentleman says my principle is not true; for that a poor man will be as ambitious to be a constable, as a rich man to be a governor:—But he will not injure his country so much by the party he creates to support his ambition.

6.12.22 The next object of the gentleman's ridicule is my idea of an aristocracy; and he indeed has done me the honor, to rank me in the order.[23] If then I am an aristocrat, and yet publicly caution my countrymen against the encroachments of the aristocrats, they will surely consider me as one of their most disinterested friends. My idea of aristocracy is not new:—It is embraced by many writers on government:—I would refer the gentleman for a definition of it to the honorable *John Adams*, one of our natural aristocrats.[24] This writer will give him a description the most ample and satisfactory. But I by no means intended to carry my idea of it to such a ridiculous length as the gentleman would have me; nor will any of my expressions warrant the construction he imposes on them. My argument was, that in order to have a true and genuine representation, you must receive the middling class of people into your government—such as compose the body of this assembly. I observed, that a representation from the United States could not be so constituted, as to represent completely the feelings and interests of the people; but that we ought to come as near this object as possible. The gentlemen say, that the exactly proper number of representatives is so indeterminate and vague, that it is impossible for them to ascertain it with any precision. But surely, they are able to see the distinction between twenty and thirty. I acknowledged that a complete representation would make the legislature too numerous; and therefore, it is our duty to limit the powers, and form checks on the government, in proportion to the smallness of the number.

6.12.23 The honorable gentleman next animadverts on my apprehensions of corruption, and instances the present Congress, to prove an absurdity in my

argument. But is this fair reasoning? There are many material checks to the operations of that body, which the future Congress will not have. In the first place, they are chosen annually:—What more powerful check! They are subject to recal: Nine states must agree to any important resolution, which will not be carried into execution, till it meets the approbation of the people in the state legislatures. Admitting what he says, that they have pledged their faith to support the acts of Congress; yet, if these be contrary to the essential interests of the people, they ought not to be acceded to; for they are not bound to obey any law, which tends to destroy them.

6.12.24 It appears to me, that had œconomy been a motive for making the representation small; it might have operated more properly in leaving out some of the offices which this constitution requires. I am sensible that a great many of the common people, who do not reflect, imagine that a numerous representation involves a great expence:—But they are not aware of the real security it gives to an œconomical management in all the departments of government.

6.12.25 The gentleman further declared, that as far his acquaintance extended, the people thought sixty-five a number fully large enough for our State Assembly; and hence inferred, that sixty-five is to two hundred and forty thousand, as sixty five is to three millions.—This is curious reasoning.

I feel that I have troubled the committee too long. I should not indeed have risen again upon this subject, had not my ideas been grossly misrepresented.

[*The Convention turned, on 24 June, to a consideration of Article I, section 3, the constitution of the Senate. Mr. George Livingston moved the following amendment: "Resolved, That no person shall be eligible as a senator for more than six years in any term of twelve years, and that it shall be in the power of the legislatures of the several states to recall their senators, or either of them, and to elect others in their stead, to serve for the remainder of the time for which such senator or senators, so recalled, were appointed."*]

6.12.26 The honorable Mr. *Smith* observed, that when he had the honor to address the committee on the preceding question of the representation, he stated to them his idea, that it would be impossible, under the constitution as it stands, to have such a genuine representation of the people, as would itself form a check in the government: That therefore it became our duty to provide checks of another nature. The honorable gentleman from New-York had made many pertinent observations on the propriety of giving stability to the senate. The general principles laid down, he thought were

just. He only disputed the inferences drawn from them, and their application to the proposed amendment. The only question was, whether the checks attempted in the amendment were incompatible with that stability which he acknowledged was essential to good government. Mr. *Smith* said he did not rise to enter at present into the debate at large. Indisposition obliged him to beg leave of the committee to defer what he had to offer to them till the succeeding day.

Convention adjourned.

Wednesday, 25 June

Section third was again read—when

6.12.27 Mr. *Smith* resumed his argument as follows. The amendment embraces two objects: First, that the senators shall be eligible for only six years in any term of twelve years; Second, that they shall be subject to the recall of the legislatures of their several states. It is proper that we take up these points separately. I concur with the honorable gentleman, that there is a necessity for giving this branch a greater stability than the house of representatives. I think his reasons are conclusive on this point. But, Sir, it does not follow from this position that the senators ought to hold their places during life. Declaring them ineligible during a certain term after six years, is far from rendering them less stable than is necessary. We think the amendment will place the senate in a proper medium between a fluctuating and a perpetual body. As the clause now stands, there is no doubt that the senators will hold their office perpetually; and in this situation, they must of necessity lose their dependence and attachment to the people. It is certainly inconsistent with the established principles of republicanism, that the senate should be a fixed and unchangeable body of men. There should be then some constitutional provision against this evil. A rotation I consider as the best possible mode of affecting a remedy. The amendment will not only have a tendency to defeat any plots, which may be formed against the liberty and authority of the state governments, but will be the best means to extinguish the factions which often prevail, and which are sometimes so fatal in legislative bodies. This appears to me an important consideration. We have generally found, that perpetual bodies have either combined in some scheme of usurpation, or have been torn and distracted with cabals—Both have been the source of misfortunes to the state. Most people acquainted with history will acknowledge these facts. Our Congress would have been a fine field for party spirit to act in—That body would undoubtedly have suffered all the evils of faction, had it not been secured by the rotation

established by the articles of the confederation. I think a rotation in the government is a very important and truly republican institution. All good republicans, I presume to say, will treat it with respect.[25]

6.12.28 It is a circumstance strongly in favor of rotation, that it will have a tendency to diffuse a more general spirit of emulation, and to bring forward into office the genius and abilities of the continent—The ambition of gaining the qualifications necessary to govern, will be in some proportion to the chance of success. If the office is to be perpetually confined to a few, other men of equal talents and virtue, but not possessed of so extensive an influence, may be discouraged from aspiring to it. The more perfectly we are versed in the political science, the more firmly will the happy principles of republicanism be supported. The true policy of constitutions will be to increase the information of the country, and disseminate the knowledge of government as universally as possible. If this be done, we shall have, in any dangerous emergency, a numerous body of enlightened citizens, ready for the call of their country. As the constitution now is, you only give an opportunity to two men to be acquainted with the public affairs. It is a maxim with me, that every man employed in a high office by the people, should from time to time return to them, that he may be in a situation to satisfy them with respect to his conduct and the measures of administration. If I recollect right, it was observed by an honorable member from New-York, that this amendment would be an infringement of the natural rights of the people.[26] I humbly conceive, if the gentleman reflects maturely on the nature of his argument, he will acknowledge its weakness. What is government itself, but a restraint upon the natural rights of the people? What constitution was ever devised, that did not operate as a restraint on their original liberties? What is the whole system of qualifications, which take place in all free governments, but a restraint? Why is a certain age made necessary? Why a certain term of citizenship? This constitution itself, Sir, has restraints innumerable.—The amendment, it is true, may exclude two of the best men: but it can rarely happen, that the state will sustain any material loss by this. I hope and believe that we shall always have more than two men, who are capable of discharging the duty of a senator. But if it should so happen that the state possessed only two capable men, it will be necessary that they should return home, from time to time, to inspect and regulate our domestic affairs. I do not conceive the state can suffer any inconvenience. The argument indeed might have some weight were the representation very large: But as the power is to be exercised upon only two men, the apprehensions of the gentlemen are entirely without foundation.

6.12.29 With respect to the second part of the amendment, I would observe that as the senators are the representatives of the state legislatures, it is reasonable and proper that they should be under their controul. When a state sends an agent commissioned to transact any business, or perform any service, it certainly ought to have a power to recall him.These are plain principles, and

so far as they apply to the case under examination, they ought to be adopted by us. Form this government as you please, you must at all events lodge in it very important powers: These powers must be in the hands of a few men, so situated as to produce a small degree of responsibility. These circumstances ought to put us upon our guard; and the inconvenience of this necessary delegation of power should be corrected, by providing some suitable checks.

6.12.30 Against this part of the amendment a great deal of argument has been used, and with considerable plausibility. It is said if the amendment takes place, the senators will hold their office only during the pleasure of the state legislatures, and consequently will not possess the necessary firmness and stability. I conceive, Sir, there is a fallacy in this argument, founded upon the suspicion that the legislature of a state will possess the qualities of a mob, and be incapable of any regular conduct. I know that the impulses of the multitude are inconsistent with systematic government. The people are frequently incompetent to deliberate discussion, and subject to errors and imprudencies. Is this the complexion of the state legislatures? I presume it is not. I presume that they are never actuated by blind impulses—that they rarely do things hastily and without consideration. [The state legislatures were select bodies of men, chosen for their superior wisdom, and so organized as to be capable of calm and regular conduct.][27] My apprehension is, that the power of recall would not be exercised as often as it ought. It is highly improbable that a man, in whom the state has confided, and who has an established influence, will be recalled, unless his conduct has been notoriously wicked.—The arguments of the gentleman therefore, do not apply in this case. It is further observed, that it would be improper to give the legislatures this power, because the local interests and prejudices of the states ought not to be admitted into the general government; and that if the senator is rendered too independent of his constituents,[28] he will sacrifice the interests of the Union to the policy of his state. Sir, the senate has been generally held up by all parties as a safe guard to the rights of the several states. In this view, the closest connection between them has been considered as necessary. But now it seems we speak a different language—We now look upon the least attachment to their states as dangerous—We are now for separating them, and rendering them entirely independent, that we may root out the last vestige of state sovereignty.

6.12.31 An honorable gentleman from New-York observed yesterday, that the states would always maintain their importance and authority, on account of their superior influence over the people.[29] To prove this influence, he mentioned the aggregate number of the state representatives throughout the continent. But I ask him, how long the people will retain their confidence for two thousand representatives, who shall meet once in a year to make laws for regulating the heighth of your fences and the repairing of your roads? Will they not by and by be saying,—Here, we are paying a great number of

men for doing nothing: We had better give up all the civil business of our state with its powers to congress, who are sitting all the year round: We had better get rid of the useless burthen. That matters will come to this at last, I have no more doubt than I have of my existence. The state governments, without object or authority, will soon dwindle into insignificance, and be despised by the people themselves. I am, sir, at a loss to know how the state legislatures will spend their time. Will they make laws to regulate agriculture? I imagine this will be best regulated by the sagacity and industry of those who practise it. Another reason offered by the gentleman is, that the states will have a greater number of officers than the general government. I doubt this. Let us make a comparison. In the first place, the federal government must have a compleat set of judicial officers of different ranks throughout the continent: Then, a numerous train of executive officers, in all the branches of the revenue, both internal and external, and all the civil and military departments. Add to this, their salaries will probably be larger and better secured than those of any state officers. If these numerous offices are not at once established, they are in the power of congress, and will all in time be created. Very few offices will be objects of ambition in the states. They will have no establishments at all to correspond with some of those I have mentioned—In other branches, they will have the same as congress. But I ask, what will be their comparative influence and importance? I will leave it, sir, to any man of candour, to determine whether there will not probably be more lucrative and honorable places in the gift of congress than in the disposal of the states all together. But the whole reasoning of the gentlemen rests upon the principle that the states will be able to check the general government, by exciting the people to opposition: It only goes to prove, that the state officers will have such an influence over the people, as to impell them to hostility and rebellion. This kind of check, I contend, would be a pernicious one; and certainly ought to be prevented. Checks in government ought to act silently, and without public commotion.[30] I think that the harmony of the two powers should by all means be maintained: If it be not, the operation of government will be baneful—One or the other of the parties must finally be destroyed in the conflict. The constitutional line between the authority of each should be so obvious, as to leave no room for jealous apprehensions or violent contests.[31]

It is further said, that the operation of local interests should be counteracted; for which purpose, the senate should be rendered permanent. I conceive that the true interest of every state is the interest of the whole; and that if we should have a well regulated government, this idea will prevail. We shall indeed have few local interests to pursue, under the new constitution: because it limits the claims of the states by so close a line, that on their part there can be little dispute, and little worth disputing about. But, sir, I conceive that partial interests will grow continually weaker, because there are not those fundamental differences between the real interests of the 6.12.32

several states, which will long prevent their coming together and becoming uniform.

6.12.33 Another argument advanced by the gentlemen is, that our amendment would be the means of producing factions among the electors: That aspiring men would misrepresent the conduct of a faithful senator; and by intrigue, procure a recall, upon false grounds, in order to make room for themselves. But, sir, men who are ambitious for places will rarely be disposed to render those places unstable. A truly ambitious man will never do this, unless he is mad. It is not to be supposed that a state will recall a man once in twenty years, to make way for another. Dangers of this kind are very remote: I think they ought not to be brought seriously into view.

6.12.34 More than one of the gentlemen have ridiculed my apprehensions of corruption. How, say they, are the people to be corrupted? By their own money? Sir, in many countries, the people pay money to corrupt themselves: why should it not happen in this? Certainly, the congress will be as liable to corruption as other bodies of men. Have they not the same frailties, and the same temptations? With respect to the corruption arising from the disposal of offices, the gentlemen have treated the argument as insignificant. But let any one make a calculation, and see whether there will not be good offices enough, to dispose of to every man who goes there, who will then freely resign his seat: for, can any one suppose, that a member of congress would not go out and relinquish his four dollars a day, for two or three thousand pounds a year? It is here objected that no man can hold an office created during the time he is in Congress—But it will be easy for a man of influence, who has in his eye a favorite office previously created and already filled, to say to his friend, who holds it—Here—I will procure you another place of more emolument, provided you will relinquish yours in favor of me. The constitution appears to be a restraint, when in fact it is none at all. I presume, sir, there is not a government in the world in which there is greater scope for influence and corruption in the disposal of offices. Sir, I will not declaim, and say all men are dishonest; but I think that, in forming a constitution, if we presume this, we shall be on the safest side.[32] This extreme is certainly less dangerous than the other. It is wise to multiply checks to a greater degree than the present state of things requires. It is said that corruption has never taken place under the old government—I believe, gentlemen hazard this assertion without proofs. That it has taken place in some degree is very probable. Many millions of money have been put into the hands of government, which have never yet been accounted for: The accounts are not yet settled, and Heaven only knows when they will be.

6.12.35 I have frequently observed a restraint upon the state governments, which Congress never can be under, construct that body as you please. It is a truth, capable of demonstration, that the nearer the representative is to his constituent, the more attached and dependent he will be—In the states, the elections are frequent, and the representatives numerous: They transact

business in the midst of their constituents, and every man may be called upon to account for his conduct. In this state the council of appointment are elected for one year.—The proposed constitution establishes a council of appointment who will be perpetual—Is there any comparison between the two governments in point of security? It is said that the governor of this state is always eligible: But this is not in point. The governor of this state is limited in his powers—Indeed his authority is small and insignificant, compared to that of the senate of the United States.

[*On 26 June the convention reached section 8 of Article I, dealing with the powers of Congress, and Mr. John Williams moved that Congress should lay no direct taxes except when the impost and excise are insufficient to meet the public exigencies and then only after requisitions on the states have been refused or neglected. The following day, Smith spoke as follows.*]

Friday, 27 June

Section 8, was again read,—and

The hon. Mr. *Smith* rose.—We are now come to a part of the system, 6.12.36
which requires our utmost attention, and most careful investigation. It is necessary that the powers vested in government should be precisely defined, that the people may be able to know whether it moves in the circle of the constitution. It is the more necessary in governments like the one under examination; because Congress here is to be considered as only part of a complex system. The state governments are necessary for certain local purposes; The general government for national purposes: The latter ought to rest on the former, not only in its form, but in its operations. It is therefore of the highest importance, that the line of jurisdiction should be accurately drawn. It is necessary, sir, in order to maintain harmony between the governments, and to prevent the constant interference which must either be the cause of perpetual differences, or oblige one to yield, perhaps unjustly, to the other. I conceive the system cannot operate well, unless it is so contrived, as to preserve harmony. If this be not done, in every contest, the weak must submit to the strong. The clause before us is of the greatest importance: It respects the very vital principle of government: The power is the most efficient and comprehensive that can be delegated; and seems in some measure to answer for all others. I believe it will appear evident, that money must be raised for the support of both governments: If therefore you give to one or the other, a power which may in its operation become exclu-

sive; it is obvious, that one can exist only at the will of the other; and must ultimately be sacrificed. The powers of the general government extend to the raising of money, in all possible ways, except by duties on exports; to the laying taxes on imports, lands, buildings, and even on persons. The individual states in time will be allowed to raise no money at all: The United States will have a right to raise money from every quarter. The general government has moreover this advantage. All disputes relative to jurisdiction must be decided in a federal court.

6.12.37 It is a general maxim, that all governments find a use for as much money as they can raise.[33] Indeed they have commonly demands for more: Hence it is, that all, as far as we are acquainted, are in debt. I take this to be a settled truth, that they will all spend as much as their revenue; that is, will live at least up to their income. Congress will ever exercise their powers, to levy as much money as the people can pay. They will not be restrained from direct taxes, by the consideration that necessity does not require them. If they forbear, it will be because the people cannot answer their demands. There will be no possibility of preventing the clashing of jurisdictions, unless some system of accomodation is formed. Suppose taxes are laid by both governments on the same article: It seems to me impossible, that they can operate with harmony. I have no more conception that in taxation two powers can act together; than that two bodies can occupy the same place. They will therefore not only interfere; but they will be hostile to each other. Here are to be two lists of all kinds of officers—supervisors, assessors, constables, &c. imployed in this business. It is unnecessary that I should enter into a minute detail, to prove that these complex powers cannot operate peaceably together, and without one being overpowered by the other. On one day, the continental collector calls for the tax; He seizes a horse: The next day, the state collector comes, procures a replevin and retakes the horse, to satisfy the state tax. I just mention this, to shew that people will not submit to such a government, and that finally it must defeat itself.

6.12.38 It must appear evident, that there will be a constant jarring of claims and interests. Now will the states in this contest stand any chance of success? If they will, there is less necessity for our amendment. But, consider the superior advantages of the general government: Consider their extensive, exclusive revenues; the vast sums of money they can command, and the means they thereby possess of supporting a powerful standing force. The states, on the contrary, will not have the command of a shilling, or a soldier. The two governments will be like two men contending for a certain property: The one has no interest but that which is the subject of the controversy; while the other has money enough to carry on the law-suit for twenty years. By this clause unlimited powers in taxation are given: Another clause declares, that Congress shall have power to make all laws necessary to carry the constitution into effect. Nothing therefore is left to construction; but the powers are most express. How far the state legisla-

tures will be able to command a revenue, every man, on viewing the subject, can determine. If he contemplates the ordinary operation of causes, he will be convinced that the powers of the confederacy will swallow up those of the members. I do not suppose that this effect will be brought about suddenly—As long as the people feel universally and strongly attached to the state governments, Congress will not be able to accomplish it: If they act prudently, their powers will operate and be increased by degrees. The tendency of taxation, tho' it be moderate, is to lessen the attachment of the citizens—If it becomes oppressive, it will certainly destroy their confidence. While the general taxes are sufficiently heavy, every attempt of the states to enhance them, will be considered as a tyrannical act, and the people will lose their respect and affection for a government, which cannot support itself, without the most grievous impositions upon them. If the constitution is accepted as it stands, I am convinced, that in seven years as much will be said against the state governments, as is now said in favour of the proposed system.

Sir, I contemplate the abolition of the state constitutions as an event fatal 6.12.39
to the liberties of America. These liberties will not be violently wrested from the people; they will be undermined and gradually consumed. On subjects of this kind we cannot be too critical. The investigation is difficult, because we have no examples to serve as guides. The world has never seen such a government over such a country. If we consult authorities in this matter, they will declare the impracticability of governing a free people, on such an extensive plan.[34] In a country, where a portion of the people live more than twelve hundred miles from the center, I think that one body cannot possibly legislate for the whole. Can the legislature frame a system of taxation that will operate with uniform advantages? Can they carry any system into execution? Will it not give occasion for an innumerable swarm of officers, to infest our country and consume our substance? People will be subject to impositions, which they cannot support, and of which their complaints can never reach the government.

Another idea is in my mind, which I think conclusive against a simple 6.12.40
government for the United States. It is not possible to collect a set of representatives, who are acquainted with all parts of the continent. Can you find men in Georgia who are acquainted with the situation of New-Hampshire? who know what taxes will best suit the inhabitants; and how much they are able to bear? Can the best men make laws for a people of whom they are entirely ignorant? Sir, we have no reason to hold our state governments in contempt, or to suppose them incapable of acting wisely. I believe they have operated more beneficially than most people expected, who considered that those governments were erected in a time of war and confusion, when they were very liable to errors in their structure. It will be a matter of astonishment to all unprejudiced men hereafter, who shall reflect upon our situation, to observe to what a great degree good government has

prevailed. It is true some bad laws have been passed in most of the states; but they arose more from the difficulty of the times, than from any want of honesty or wisdom. Perhaps there never was a government, which in the course of ten years did not do something to be repented of. As for Rhode-Island, I do not mean to justify her—She deserves to be condemned—If there were in the world but one example of political depravity, it would be her's: And no nation ever merited or suffered a more genuine infamy, than a wicked administration has attached to her character. Massachusetts also has been guilty of errors: and has lately been distracted by an internal convulsion. Great-Britain, notwithstanding her boasted constitution, has been a perpetual scene of revolutions and civil war—Her parliaments have been abolished; her kings have been banished and murdered. I assert that the majority of the governments in the union have operated better than any body had reason to expect: and that nothing but experience and habit is wanting, to give the state laws all the stability and wisdom necessary to make them respectable. If these things be true, I think we ought not to exchange our condition, with a hazard of losing our state constitutions. We all agree that a general government is necessary: But it ought not to go so far, as to destroy the authority of the members. We shall be unwise, to make a new experiment in so important a matter, without some known and sure grounds to go upon. The state constitutions should be the guardians of our domestic rights and interests; and should be both the support and the check of the federal government. The want of the means of raising a general revenue has been the principal cause of our difficulties. I believe no man will doubt that if our present Congress had money enough, there would be few complaints of their weakness. Requisitions have perhaps been too much condemned. What has been their actual operation[?] Let us attend to experience, and see if they are such poor, unproductive things, as is commonly supposed. If I calculate right, the requisitions for the ten years past, have amounted to thirty-six millions of dollars; of which twenty-four millions, or two thirds, have been actually paid. Does not this fact warrant a conclusion that some reliance is to be placed on this mode? Besides, will any gentleman say that the states have generally been able to collect more than two thirds of their taxes from the people? The delinquency of some states has arisen from the fluctuations of paper money, &c. Indeed it is my decided opinion, that no government in the difficult circumstances, which we have passed thro', will be able to realize more than two thirds of the taxes it imposes. I might suggest two other considerations which have weight with me—There has probably been more money called for, than was actually wanted, on the expectation of delinquencies; and it is equally probable, that in a short course of time the increasing ability of the country will render requisitions a much more efficient mode of raising a revenue. The war left the people under very great burthens, and oppressed with both public and private debts. They are now fast emerging from their difficulties.

Many individuals without doubt still feel great inconveniences; but they will find a gradual remedy. Sir, has any country which has suffered distresses like ours, exhibited within a few years, more striking marks of improvement and prosperity? How its population has grown; How its agriculture, commerce and manufactures have been extended and improved! How many forests have been cut down; How many wastes have been cleared and cultivated; How many additions have been made to the extent and beauty of our towns and cities! I think our advancement has been rapid. In a few years, it is to be hoped, that we shall be relieved from our embarrassments; and unless new, calamities come upon us, shall be flourishing and happy. Some difficulties will ever occur in the collection of taxes by any mode whatever. Some states will pay more; some less. If New-York lays a tax, will not one county or district furnish more, another less than its proportion? The same will happen to the United States, as happens in New-York, and in every other country.—Let them impose a duty equal and uniform—those districts, where there is plenty of money, will pay punctually: Those, in which money is scarce, will be in some measure delinquent. The idea that Congress ought to have unlimited powers, is entirely novel; I never heard it, till the meeting of this convention. The general government once called on the states, to invest them with the command of funds adequate to the exigencies of the union: but they did not ask to command all the resources of the states—They did not wish to have a controul over all the property of the people. If we now give them this controul, we may as well give up the state governments with it. I have no notion of setting the two powers at variance; nor would I give a farthing for a government, which could not command a farthing. On the whole, it appears to me probable, that unless some certain, specific source of revenue is reserved to the states, their governments, with their independency will be totally annihilated.

1. Cf. Henry 5.16.6.

2. See Robert Livingston, Elliot II, 212–13; see *The Federalist* nos. 6–8 and references in Centinel IV, 2.7.91 n. 43; Federal Farmer I, 2.8.1 n. 4; Plebeian 6.11.5 n. 6.

3. Hamilton replied, Elliot II, 230–31. Cf. the order of the argument in *The Federalist:* the utility of union; the defects of the present Confederation; the necessity of a government at least as energetic as the one proposed (no. 1, 6–7). Livingston had followed *The Federalist* in beginning with the desirability of union and moving to the fundamental insufficiency of the Articles of Confederation. Elliot II, 208–16.

4. Livingston, Elliot II, 214.

5. Livingston had argued "that the old Confederation was defective in its principle, and impeachable in its execution, as it operated upon states in their political capacity, and not upon individuals; and that it carried with it the seeds of domestic violence, and tended ultimately to its dissolution. . . . [T]he powers which were, by common consent, intended to be vested in the federal head, had either been found deficient, or rendered useless by the impossibility of carrying them into execution, as the principle of a league of states totally separate and independent;—secondly, that if the principle was changed, a change would also be necessary in the form of the government; but if we could no longer retain the old principle of the confederacy, and were compelled to change its form, we were driven to the necessity of creating a new constitution, and

could find no place to rest upon in the old Confederation. . . . " Elliot II, 214–15; cf. *The Federalist* no. 15. On the Anti-Federalist opposition to consolidation, see Plebeian, 6.11.15 n. 9.

6. See Martin 2.4.43 n. 12.

7. Montesquieu, *The Spirit of Laws* IX, ch. 1.

8. Livingston was Chancellor of New York. On the claim that the Anti-Federalists were mainly state officials see Martin 2.4.117 n. 44.

9. Cf. *The Federalist* no. 49. On dangers of innovation, see Republican Federalist 4.13.15 n. 11.

10. I Samuel 8:11–18.

11. See Brutus IV, 2.9.48 n. 34.

12. See Cato IV, 2.6.27 n. 18.

13. Hamilton replied: "It was remarked yesterday, that a numerous representation was necessary to obtain the confidence of the people. This is not generally true. The confidence of the people will easily be gained by a good administration. This is the true touchstone. . . . The popular confidence depends on circumstances very distinct from considerations of number. Probably the public attachment is more strongly secured by a train of prosperous events, which are the result of wise deliberation and vigorous execution, and to which large bodies are much less competent than small ones." Elliot II, 254. Cf. *The Federalist* no. 17, 106–7; no. 27.

14. While acknowledging that there was no direct prohibition, Hamilton had contended "that the true and genuine construction of the clause gives Congress no power whatever to reduce the representation below the number as it now stands. Although they may limit, they can never diminish the number." Elliot II, 238.

15. See *The Federalist* no. 58. Smith continues this argument at 6.12.22.

16. See 6.12.21 ff. Smith's whole discussion of representation and its bearing on the taxing powers should be compared with *The Federalist* nos. 35, 36, and 63. References to the main Anti-Federalist discussions of representation are collected in Federal Farmer II, 2.8.15 n. 11.

17. Hamilton replied: "But who are the aristocracy among us? Where do we find men elevated to a perpetual rank above their fellow-citizens, and possessing powers entirely independent of them? The arguments of the gentleman only go to prove that there are men who are rich, men who are poor, some who are wise, and others who are not; that, indeed, every distinguished man is an aristocrat. This reminds me of a description of the aristocrats I have seen in a late publication styled the Federal Farmer. The author reckons in the aristocracy all governors of states, members of Congress, chief magistrates, and all officers of the militia. This description, I presume to say, is ridiculous. The image is a phantom. Does the new government render a rich man more eligible than a poor one? No. It requires no such qualification. It is bottomed on the broad and equal principle of your state constitution." Elliot II, 256. See Federal Farmer VII, 2.8.97–100. Smith replies 6.12.21–23. For other Anti-Federalist discussions of the natural aristocracy, see Federal Farmer VII, 2.8.97 n. 64.

18. Hamilton replied: "It is a harsh doctrine that men grow wicked in proportion as they improve and enlighten their minds. Experience has by no means justified us in the supposition that there is more virtue in one class of men than in another. Look through the rich and the poor of the community, the learned and the ignorant, where does virtue predominate? The difference indeed consists, not in the quantity, but kind, of vices which are incident to various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the state than those of the indigent, and partake less of moral depravity." Elliot II, 257. See below, n. 22.

19. *Journals of the Continental Congress* I, 105–13. The address, published in 1774, quotes from the Introduction to Beccaria's *Essay on Crimes and Punishments*. See Federal Farmer VII, 2.8.97 n. 61.

20. Sir Robert Walpole? William Coxe, *Memoirs of Walpole* IV, 369.

21. For other Anti-Federalist discussions of this practice see Federal Farmer III, 2.8.25 n. 19.

22. See 6.12.15, 21–22. Chancellor Livingston had said: "As to the idea of representing the feelings of the people, I do not entirely understand it, unless by their feelings are meant their interests. They appear to me to be the same thing. But if they have feelings which do not rise out of their interests, I think they ought not to be represented. What! shall the unjust, the selfish, the unsocial feelings, be represented? Shall the vices, the infirmities, the passions, of the people, be represented? Government, sir, would be a monster; laws made to encourage virtue and maintain peace would have a preposterous tendency to subvert the authority and outrage the principles on which they were founded; besides, the feelings of the people are so variable and inconstant, that our rulers should be chosen every day: people have one sort of feeling today, another tomorrow, and the voice of the representative must be incessantly changing in correspondence with these feelings. This would be making him a political weathercock." Elliot II, 275–76.

23. The Chancellor's sarcasm is broad, but he points to a basic difficulty in Smith's position: "The gentleman . . . is obliged to fortify [his reasoning] by having recourse to the phantom aristocracy. I have heard much of this. I always considered it as the bugbear of the party. We are told that, in every country, there is a natural aristocracy, and that this aristocracy consists of the rich and the great: nay, the gentleman goes further, and ranks in this class of men the wise, the learned, and those eminent for their talents or great virtues. Does a man possess the confidence of his fellow-citizens for having done them important services? He is an *aristocrat.* Has he great integrity? Such a man will be greatly trusted: he is an aristocrat. Indeed, to determine that one is an aristocrat, we need only be assured he is a man of merit. But I hope we have many such. I hope, sir, we are all aristocrats. So sensible am I of that gentleman's talents, integrity, and virtue, that we might at once hail him the first of the nobles, the very prince of the Senate. But whom in the name of common sense, will we have to represent us? Not the rich, for they are sheer aristocrats. Not the learned, the wise, the virtuous, for they are all aristocrats. Whom then? Why, those who are not virtuous; those who are not wise; those who are not learned: these are the men to whom alone we can trust our liberties. He says further, we ought not to choose these aristocrats, because the people will not have confidence in them; that is, the people will not have confidence in those who best deserve and most possess their confidence. He would have his government composed of other classes of men: where will we find them? Why, he must go out into the highways, and pick up the rogue and the robber; he must go to the hedges and ditches, and bring in the poor, the blind, and the lame. As the gentleman has thus settled the definition of aristocracy, I trust that no man will think it a term of reproach; for who among us would not be wise? Who would not be virtuous? Who would not be above want? How, again, would he have us to guard against aristocracy? Clearly by doubling the representation, and sending twelve aristocrats instead of six. The truth is, in these republican governments, we know no such ideal distinctions. We are all equally aristocrats. Offices, emoluments, honors, are open to all." Elliot II, 277–78. See above, n. 17.

24. John Adams, *Defence of the Constitutions of the United States* I, letter 25 (*Works* IV, 396–98).

25. See Hamilton's reply, Elliot II, 320–21, and Gouverneur Morris' opposition to any form of rotation: "It formed a political School, in wch. we were always governed by the scholars, and not by the Masters." Farrand II, 112 (25 July). On rotation see Federal Farmer XI, 2.8.147; Georgian 5.9.4–6.

26. Robert A. Livingston: "The people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights." Elliot II, 292–93.

27. Comment by Smith later this day. Elliot II, 324.

28. The original reads, "independent on his constituents."

29. Alexander Hamilton, Elliot II, 304–5. Cf. *The Federalist* no. 17, 106–7; no. 27, 172–74.

30. Hamilton argued: "Sir, the most powerful obstacle to the members of Congress betraying the interest of their constituents, is the state legislatures themselves, who

will be standing bodies of observation, possessing the confidence of the people, jealous of federal encroachments, and armed with every power to check the first essays of treachery. They will institute regular modes of inquiry. The complicated domestic attachments, which subsist between the state legislators and their electors, will ever make them vigilant guardians of the people's rights. Possessed of the means and the disposition of resistance, the spirit of opposition will be easily communicated to the people, and, under the conduct of an organized body of leaders, will act with weight and system. Thus it appears that the very structure of the confederacy affords the surest preventives from error, and the most powerful checks to misconduct." Elliot II, 266–67; see also 304–5. To this argument, Lansing answered: "The circumstances the gentleman had enumerated, which seemed to be in favor of the states, only proved that the people would be under some advantages to discern the encroachments of *Congress,* and to take the alarm; but what would this signify? The gentleman did not mean that his principles should encourage rebellion: what other resource had they? None, but to wait patiently till the long terms of their senators were expired, and then elect other men. All the boasted advantages enjoyed by the states were finally reduced to this. The gentleman had spoken of an enmity which would subsist between the general and state governments: what, then, would be the situation of both? His wish, he said, was to prevent any enmity, by giving the states a constitutional and peaceable mode of checking maladministration, by recalling their senators, and not driving them into hostilities, in order to obtain redress." Elliot II, 308–9.

31. Cf. Brutus X, 2.9.128 n. 84. See Monroe 5.21.17 n. 8; cf. Hamilton's argument that the division of powers between the general and state governments is a question of convenience, a prudential inquiry. Elliot II, 350.

32. For similar views see Brutus IV, 2.9.54; DeWitt 4.3.17; A Friend to the Rights of the People 4.23.3; Cincinnatus II, 6.1.12; also Elliot IV, 203 (Lenoir). The Federalists repeatedly warned against excessive jealousy of chosen rulers. For examples see Ford, *Pamphlets* 126 (A Citizen of Philadelphia), 364 (Marcus); Ford, *Essays* 191 (A Landholder); Elliot III, 70 (Randolph); Elliot IV, 195, 221 (Iredell); and, the definitive statement, *The Federalist* no. 76, 513–14.

33. Hamilton replied that the resources of the general government ought to extend "as far as possible exigencies can require; that is, without limitation. A constitution cannot set bounds to a nation's wants; it ought not, therefore, to set bounds to its resources." Elliot II, 351. In *The Federalist* Hamilton emphatically conceded that *"in the usual progress of things, the necessities of a nation in every stage of its existence will be found at least equal to its resources." The Federalist* no. 30, 190; see also no. 23, 147–48; no. 21, 194–95; Symmes 4.5.14 n. 5.

34. For similar views see Cato III, 2.6.13–21 and n. 8. Hamilton argues that "this idea has been taken from a celebrated writer, who, by being misunderstood, has been the occasion of frequent fallacies in our reasoning on political subjects." Elliot II, 352; cf. *The Federalist* no. 9; Agrippa IV, 4.6.16 n. 10.

Notes of Speeches Given by George Clinton before the New York State Ratifying Convention

Like many Anti-Federal leaders, George Clinton's stage was a local one. Though a member of the second Continental Congress and later a Vice President of the United States, Clinton was, according to his biographer, "never to show any exaggerated zeal in the federal service."[1] It was as governor of New York (1777–95, 1801–3) and leader of the party that took his name that Clinton acquired his reputation for vigor, probity, and good judgment. He wielded, according to William Stone, "vast influence in his day, more by sound judgment, marvellous energy and great moral force of character than by any high-sounding or specially brilliant achievements."[2]

Clinton was chosen as the president of the New York Ratifying Convention but took a relatively small part in the debates.[3] None of the speeches printed here was reported in the newspapers or, therefore, in Elliot's *Debates*, these notes having been transcribed by George Bancroft in 1880 from the originals in the New York State Library. The originals were destroyed by fire, and Bancroft's transcripts, preserved in the New York Public Library, are published here for the first time.[4]

The notes are not in finished form, having been the speaker's notes or resume; but they are nevertheless a rather full and coherent account of the views expressed by Clinton at the convention. Perhaps their most striking feature is the clarity and emphasis with which they outline a truly federal position and the extent to which Clinton seems to rest on such a position. This might be called the primitive Anti-Federalist position, with its insistence that in a republic the will of the people is law and in a confederation the will of the state is law; or there is tyranny (6.13.2, 35). Replying directly to Hamilton's plausible argument that the proper inquiry is into the *objects* and *structure* of the government, Clinton seeks to turn the question back to the excessive *powers* granted to the federal government, particularly in the sphere of taxation (6.13.4–10). He concludes the first speech with a warning that republican government rests on the confidence of the people (which

presumably is enjoyed only by the states), in the absence of which it must inevitably turn to coercion.

The elucidation of the principle of federalism is especially clear and striking in the second speech (6.13.14–17, 22–23), where Clinton shows the departure of the Constitution from these principles (6.13.18–27). In the third speech Clinton summarizes his main objections (6.13.31–35), while explaining his reasons for supporting Melancton Smith's proposal for conditional ratification (6.13.37–45).

1. Spaulding, *His Excellency George Clinton* 11.
2. William L. Stone, "George Clinton," *The Magazine of American History* III (June 1879), 354. See also John S. Jenkins, *Lives of the Governors of the State of New York* (Auburn, N.Y.: Derby & Miller, 1851), 2–73.
3. On Clinton's activities concerning ratification see this volume, part 1, intro.; on his possible authorship of Cato's letters, see Cato 2.6. intro.
4. For editorial details, see note 1 to Clinton's text below.

Remarks made in the N.Y. State Convention on the power to levy taxes, as granted to Congress by the new Constitution. [*This speech probably of 27 June*][1]

6.13.1 I wish to make a few remarks upon the clause under consideration, which I am influenced to do from attempts which have been made in the course of the debate to establish principles which appear to be [*to me?*] not only to be new [*but?*] to mislead the mind.

I have before mentioned that I was apprehensive that we expressed from both sides of the Committee a desire to establish a strong energetic federal government and attachments to principles of republicanism, that while we agreed in the terms we differed essentially in the principles.

6.13.2 I think it proper on this occasion to declare that when I speak of a strong energetic federal government I mean such an one as is best calculated to preserve the peace and safety of the union and at the same time to secure the freedom and independence of the States. When I speak of a republican Government, I mean a government where the will of the people expressed by themselves as [or?] representatives is the law, and in the present compound government[,] where part of the powers originate from the people in their moral capacity and part from the states in their political capacity, the will of the component parts expressed in the general government ought to be the law, and that the security of the States and the liberties of the people might depend in having this will fully and fairly expressed in the public councils.—These are the true principles of a free representative government—if they are not[,] the election of representatives is mere matter of form, and the government is not a government of the people, or states but of

the few who exercise the powers of it—it may indeed be called a republic, for the idea is vague and indefinite and may include an arbitrary aristocracy—It has even been applied to the Brittish Government by some writers.

6.13.3 I have been led to express these sentiments from observations which have been made on a former occasion and repeated on the present by an Honble Gentm. from N. York to wit, that the Senators ought [*not?*] to be subject to the recal of the legislatures of the States, because they would be too subject to the influence of local and State prejudices, and be thereby diverted from the pursuit of general interests [*Hamilton on 24 and 25 June, Elliot 307, 320.*][2]—this, it is obvious is a doctrine contrary to common reason and the nature of things and every idea we can form of true representation and more especially when applied to the Legislatures of States which being a deliberative body cannot be supposed to be under the sudden impulses of passion and prejudice—nor can they ever fear want of information if their representatives in the general legislature do their duty.

6.13.4 The same Honble Gentm. [*Hamilton on 27 June, II Elliot 347–8*] attempted to establish another principle, to wit, that the only true security the People can have against the undue exercise of powers in the government is derived from its being organized on Representative republican principles and a proper distribution and separation of the legislative[,] judicial and executive branches of power.[3] This at first review is specious and plausible for it must be universally admitted, that much security is derived from this power.

6.13.5 It is therefore the better calculated to lead the mind from the true point of inquiry, to wit, whether the powers of this government are well defined and limitted to the proper objects. But, on this head, it will be only necessary to observe that the system itself establishes a different doctrine by express limitations in a variety of instances prohibiting the exercise of certain powers. For instance[:] The suspension of the Writ of Habeus Corpus except in certain cases. The passing of bills of attainder and ex post facto laws. The creation of a nobility and a variety of other restrictions too tedious to mention.

6.13.6 If the principle advocated by the Honble Gentm. was true in almost any extent, it is obvious that these provisions would have been unnecessary and that after having provided for the organization of the government[,] the distribution of its powers and a very few other objects, the whole system might have been comprised in the few following words, Congress shall have power to provide for the common defence and general welfare and to make all laws which in their judgment may be necessary and proper for these purposes.

6.13.7 The subject in debate is whether the power of levying internal taxes ought to be confided to Congress in the first instance, whether a matter so intimately connected with the internal police of the states,—a power which

might so immediately operate on the property of individuals and so indefinite that it may effect [*affect?*] the existence of the States ought in the first place to be confided in so feeble and imperfect a representation as that in the general government or whether it is not proper to reserve this power to the States except in cases where the delinquency may render their [the?] exercise of it in the genl. govt. necessary.

6.13.8 Great pains have been taken on one side to show that the States have concurrent jurisdiction with the genl. govt. in this instance, [*Elliot—2, 351*][4] and this seems in some measure to be admitted by all. I confess however that with me it is not clearly established. At most it depends upon construction and this too arising from a maxim which has not been adhered to by the framers of the Constitution, that what power is not expressly granted to the genl. govt. is reserved—for if we recur to the system, we will find that in sundry instances there are prohibitions found against the exercise of powers, which would appear to be neither expressly or impliedly granted, particularly in a case I have before mentioned, the creation of a nobility. This alone would justify a doubt—but admit the principle.

6.13.9 Concurrent Jurisdictions are dangerous—they ought as far as possible to be avoided—they may and in all probability will endanger the peace and harmony of the union. They involve the political absurdity of imperium in imperio, so destructive to every idea of good govt.

6.13.10 The celebrated Lord Coke somewhere observes that certainty is the mother of quiet[5]—It is unwise and dangerous therefore to suffer the fundamental compact to rest upon uncertain constructions, it will not fail to occasion discord between the genl. govt. and its members—and if it should we are told by the gentlemen who oppose the amendmt. that the latter will and must prevail and consequently the union will be dissolved.[6] I submit it therefore to the Committee, whether it will not be wise to avoid so great an evil by rendering the meaning of the system in this and every other instance, where it may be doubtful, certain and unequivocal and by limitting its powers as far as may be consistent with the general safety to such objects only as will avoid a dangerous and improper interference of State and genl. authority.

6.13.11 It has been alledged by the Gentlemen opposed to the system that in many instances the genl. and state govt. will have discordant interests. This has been fully admitted by the Gentm. in favor of it in their speeches agt. the amendt. proposed for subjecting the Senators to the recal of the States—for one of the arguments offered against the amendt. was that by rendering them too dependent on the States, it would subject them to state or local views.

6.13.12 This govt. among other things is to form a more perfect union, yet it would appear that its operations might produce discord with its members. It is in my opinion however absurd in the last degree to propose that the states will combine agt. the genl. govt. as long as it is confined to proper objects

and preserves the common interest—this would be to propose that the States will conspire to destroy themselves—and it has been added that the people from their attachments will even join them. [*This said by Hamilton on 24 June—Elliot—2, 304 and on 27 June—354, 355*] I do not believe that either will happen unless provoked by an undue and wicked administration. And should this be the case if the people both in their moral and political capacities should consider the general government as an evil I heartily join the honble. gentl in his pious ejaculation and when speaking with respect to the existence of the states Government.[7] God forbid that it should then continue to exist against the general will.

6.13.13 For my own part, I lay it down as a certain truth that unless the govt. is so constructed as to harmonize with the State Govts. and persue one common interest, that the system must fail and end in ruin. The best and surest support of a Republican Govt. is the confidence and attachment of the members of which it is composed—if they have clashing interests and interferring powers, this confidence and affection will cease and then if any government exists it must be supported by force and the coercion of the sword.[8]

Substance of a speech made in the N.Y. State Convention against adopting the New Constitution. [*This speech probably spoken on 11 July in opposition to Jay's motion* (to ratify and then recommend amendments). *See Elliot, 2. 410*]

6.13.14 On a consideration of the objections which have been made to the Constitution proposed for our adoption, it will readily be discovered that most of them are founded upon or derive force from the idea, that the system is a departure from the principles of a Confederacy and embraces the essential powers of a general consolidated government; on the other hand, if we take a view of the arguments, which have been offered to refute these objections, it will appear that they are principally predicated on a denial of this position and attempt to establish the contrary doctrine. It is asserted that the rights of the states will remain uninvaded and that they will serve as effectual barriers to secure the liberties of the people against the undue encroachments of power—and it has even been admitted by one of the framers and ablest advocates of the system—that so extensive a territory as the United States, would not be governed, connected and preserved but by the supremacy of despotic power. [*Probably refers here to what Hamilton says, pp. 352 and 353 of Elliot 2*][9]

6.13.15 In order then to be able to form a proper judgment on this subject, it is necessary carefully to inquire how far this system partakes of or departs from the nature of a confederate republic; and what[,] from the power it

possesses and the objects it embraces, its probable operations will be.

6.13.16 The definition given of States and their rights by authors of the first authority is, that they are equally free and independent, as the individuals of which they are composed, naturally were—that they are to be considered as moral persons, having a will of their own and equal rights—that these rights are freedom, sovereignty, and independence. The celebrated Vattel treating on this subject, observes "that power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is as much a sovereign as the most powerful kingdom."[10]

6.13.17 Hence it follows, that as the only inducement, which men can have to quit the condition, in which nature has placed them and enter into society is the preservation of their rights and liberties, so the only end for which states are induced to confederate, is mutual protection and the security of their equal rights,—and the idea of states confederating upon principles of inequality and destructive of their freedom and independence is as absurd and unreasonable as it would be to suppose that a man would take a draught of poison to preserve his life.

6.13.18 From these premises it is clearly deducible that the elements of every just league or confederacy, however diversified in the modification, ought to be.[11] 1st. That as the States are the creative principle, the power of the confederacy, must originate from and operate upon them, and not upon the individuals, who composed them, and consequently be confined as far as possible to general extraneous concerns, reserving to the States the exclusive sovereignty and arrangement of their internal government and concerns.

2nd. That the states having equal rights to protect, ought to be equally represented.

3rd. That it is the will of the States, which is to be expressed in the federal council, as their interests arise and their safety may require, they ought to have the government of that will and therefore that the delegates who are to express that will, ought to be subject to their appointment and controul.

6.13.19 I presume that to the most superficial observer, it will appear that these principles are founded in the reason and nature of things. To enter into a train of reasoning to support them, would consequently be an unnecessary waste of time. I am persuaded they will not be controverted.

If then in the formation of a Confederacy, an adherence to these principles, is essential to the security of the rights of the confederating states, we shall find on an examination of this system, that except in appearance, it is a total departure from them and calculated in its operations, to destroy not to preserve their existence.

6.13.20 From the terms of the instrument it appears that the powers granted do not originate from the states in their political capacity but from the people at large—The style is "We the people of the United States" hence this government must be considered as an original compact, annulling the State

Constitutions as far as its powers interfere with them and thus far destroying their distinct rights—The powers of this government operate not upon the States but immediately upon the people that compose them—They are not confined to the general and extraneous concerns of the States but extend to the most important internal affairs, to wit, the raising and levying of taxes direct and indirect—the regulation of bankruptcies, the establishing of rules for naturalization, the organizing and disciplining the militia, and the regulation of the Elections for Senators and Representatives in Congress.

The equality of Representation as States is also destroyed—The Legislative authority is divided into 2 branches, a house of Representatives and Senate. 6.13.21

In the house of Representatives the states cannot be said to have any share in the representation—as that branch is elected by the people in their moral capacity—but if the contrary should be alledged, yet the representation is unequal, the ratio of representation being in proportion to the number of inhabitants of which the States are respectively composed—In the Senate, indeed, they are equally represented, and in this instance it would appear to partake of the principles of a confederate government, but this feature of federalism is destroyed, as the mode of voting in the Senate is not by states but by voices, in the latter way the States may not be able to express their will for having two members who may vote differently on the same question, they may have two wills, a negative and a positive one. From whence it will appear that the only check which the states will possess in this or any other instance might be derived from their being electors of one Legislative branch of the general government.

From this concise view of the subject, it is evident, that the system is not constructed upon the principles of a federal republic, for wherever a federal feature appears in it it is united with the stronger impressions of consolidation, is neither raised upon an equality of rights or representation in the States. 6.13.22

The objects of a Confederacy being as before observed the preservation of the rights of the States and the States being the Creative principle, it is obvious that the Confederacy ought to depend upon the States for its existence but if we examine the present system, we will find that this principle is reversed and that the existence of the latter depends solely upon the former—and if we permit our sentiments on this occasion to be governed by the history of ages and the experience of mankind, as to the encroachments of power, when there is no constitutional or effectual bar to restrain them—we may safely venture to pronounce that it is not only possible but highly probable; that should the Constitution be adopted, it will ere long terminate in a consolidation of the United States into one general government. 6.13.23

It commences in a complete system of government—divided into Legislative, Executive, and Judicial Branches and totally independent of any 6.13.24

other power for its continuance—it has a perfect control over the elections of its members—it possesses power over all the resources of the country with the absolute and uncontrolled command of the military services of the people while the States are left wholly destitute of any means of support, but what they hold at the will and pleasure of the general government—They are divested of the power of commanding the services of their own Citizens and reduced to the degraded situations of public corporations by being rendered liable to suits. But if any thing farther was necessary to their total annihilation, the powers vested in the judicial department, which is rendered totally independent both as to the terms and emolument of their offices (except as to an increase of salary) and whose decrees are uncontrollable and fully competent to that purpose since it possesses still more extensive power, than the legislative and if possible still more dangerous to the existence of the States—for besides comprehending within its jurisdiction all the variety of cases, to which the other branches of government extend, it is authorized to determine upon all cases in law and equity arising under the Constitution etc.[12]—In every controversy therefore which may arise in cases where the States may be supposed to possess concurrent jurisdiction with the general government, as in the case of internal taxation, the decision of the supreme judicial upon equitable principles is to be final and by a fundamental principle of the government, these adjudications will be engrafted into the original compact. The more the powers of the general government are enlarged by these decisions the more extensive does the jurisdiction of the judges become. It is an old established maxim among lawyers that he is a good judge who enlarges the sphere of the jurisdiction of his Court—a maxim that has never failed to have been faithfully pursued—as instances we need only refer to the Courts of Kings Bench and Exchequer in England—but it will not require an extraordinary stretch of legal ingenuity in the judges to extend their power to every conceivable case and to collect into the sphere of their jurisdiction every judicial power which the States now possess.

6.13.25 The objects of this government as expressed in the preface to it, are "to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty"—These include every object for which government was established amongst man, and in every dispute about the powers granted, it is fair to infer that the means are commensurate with the end—and I believe we may venture to assert, that a good judge would not hesitate to draw this inference, especially when supported by the undefined powers granted by the 8th. section of the 1st. article and the construction that naturally arises from the prohibition against the creation of a nobility, a power which would otherwise appear to be neither expressly or impliedly granted.

6.13.26 I am sensible, it may be said, that the state governments are component parts of the general government and therefore that of necessity their exis-

tence must be preserved and that the Constitution has guaranteed to them a republican form[;] but this, on the least reflection, will appear to be too feeble a security to be relied on, when they are divested of every resource for their own support and the terms too indefinite to afford any security to the liberties of the people, as it includes in it the idea of an arbitrary aristocracy as well as of a free government—The form may exist without the substance. It will be remembered that this was the case in Rome when under a despotism—The Senate existed as formerly—Consuls, Tribunes etc. were chosen by the people—but their powers were merely nominal, as they were ruled by the will of the reigning Tyrant—and the most arbitrary ministers and judges generally preserve the forms of law, while they disregard its precepts and pervert them to the purposes of oppression.

From these observations, it is evident, that the general government is not 6.13.27
constructed upon federal principles, and that its operations will terminate in a dissolution of the States—That even if this should not be the case, they will be so enfeebled as not to afford that effectual security to the rights and liberties of the people, against the undue and extensive powers vested in the general government, as its advocates have led them to expect. This being the case, the objections which have been stated against the system, must appear to well founded—and it therefore becomes our indispensable duty to obviate them by suitable amendments calculated to abridge and limit the powers to general objects. The evils pointed out in the system are now within our power to remedy—but if we suffer ourselves to be influenced by specious reasoning unsupported by example to an unconditional adoption of an imperfect government, the opportunity will be forever lost, for history does not furnish a single instance of a government once established, voluntarily yielding up its powers to secure the rights and liberties of the people.

Remarks made in the N. Y. State Convention on the question as to the mode, in which the State should express its acceptance of the new Constitution. [*The motion to which this speech is directed was proposed by Smith—15 July. As Clinton seems to have spoken late in the debate (cf. p. 29) this was probably delivered on the 17 of July. Elliot 2. 411 and cf. Md. Adop of Const. p. 49.*[13] *showing no debate on 18.*]

Altho I came to the Convention impressed with an idea that the system of 6.13.28
Government proposed for our adoption was unsafe and dangerous to the liberties of the people and I conceive that the measures which were taken to introduce this change of govt. were equally exceptionable. Yet I was sensible that I was as all other men are liable to error and as I entertained a high opinion of the good sense, and patriotism of many of the gentlemen who advocated it, I came here with a firm determination to hear with coolness

and candor the arguments which might be offered in its favor and to give them their due weight.

6.13.29 I have therefore avoided taking any considerable part in the debates lest as is too apt to be the case, I might become prejudiced in favor of my own reasoning—the little that I have said, it must appear has been rather to raise objections with a view of having them answered than to support any opinion on either side of the question—I have listened with candor and attention to every argument that has been offered in support of the system when under debate by paragraphs and as far as I have been capable, I have given them their due weight, and if they had been such as would have convinced me that my first opinion was wrong, I would have cheerfully acquiesced and used my utmost endeavours by the same arguments to spread conviction among my constituents and to reconcile them to the plan.

6.13.30 Unfortunately, however, this has not been the case—some explanations indeed have been made of articles doubtful in their nature, which I never thought very material—but I can with great truth and sincerity declare that notwithstanding every thing I have yet heard the principal objections agt. the system remain in my mind unimpaired and in full force.

6.13.31 Nothing has been offered to convince my judgment that the representation is not too feeble and imperfect considering the extensive and undefined powers that are committed to this government, or that there is a sufficient degree of security under this Constitution that the will of the people will be the law. And this it must be admitted is the only true definition of a free government. Nor is there sufficient security afforded for the existence of the states sovty. which I consider the only stable security for the liberties of the people against the encroachments of power.

6.13.32 The system still appears to be radically defective in its organization—the most important legislative, judicial and executive powers being dangerously blended together in the President and Senate.—whereby responsibility is in a great measure destroyed.

The judicial department also appears to me equally defective—it is not however my intention at this time to enter into a detail of arguments to establish these points—it is not necessary to take up the time of the Committee in repeating arguments that have been already alledged by other gentlemen, especially as the amendments proposed which are calculated to cure these defects in some degree will naturally recal to the minds of gentlemen the reasons upon which they are founded.

6.13.33 In the cource of the debate some new doctrines have indeed been attempted to be established which if they could be supported would seem in a degree to obviate some of the objections that have been made to the system, to wit. that the only true security the people can have in a govt. is its being a representative governt. formed upon republican principles and a proper distribution of the Legislative, Judicial and Executive powers—

6.13.34 But it will be easily perceived that this doctrine is not only wrong in itself

but even a departure from the principles pursued by the very framers of this Governt. because we will find that it contains several limitations such as the suspension of the Writ of Habeas Corpus, the passing of Bills of attainder and Ex post facto laws and the creation of a nobility—Whereas if the doctrine attempted to be established was true in almost any extent these provisions would have been utterly unnecessary—for after having provided for the organization of the government and the due distribution of its powers the whole system might have been comprised in these words—Congress shall have power to provide for the common defence and general welfare and to make all laws which in their judgment may be necessary and proper for these purposes or in the words of the powers that were given to the Roman Dictators[,] To take care that the Republic receives no detriment.

6.13.35 The other principle I allude to will be found among the reasonings offered against the amendment rendering the Senate in a greater degree responsible to their Constituents than they now are. It will be remembered that it was alledged it would render them too dependent upon the will of the Legislatures of the States and that they might be influenced from pursuing the public good by the local views, passions and prejudices of their Constituents. I will only observe that these sentiments will not apply to a deliberative body and that it must appear that they are in every point of view contrary to the principles of a free representative government for if the representative is not to be subject to the will of his Constituents, lest he might be influenced to do wrong, but is in his representative capacity to express his own not their will, then it is evident that the will of a few must become their will, then it is evident that the will of a few must become the law, and this is the essence of Tyranny.

6.13.36 The Committee I trust will pardon me for this digression from the point in question. I shall now proceed to make some objections more particularly applicable to the question now before the Committee.

The motion on which the question arises [*Smith's motion of Tuesday 15. July Elliot. 2. 411*] is for postponing one previously made [*The "one previously made" was Jay's of 11 July.*] (the purport of which is to procure an unconditional adoption of the Constitution) and to introduce a different plan of adoption—The principal question that has been raised upon this subject, is whether the last mode will be such an adoption as that Congress can receive [the state so adopting] into the union.[14]

6.13.37 This matter has been so fully and ably debated by Gentlemen on both sides of the House, that it would be vain in me to attempt to offer any new arguments, as it is fairly exhausted—That doubts may be raised and supported with a great degree of plausibility upon almost any political subject is certain—that in all questions of this kind, where the matter might depend upon the will of a public who are perhaps as frequently if not more so governed by motives of political expediency than other considerations, the issue must be attended with a degree of uncertainty—I have weighed with

care and attention the arguments offered on both sides—I do not pretend to be capable of forming a perfect judgment upon the subject—but as far as my reasoning and reflection go, to me it appears that Congress may without a violation of the Constitution, receive the states on the terms of ratification proposed into the union—nay, I believe if they do not that their denial will not arise from the want of power. I believe I may venture to say that a refusal on this ground will be a more rigid adherence to compact and that too upon more refined constructive reasoning and metaphysical distinctions than ever a body of this kind adhered to before. I am persuaded there is not a State in the union, nay I question if there is in the world, who have not upon less interesting occasions made greater departure from the fundamental principles of the Government than this will be if it can be called a departure at all.—

6.13.38 I would ask whether in the establishment of this new Government, we find such a religious adherence to Compact—Has it not originated and grown into what it is from motives of political expediency? Has it not been submitted to upon this consideration alone? Have not all the measures that have introduced it and that are now bringing into action been in the force [*face?*] of compact, in direct violation of solemn plighted faith? Can this govt. ever be consistently with compact put into operation without the consent of every state in the union? Why then should we suppose upon this occasion that the states who have acceded to it contrary to original compact should hesitate to receive us when only justified in a refusal by refined and subtle distinctions? Would not this be indeed like swallowing a Camel and chocking with a gnat?

6.13.39 But by one Gentlmn. arguments have been alledged to show that it would not be the interest of the other states to receive us into the union[15]—Let us examine the matter upon this ground. I will not take up the Honble. Gentmn's. reasoning with respect to the increase or decrease of influence it might occasion to the greater or smaller states.—these might have weight if the Govt. was fairly and firmly established and brought into operation—but I humbly conceive they can have none in the present situation of affairs. I beg Gentm. to reflect upon the real situation of the U.S. as to the Govt. Let them cooly and calmly reflect whether it is probable that they will be able to establish and support it—against the will of so large a proportion of the Community from one end of the Continent to the other unless essential amendments take place and in the meantime a suspension of the exercise of certain powers most obnoxious to the people?

6.13.40 It has been observed by an Honble. Gentm. that it has had 11 verdicts in its favor, the Convention at Philadelphia and 10 other states, and that therefore, we ought to acquiesce in it.—That Gentm. well knows it is essential to a verdict that the Jury be unanimous, and in this veiw it will be found to have but very few verdicts indeed, and if we apply the evidence that may be drawn from the arguments to which we allude it affords the

strongest testimony[,] the testimony of its warmest friends and advocates, that it is dangerously and radically defective, since they have recommended essential amends.

Have Gentmn. the smallest hope that the question will be carried on the motion—have they not the most convincing proofs to the contrary? Will not a negative be a rejection? Have they any reason to suppose it will promote the peace and harmony of the state? I entreat Gentlemen to reflect what will be the consequence if this proposal should be rejected and question taken upon the original motion. 6.13.41

We have been told of the necessity there is for a spirit of conciliation and unanimity upon this important point—the honble. Gentm. has in the most lively and pathetic manner pointed out the calamities that would ensue our rising divided upon this subject—I will not repreat what has been said upon this occasion—because I conceive that many of the observations that were thrown out by the Honble. Gentm. were highly indiscreet and improper—I wish they may never be repeated out of these walls—I verily believe they will tend to occasion the evils which I hope they were intended to prevent. Gentlemen ought to consider that the Country is divided upon this question that they have made up decidedly their sentiments and are warmly engaged in the support of them—that from the most conclusive testimony, a large majority of the people are opposed to the unconditional adoption of the system—some respect ought surely to be paid to their opinions; it cannot be reasonably supposed that they will yield to minority without the least concessions on the part of the latter—and if we reason rightly I believe we will be convinced that the danger will chiefly be in a deviation from the will of a majority. 6.13.42

Mr. Chairman

altho' I have as I have before mentioned heard nothing in the Committee to change my opinion of the Constitution yet I shall be in favor of the present motion that I may have an opportunity of yielding my assent to the proposition made by the Honble. Gentm. from Dutchess. [*Melancton Smith*] I think it my duty at the same time to declare that I could only be induced to this from a strong attachment to the union—from a spirit of conciliation and an earnest desire to promote peace and harmony among the Citizens of the states to forward the interest and happiness of whom I am bound by ties uncommonly strong. 6.13.43

I shall conclude sir by just observing that I think the proposition is a reasonable one, that it contains nothing that can give offence or that can prevent its being accepted[;] its object is barely to prevent the immediate operation of powers the most odious to our Constituents until they can be considered by the people of America to whose decision we declare our willingness to submit. There is nothing in the Proposition that can prevent the Government's going into full operation and having full effect as to all essential National Concerns—These conditions go only as to the Mode of 6.13.44

changing the Government's Operations in the few instances mentioned in the Propositions.

6.13.45 I am convinced Sir, we have gone even beyond the will of our Constituents upon this occasion—but I have hopes that the reasons which have influenced us so to do will be satisfactory to them—

I will only add that the earnestness which has been discovered in this Committee to support most of the Clauses included among those termed conditional is with me an additional reason for holding them up in a conspicuous point of view as objects most wanting amendts.

Because I know most certainly that they are those which have given greatest Discontent—

1. The copy appears to have been made by an assistant and then gone over by Bancroft. While Bancroft's minor corrections of the text have been incorporated without notice, his comments and queries are printed here in brackets and italics. What appears to be his underlining has been omitted. Corrections of the present editor are printed in brackets without italics.

2. Hamilton argued against the recall of senators on 24 June (Elliot II, 303 ff.); he is not reported as having done so on 27 June, but may well have done so incidentally (Elliot II, 347–56).

3. Hamilton had argued: "After all our doubts, our suspicions, and speculations, on the subject of government, we must return at last to this important truth—that, when we have formed a constitution upon free principles, when we have given a proper balance to the different branches of administration, and fixed representation upon pure and equal principles, we may, with safety, furnish it with all the powers necessary to answer, in the most ample manner, the purpose of government. The great *disiderata* are, *free representation* and *mutual checks*. When these are obtained, all our apprehensions of the extent of power are unjust and imaginary. . . . Sir, when you have divided and nicely balanced the departments of government; when you have strongly connected the virtue of your rulers with their interest; when, in short, you have rendered your system as perfect as human forms can be,—you must place confidence; you must give power. . . . The true principle of government is this—make the system complete in its structure, give a perfect proportion and balance to its parts, and the powers you give it will never affect your security. The question, then, of the *division of powers* between the general and state governments, is a question of convenience; it becomes a prudential inquiry, what powers are proper to be reserved for the latter; and this immediately involves another inquiry into the proper objects of the two governments. This is the criterion by which we shall determine the just distribution of powers." Elliot II, 347–50. Cf. *The Federalist* no. 23.

4. See R. R. Livingston, Elliot II, 345; Hamilton, ibid. 355–56. Cf. *The Federalist* nos. 32–34.

5. Coke, *Institutes* II, proem. On the vagueness of the Constitution see references in Cato V, 2.6.34 n. 21.

6. See R. R. Livingston, Elliot II, 343–44. The amendment, proposed by Mr. John Williams, would have restricted the power of Congress to lay excise and direct taxes. Elliot II, 331–32.

7. Elliot II, 354–55.

8. Cf. references in Brutus IX, 2.9.110 n. 73.

9. Hamilton discusses this subject but he says nothing that could be construed into such an admission. Elliot II, 352–53. (But see Farrand I, 283 [18 June], where Hamilton confessed that "he was much discouraged by the amazing extent of Country in expecting the desired blessings from any general sovereignty that could be substituted" for the Confederation.) The more likely reference is to James Wilson who, in his widely reported speech of 24 November in the Pennsylvania ratifying conven-

tion, did say that "at first view the hand of despotism seemed necessary to control, connect and protect [the United States]; and hence our chief embarrassment arose." McMaster and Stone 220; the same speech (misdated 26 November) is reported in Elliot II, 421. See Centinel V, 2.7.94; on the large versus small republic see references in Cato III, 2.6.13 n. 8; Agrippa IV, 4.6.16 n. 10.

10. Vattel, *The Law of Nations or the Principles of Natural Law,* Intro., sec. 18.

11. For other Anti-Federalist discusssions of the true principle of federalism see Federal Farmer I, 2.8.10 n. 9.

12. Clinton appears here to be indebted to Brutus for some of his arguments. See Brutus XII, 2.9.145 ff.

13. I have been unable to identify this reference.

14. Smith proposed ratification but with reservations regarding certain objectionable parts of the Constitution. Elliot II, 411.

15. This part of the debates was not reported.

PART 2

Conclusion

Mercy Warren

History of the Rise, Progress and Termination of the American Revolution

(Chapter 31, with Excerpts from Chapter 30)

1805

Mercy Warren's *History of the Rise, Progress and Termination of the American Revolution, interspersed with Biographical, Political and Moral Observations,* was published in Boston in 1805.[1] Although it does not belong to the body of Anti-Federalist writing proper, its last chapter forms a fitting conclusion of the present collection and is reprinted here, along with a few extracts (enclosed in braces) from the next-to-last chapter. Charles Warren quite rightly describes this work of his ancestor as containing "the most accurate and temperate statement, by any contemporary, of the defects of the Constitution from the Anti-Federalist point of view, and of the grounds on which the opposition was founded."[2] Mrs. Warren's style is not to the taste of most modern readers. She is unquestionably verbose and demands a more leisurely reading than is our present custom. But if this hurdle can be o'er-leaped, as Mrs. Warren might say, the reader will learn much from her clear, well-balanced, shrewd, and surprisingly tough reflections on the early years of the Republic.[3]

Mrs. Warren describes the debate over the Constitution and the objections to it, and she sets down the reflections of an intelligent Anti-Federalist on the present and future of republican government in the United States. Even those parts of the chapter that seem little related to the Anti-Federalist argument, such as Mrs. Warren's cool, balanced account of Washington or her description of American foreign negotiations and entanglements, reveal more of the Anti-Federal position than many of the Anti-Federalist essays themselves.

The theme of chapter 31 (and the parts of 30 interpolated) is the danger of a decline in republican virtue and simplicity in the United States caused by foreign influence, commerce, complex and splendid government, and a forgetting of the principles of the American revolution. Mrs. Warren begins

with a picture of the fair condition and prospects of the United States after the revolution, when "nothing seemed to be wanting to the United States but a continuance of their union and virtue" (6.14.14). Difficulties soon arose, however, including economic distress, religious and moral decline, and a growing resentment of the impositions of government (6.14.16–23). Mrs. Warren describes the origin, course, and termination of Shays' insurrection, which strengthened the opinion that measures were needed to strengthen the Union (6.14.24–37). She then takes up the secret meetings of the Convention and the growth of monarchical and aristocratic ideas, and the objections of the Anti-Federalists to the proposed Constitution (6.14.38–44). Thanks to the opposition that was made, amendments were proposed which, on being accepted, largely allayed the fears of the people (6.14.45–51).

Turning to the new government under the Constitution, Mrs. Warren presents a lengthy account and criticism of Washington's political character and acts (6.14.52–65). She describes the rise of parties, the weakening of simple republicanism, and the growth of the spirit of finance (6.14.66–76). An account of the unpopular and unwise Jay treaty (6.14.77–84) leads to reflections on the desirability of a strict isolation of the United States from European politics and example and, at the same time, the invincibility of the thirst for wealth and the spirit of commerce to any barriers that might be erected (6.14.85–86). The wisdom of Washington's farewell advice to his countrymen to stay clear of foreign influence was tarnished by the fact that the corruption had already been allowed to take root during these critical early years of the Republic (6.14.87–104).

Mrs. Warren turns to a brief discussion of John Adams and particularly his monarchical tendencies (6.14.105–10), which leads her into a discussion of republican government in general and in postrevolutionary United States (6.14.112–36). She takes up and emphatically denies the charge that the free political inquiry characteristic of republics has led to the prevalent skepticism and demoralization (6.14.137–47).

Yet there are signs of religious, moral, and political decay in America; and Mrs. Warren spends the last part of the chapter reflecting on the evidence of this decay, its causes, and its probable course (6.14.148–79). Faced with what seems to be an inevitable corruption of republican simplicity and virtue by avarice, foreign influence, and the yearning for distinction, she nevertheless urges that, given the proper education of the youth of the United States, "there is not much danger that they will for a long time be subjugated by the arms of foreigners, or that their republican system will be subverted by the arts of domestic enemies" (6.14.157). The system of government laid down by the Constitution is perhaps as good as can be expected from man. It must be guarded against ambitious men, against the enemies of republican government, and against the tyranny of opinion. So

long as Americans can hold fast to the memory of the patriots and the principles of the Revolution, their republic, and with it their liberty, is safe.

1. The history has been republished by AMS Press, New York, 1971. On the writing, publication, and reception of the *History*, see Alice Brown, *Mercy Warren* (New York 1896) chs. 8–9; Katherine Anthony, *First Lady of the Revolution* (Garden City, N.Y., 1958), chs. 12–13.
2. Massachusetts Historical Society, *Proceedings* LXIV (1932), 157.
3. Mercy Warren was also the probable author of the pamphlet by A Columbian Patriot (see 4.28 intro.).

Chapter XXXI.

The narration of the revolutionary war between Great Britain and her former colonies, brought down to its termination, leaves the mind at leisure for more general observations on the subsequent consequences, without confining it to time or place. 6.14.1

At the conclusion of the war between Great Britain and America, after the rejection of the claims of a potent foreign nation, the dissevering of old bands of governmental arrangement, and before new ones were adopted, the proud feelings of personal independence warmed every bosom, and general ideas of civil and religious liberty were disseminated far and wide.

On the restoration of peace, the soldier had returned to the bosom of his family, and the artisan and the husbandman were stimulated to new improvements; genius was prompted to exertion, by the wide field opened by the revolution, and encouraged by the spirit of inquiry to climb the heights of literature, until it might stand conspicuous on the summit of fame.

Under such circumstances, every free mind should be tenacious of supporting the honor of a national character, and the dignity of independence. This claim must be supported by their own sobriety, economy, industry, and perseverance in every virtue. It must be nurtured by that firmness and principle that induced their ancestors to fly from the hostile arm of tyranny, and to explore and begin a new nation in the forlorn and darksome bosom of a distant wilderness. The social compacts, the religion, the manners, and the habits of these wandering strangers, and their immediate successors, taught their sons the noble example of fortitude and love of freedom, that has led them to resist the encroachments of kings and nobles, and to dissipate the cloud that threatened to envelope the mind in darkness, and spread the veil of ignorance over the bright hemisphere that encircles the children of Columbia. 6.14.2

Indeed America was at this period possessed of a prize, replete with advantages seldom thrown into the hand of any people. Divided by nature from three parts of the globe, which have groaned under tyrants of various 6.14.3

descriptions, from time immemorial, who have slaughtered their millions to feed the ambition of princes, she was possessed of an immense territory, the soil fertile and productive, her population increasing, her commerce unfettered, her resources ample. She was now uncontrolled by foreign laws; and her domestic manufactures might be encouraged, without any fear of check from abroad: and under the influence of a spirit of enterprise, very advantageous in a young country, she was looking forward with expectations of extending her commerce to every part of the globe.

6.14.4 {In a country like America, including a vast variety of soil and climate, producing every thing necessary for convenience and pleasure, every man might be lord of his own acquisition.[1] It was a country where the standard of freedom had recently been erected, to allure the liberal minded to her shores, and to receive and to protect the persecuted subjects of arbitrary power, who might there seek an asylum from the chains of servitude to which they had been subjected in any part of the globe. Here it might rationally be expected, that beside the natural increase, the emigrations to a land of such fair promise of the blessings of plenty, liberty, and peace, to which multitudes would probably resort, there would be exhibited in a few years, a population almost beyond the calculation of figures.

6.14.5 {The extensive tract of territory above described, on the borders of the Atlantic, had, as we have seen, been divided into several distinct governments, under the control of the crown of Great Britain; these governments were now united in a strong confederacy, absolutely independent of all foreign domination: the several states retained their own legislative powers; they were proud of their individual independence, tenacious of their republican principles, and newly emancipated from the degrading ideas of foreign control, and the sceptred hand of monarchy. With all these distinguished privileges, deeply impressed with the ideas of internal happiness, we shall see they grew jealous of each other, and soon after the peace, even of the powers of the several governments erected by themselves: they were eager for the acquisition of wealth, and the possession of the new advantages dawning on their country, from their friendly connexions abroad, and their abundant resources at home.

6.14.6 {At the same time that these wayward appearances began early to threaten their internal felicity, the inhabitants of America were in general sensible, that the freedom of the people, the virtue of society, and the stability of their commonwealth, could only be preserved by the strictest union; and that the independence of the United States must be secured by an undeviating adherence to the principles that produced the revolution.

6.14.7 {These principles were grounded on the natural equality of man, their right of adopting their own modes of government, the dignity of the people, and that sovereignty which cannot be ceded either to representatives or to kings. But, as a certain writer has expressed it,—"Powers may be delegated for particular purposes; but the omnipotence of society, if any where, is in

itself. Princes, senates, or parliaments, are not proprietors or masters; they are subject to the people, who form and support that society, by an eternal law of nature, which has ever subjected a part to the whole."*

{These were opinions congenial to the feelings, and were disseminated by the pens, of political writers; of Otis, Dickinson, Quincy,† and many others, who with patience and energy had defended the liberties of America, previous to the commencement of hostilities.

{On these principles, a due respect must ever be paid to the general will; 6.14.8
to the right in the people to dispose of their own monies by a representative voice; and to liberty of conscience without religious tests: on these principles, frequent elections, and rotations of office, were generally thought necessary, without precluding the indispensable subordination and obedience due to rulers of their own choice. From the principles, manners, habits, and education of the Americans, they expected from their rulers, economy in expenditure, (both public and private,) simplicity of manners, pure morals, and undeviating probity. These they considered as the emanations of virtue, grounded on a sense of duty, and a veneration for the Supreme Governor of the universe, to whom the dictates of nature teach all mankind to pay homage, and whom they had been taught to worship according to revelation, and the divine precepts of the gospel. Their ancestors had rejected and fled from the impositions and restrictions of men, vested either with princely or priestly authority: they equally claimed the exercise of private judgment, and the rights of conscience, unfettered by religious establishments in favor of particular denominations.

{They expected a simplification of law; clearly defined distinctions be- 6.14.9
tween executive, legislative, and judiciary powers: the right of trial by jury, and a sacred regard to personal liberty and the protection of private property, were opinions embraced by all who had any just ideas of government, law, equity, or morals.

{These were the rights of men, the privileges of Englishmen, and the claim of Americans: these were the principles of the Saxon ancestry of the British empire, and of all the free nations of Europe, previous to the corrupt systems introduced by intriguing and ambitious individuals.

*See Lessons to a Prince, by an anonymous writer.[2]

†The characters of Dickenson and Otis are well known, but the early death of Mr. *Quincy* prevented his name from being conspicuous in the history of American worthies. He was a gentleman of abilities and principles which qualified him to be eminently useful, in the great contest to obtain and support the freedom of his country. He had exerted his eloquence and splendid talents for this purpose, until the premature hand of death deprived society of a man, whose genius so well qualified him for the investigation of the claims, and the defence of the rights of mankind. He died on his return from a voyage to Europe, a short time before war was actually commenced between Great Britain and the colonies.

The writings of the above named gentlemen, previous to the commencement of the war, are still in the hands of many.

6.14.10 {These were the opinions of Ludlow and Sydney, of Milton and Harrington. these were principles defended by the pen of the learned, enlightened, and renowned Locke; and even judge Blackstone, in his excellent commentaries on the laws of England, has observed, "that trial by jury and the liberties of the people went out together."[3] Indeed, most of the learned and virtuous writers that have adorned the pages of literature from generation to generation, in an island celebrated for the erudite and comprehensive genius of its inhabitants, have enforced these rational and liberal opinions.

6.14.11 {These were the principles which the ancestors of the inhabitants of the United States brought with them from the polished shores of Europe, to the dark wilds of America: these opinions were deeply infixed in the bosoms of their posterity, and nurtured with zeal, until necessity obliged them to announce the declaration of the independence of the United States. We have seen that the instrument which announced the final separation of the American colonies from Great Britain, was drawn by the elegant and energetic pen of Jefferson, with that correct judgment, precision, and dignity, which have ever marked his character.

6.14.12 {The declaration of independence, which has done so much honor to the then existing congress, to the inhabitants of the United States, and to the genius and heart of the gentleman who drew it, in the belief, and under the awe, of the Divine Providence, ought to be frequently read by the rising youth of the American states, as a palladium of which they should never lose sight, so long as they wish to continue a free and independent people.

6.14.13 {This celebrated paper, which will be admired in the annals of every historian, begins with an assertion, that all men are created equal, and endowed by their Creator with certain unalienable rights, which nature and nature's God entitle them to claim; and, after appealing to the Supreme Judge of the world for the rectitude of their intentions, it concludes in the name of the *good people* of the *colonies,* by their representatives assembled in congress, they publish and declare, that they are, and of right ought to be, Free and Independent States: in the *name* of the *people,* the foundation of all just authority, relying on the protection of Divine Providence, they mutually pledged themselves to maintain these rights, with their lives, fortunes, and honor.}

6.14.14 Nothing seemed to be wanting to the United States but a continuance of their union and virtue. It was their interest to cherish true, genuine republican virtue, in politics; and in religion, a strict adherence to a sublime code of morals, which has never been equalled by the sages of ancient time, nor can ever be abolished by the sophistical reasonings of modern philosophers. Possessed of this palladium, America might bid defiance both to foreign and domestic intrigue, and stand on an eminence that would command their veneration of nations, and the respect of their monarchs: but a defalcation from these principles may leave the sapless vine of liberty to

droop, or to be rooted out by the hand that had been stretched out to nourish it.

If, instead of the independent feelings of ancient republics, whose prime object was the welfare and happiness of their country, we should see a dereliction of those principles, and the Americans ready to renounce their great advantages, by the imitation of European systems in politics and manners, it would be a melancholy trait in the story of man: yet they, like other nations, may in time, by their servility to men in power, or by a chimerical pursuit of the golden fleece of the poets, become involved in a mist ascending from the pit of avarice. This may lead to peculation, to usurious contracts, to illegal and dishonest projects, and to every private vice, to support the factitious appearances of grandeur and wealth, which can never maintain the claim to that rich inheritance which they so bravely defended. 6.14.15

Thus it was but a short time after the restoration of peace, and the exhilarating view of the innumerable benefits obtained by the general acknowledgment among foreign nations of the independence of America, before the brightened prospect, which had recently shone with so much splendor, was beclouded by the face of general discontent. New difficulties arose, and embarrassments thickened, which called for the exercise of new energies, activity, and wisdom. 6.14.16

The sudden sinking of the value of landed, and indeed of all other real property, immediately on the peace, involved the honest and industrious farmer in innumerable difficulties. The produce of a few acres had been far from sufficient for the support of a family, and at the same time to supply the necessary demands for the use of the army, when from the scarcity of provisions every article thereof bore an enhanced price, while their resources were exhausted, and their spirits wasted under an accumulated load of debt. 6.14.17

The general congress was yet without any compulsory powers, to enforce the liquidation of public demands; and the state legislatures totally at a loss how to devise any just and ready expedient for the relief of private debtors. It was thought necessary by some to advert again to a paper medium, and by others this was viewed with the utmost abhorrence: indeed the iniquitous consequences of a depreciating currency had been recently felt too severely, by all classes, to induce any to embrace a second time with cordiality such a dangerous expedient. Thus, from various circumstances, the state of both public and private affairs presented a very serious and alarming aspect. 6.14.18

The patriotic feelings of the yeomanry of the country, had prompted them to the utmost exertions for the public service. Unwilling to withhold their quota of the tax of beef, blankets, and other necessaries indispensable for the soldiery, exposed to cold and hunger, many of them had been induced to contract debts which could not be easily liquidated, and which it was impos- 6.14.19

sible to discharge by the products from the usual occupations of husbandry. While at the same time, the rage of privateering and traffic, by which some had suddenly grown rich, had induced others to look with indifference on the ideas of a more moderate accumulation of wealth. They sold their patrimonial inheritance for trifling considerations, in order to raise ready specie for adventure in some speculative project. This, with many other causes, reduced the price of land to so low a rate, that the most valuable farms, and the best accommodated situations, were depreciated to such a degree, that those who were obliged to alienate real property were bankrupted by the sales.

6.14.20 The state of trade, and the derangement of commercial affairs, were equally intricate and distressing at the close of the war. The natural eagerness of the mercantile body to take every advantage that presented in that line, induced many, immediately on the peace, to send forward for large quantities of goods from England, France, and Holland, and wherever else they could gain a credit. Thus the markets loaded with every article of luxury, as well as necessaries, and the growing scarcity of specie united with the reduced circumstances of many who had formerly been wealthy, the enormous importations either lay upon hand, or obliged the possessor to sell without any advance, and in many instances much under the prime cost. In addition to these embarrassments on the mercantile interest, the whole country, from north to south, was filled with British factors, with their cargoes of goods directly from the manufacturers, who drew customers to their stores from all classes that were able to purchase. Every capital was crowded with British agents, sent over to collect debts contracted long before the war, who took advantage of the times, oppressed the debtor, and purchased the public securities from all persons whose necessities obliged them to sell, at the monstrous discount of seventeen shillings and six pence on the pound. At the same time, the continent swarmed with British emissaries, who sowed discord among the people, infused jealousies, and weakened their reliance on the public faith, and destroyed all confidence between man and man.

6.14.21 Nor did religion or morals appreciate amidst the confusion of a long war, which is ever unfavorable to virtue, and to all those generous principles which ennoble the human character, much more than ribbons, stars, and other playthings of a distempered imagination. These soon sink to the level of their own insignificance, and leave the sanguine admirer sickened by the chace of ideal felicity.

6.14.22 The wide field of more minute observation on these great and important subjects, shall at present be waved. Agriculture may be left to the philosophic theorist, who may speculate on the real value and product of the lands, in a country in such an improveable state as that of America; while the advance in the profits of the husbandman must be estimated by the ratio of future experiment. The statesman versed in the commerce and politics of

Europe, and the commercial treaties which may be, or have already been formed, has a labyrinth to trace, and investigations to unfold, before every thing can be fixed on the principles of equity and reciprocity, that will give complete satisfaction to all nations. Religious discussions we leave to the observation of the theologian, who, however human nature may be vilified by some and exalted by others, traces the moral causes and effects that operate on the soul of man. The effects only are level to the common eye, which weeps that the result is more frequently productive of misery than felicity to his fellow beings.

6.14.23 Besides the circumstances already hinted, various other combinations caused a cloud of chagrin to sit on almost every brow, and a general uneasiness to pervade the bosoms of most of the inhabitants of America. This was discoverable on every occasion; they complained of the governments of their own instituting, and of congress, whose powers were too feeble for the redress of private wrongs, or the more public and general purposes of government. They murmured at the commutation which congress had agreed to, for the compensation of the army. They felt themselves under the pressure of burdens, for which they had not calculated; the pressure of debts and taxes beyond their ability to pay. These discontents artificially wrought up, by men who wished for a more strong and splendid government, broke out into commotion in many parts of the country, and finally terminated in open insurrection in some of the states.

6.14.24 This general uneasy and refractory spirit had for some time shewn itself in the states of New Hampshire, Rhode Island, Connecticut, and some other portions of the union; but the Massachusetts seemed to be the seat of sedition. Bristol, Middlesex, and the western counties, Worcester, Hampshire, and Berkshire, were more particularly culpable. The people met in county conventions, drew up addresses to the general assembly, to which were annexed long lists of grievances, some of them real, others imaginary. They drew up many resolves, some of which were rational, others unjust, and most of them absurd in the extreme. They censured the conduct of the officers of government, called for a revision of the constitution, voted the senate and judicial courts to be grievances, and proceeded in a most daring and insolent manner to prevent the sitting of the courts of justice, in the several counties.

6.14.25 The ignorance* of this incendiary and turbulent set of people, might lead them to a justification of their own measures, from a recurrence to transactions in some degree similar in the early opposition to British government. They had neither the information, nor the sagacity to discern the different grounds of complaint. Nor could they make proper distinctions with regard

*Some of them indeed were artful and shrewd, but most of them were deluded and persuaded to attempt, by resistance to government, to relieve themselves from debts which they could not pay, and from the hand of tax-gatherers, who had distrained in some instances to the last article of their property.

to the oppressions complained of under the crown of Britain, and the temporary burdens they now felt, which are ever the concomitants and consequences of war. They knew that a successful opposition had been made to the authority of Britain, while they were under the dominion of the king of England; but they were too ignorant to distinguish between an opposition to regal despotism, and a resistance to a government recently established by themselves.

6.14.26 County meetings and conventions, and the opposition of the body of the people to submit to judiciary proceedings, in direct violation of their charter, and the stipulated indulgencies which they claimed in common with their fellow subjects in Great Britain, wore a very different aspect from those of the clamorous and tumultuary proceedings of the Massachusetts' insurgents. These were violating the constitutions of their own forming, and endeavouring to prostrate all legal institutions, before they were cemented on the strong basis of a firm and well established government.

6.14.27 Those disturbances were for a time truly alarming, and gave cause for serious apprehensions that civil convulsions might spread through the country within the short term of three or four years after independence had been established, and peace restored to the United States of America. Under existing circumstances, the high-handed and threatening proceedings of the insurgents wore a very formidable aspect. There were among them very many men hardy, bold and veteran, who had been very serviceable in the field during the late revolutionary war. They had assembled in great numbers, in various places, and at different times, and seemed to bid defiance to all law, order, and government.

6.14.28 In the winter of one thousand seven hundred and eighty-six, several thousands of those disorderly persons armed and embodied, and appeared in the environs of Springfield. They chose for their leader a man who had been a subaltern officer* in the revolutionary war, threatened to march to Boston, and by compulsory measures oblige the governor and general assembly to redress the grievances of the people, which they alleged were brought upon them by enormous taxation, and other severities from their own government: they however thought proper to send forward a petition instead of marching sword in hand to the capital.

6.14.29 In the mean time, the exertions and the resolves of the legislative body, with a view of relieving the public distresses, only increased the discontents of the people. They were much divided in opinion, relative to the best modes of quieting the disturbances. Tender laws and sumptuary regulations were superficial expedients, that like paper money eventually would increase, rather than eradicate the evils complained of; while the temper of the people of various descriptions, and from various motives, augured an

*Daniel Shays.

approaching crisis that might produce convulsions too extensive for calculation.

In this situation of affairs, the governor was empowered by the legislature 6.14.30
to order a military force to be in readiness to march, under the command of general Lincoln. The temerity of the insurgents had emboldened them to move forward in hostile array, which made it necessary to direct general Lincoln to give a check to their insolence, and to restore peace and order to the state. But before the troops from the lower counties had collected at Worcester, great numbers of the insurgents had embodied, and moved forward to Springfield, with a design to attack the continental arsenal: this was defended by general Shepard, who took every precaution to prevent the shedding of blood. He expostulated with their leaders, and warned them against the fatal consequences of perseverance in their rebellious and hostile proceedings: they however neglected the warning, and rushed on in the face of danger; this obliged general Shepard to fire upon them, which so disconcerted them that they immediately retreated. General Lincoln reached Springfield about the same time, which entirely defeated this project; the field was left with dismay, and with the loss only of two or three of their party. The next movement of any importance was their again collecting from all quarters, and taking a position on the heights of Pelham.

General Lincoln, unwilling to see his countrymen involved in a war 6.14.31
among themselves, passed on to Hadley without proceeding to extremities. There he received letters from some of the leaders of the insurgent parties, and with his usual mildness and humanity endeavoured to persuade them to quit their hostile parade, and by their peaceable demeanor to render themselves worthy of the lenity of government, which was ready, on their return to proper submission, to extend a general pardon, and throw a veil of oblivion over past transactions: but there appeared no signs of repentance, or of a relinquishment of their atrocious projects; and though without system, or any determinate object, and without men of talents to direct, or even to countenance, their disorderly conduct, in any stage of the business, they soon moved from Pelham in a strong body, entered and halted in the town of Petersham.

General Lincoln heard of the decampment of Shays and his followers 6.14.32
from Pelham, at twelve o'clock, and had certain intelligence by the hour of six that they had moved on to Petersham. Convinced of the necessity of a quick march, he ordered his troops to be ready at a moment's morning [warning?]. By eight o'clock they began their route. Notwithstanding the intrepidity of general Lincoln, when immediate hazard required enterprise, he would not have exposed his troops to a march of thirty miles, in one of the severest nights of a remarkably severe winter, had not the entrance of the evening been mild and serene. The sky unclouded, and the moon in full splendor, they began their march under the promise of a more easy termina-

tion; but after a few hours the wind rose, the clouds gathered blackness, and the cold was so intense that it was scarcely supportable by the hardiest of his followers: nothing but the quickness of their motion prevented many of his men from falling victims to the severity of the season. The difficulty of their march was increased by a deep snow that had previously fallen, and lain so uncemented that the gusts drove it in the faces of the army with the violence of a rapid snow storm. They however reached Petersham before nine o'clock the next morning, but so miserably fatigued and frost bitten, that few of them were fit for service; and had not a general panic seized the insurgents, on the first alarm of the approach of the government troops, they might have met them with great slaughter, if not with total defeat; but though in warm quarters, well supplied with arms and provisions, they left this advantageous post with the greatest precipitation, and fled in all directions.

6.14.33 General Lincoln was not in a capacity for immediate pursuit; it was necessary to halt and refresh his men: besides, his known humanity was such, that he might be willing they should scatter and disappear, without being pushed to submission by the point of the sword. The insurgents never again appeared in a collective body, but spread themselves over the several parts of the western counties, and even into the neighbouring states, plundering, harassing, and terrifying the inhabitants, and nourishing the seeds of discontent and sedition, that had before been scattered amongst them. It was not long before general Lincoln pursued and captured many of them, who implored and experienced the clemency of the commander, and only a few were taken into custody for future trial. Thus those internal commotions, which had threatened a general convulsion, were so far quelled, that most of the troops returned to Boston early in the spring. Before his return, general Lincoln marched to the borders of the state, and found many in the counties of Hampshire and Berkshire, ready to take the oath of allegiance, with all the marks of contrition for their late guilty conduct. Commissioners were afterwards sent forward, with powers to pardon, after due inquiry into the present temper and conduct of individuals: to administer the oath of allegiance to the penitent, and to restore to the confidence of their country all such as were not stigmatized by flagitious and murderous conduct.

6.14.34 Perhaps no man could have acted with more firmness, precision, and judgment, than did governor Bowdoin, through the turbulent period of two years, in which he presided in the Massachusetts: yet notwithstanding his conspicuous talents, and the public and private virtues which adorned his character, the popular current set strongly against him on the approaching annual election; and governor Hancock, who had once resigned the chair, was again requested to resume his former dignified station, and was brought forward and chosen with *eclat* and expectation. He did not however contravene the wise measures of his predecessor. He was equally vigilant to quiet the perturbed spirits of the people, and to restore general tranquillity:

this he did by coercive or lenient measures, as circumstances required; and by his disinterested conduct, and masterly address, he was very influential in overcoming the remains of a factious and seditious spirit that had prevailed. Thus he did himself much honor, and acquired the applause of his constituents.

6.14.35 The governor was authorised by the legislature to keep in pay any number of troops that might be thought necessary to preserve the public peace. Eight hundred men were stationed on the western borders of the state, but before the summer elapsed the insurgents were so generally subdued that the troops were recalled and dismissed.

6.14.36 The governors of all the neighbouring states had been requested not to receive or protect any of the guilty party, who had fled for security within their limits. These were all so sensibly impressed with the danger of disunion and anarchy, which had threatened the whole, that they readily gave assurances of detection, if any should flatter themselves with impunity, by flying without the jurisdiction of their own government. Several of the most notorious offenders were secured, and tried by the supreme judicial court, and received sentence of death; but the compassion of the people, coinciding with the humane disposition of the governor, induced him to grant reprieves from time to time, and finally prevented the loss of life by the hand of civil justice, in a single instance.

6.14.37 Thus, by well-timed lenity, and decided energy, as the exigencies of the moment required, was terminated an insurrection, that, by its dangerous example, threatened the United States with a general rupture, that might have been more fatal than foreign war, to their freedom, virtue, and prosperity. But though the late disturbances were quelled, and the turbulent spirit, which had been so alarming, was subdued by a small military force, yet it awakened all to a full view of the necessity of concert and union in measures that might preserve their internal peace. This required the regulation of commerce on some stable principles, and some steps for the liquidation of both public and private debts. They also saw it necessary to invest congress with sufficient powers for the execution of their own laws, for all general purposes relative to the union.

6.14.38 A convention was appointed by the several states, to meet at Annapolis, in the state of Maryland, in the year one thousand seven hundred and eighty-six, for these salutary purposes; but the work was too complicated: the delegates separated without doing any thing, and a new convention was called the next year, to meet at Philadelphia, with the same design, but without any enlargement of their powers; they however framed a new constitution of government, and sent it for the consideration and adoption of the several states: and though it was thought by many to be too strongly marked with the features of monarchy, it was, after much discussion, adopted by a majority of the states.

6.14.39 We must consult the human heart, says the marquis Beccaria, for the

foundation of the rights of both sovereign and people. "If we look into history, we shall find, that laws which are or ought to be conventions between men in a state of freedom, have been, for the most part, the work of the passions of a few, or the consequences of a fortuitous, temporary necessity, not dictated by a cool examiner of human nature, who knew how to collect in one point the actions of a multitude, and had this only end in view, *the greatest happiness of the greatest number.*"[4]

6.14.40 It was thought by some, who had been recently informed of the secret transactions of the convention at Philadelphia, that the greatest happiness of the greatest number was not the principal object of their contemplations, when they ordered their doors to be locked, their members inhibited from all communications abroad, and when proposals were made that their journals should be burnt, lest their consultations and debates should be viewed by the scrutinizing eye of a free people.* These extraordinary movements appeared to them the result of the passions of a few. It is certain, that truth, whether moral, philosophical, or political, shrinks not from the eye of investigation.

6.14.41 The ideas of royalty, or any thing that wore the appearance of regal forms and institutions, were generally disgusting to Americans, and particularly so to many characters who early came forward, and continued to the end of the conflict, stedfast in opposition to the crown of Britain. They thought that after America had encountered the power, and obtained a release from foreign bondage, and had recently overcome domestic difficulties and discontents, and even quieted the spirit of insurrection in their own states; that the republican system for which they had fought, should not be hazarded by vesting any man or body of men with powers that might militate with the principles, which had been cherished with fond enthusiasm, by a large majority of the inhabitants throughout the union.

6.14.42 Republicanism, the idol of some men, and independence, the glory of all, were thought by many to be in danger of dwindling into theory; the first had been defaced for a time, by a degree of anarchy, and fears were now awakened that the last might be annihilated by views of private ambition.

6.14.43 The people were generally dissatisfied with the high pretensions of the officers of the army, whose equality of condition previous to the war, was, with few exceptions, on the same grade with themselves. The assumption of an appropriate rank was disgusting, in a set of men, who had most of them been taken from mechanic employments, or the sober occupations of ag-

*This convention was composed of some gentlemen of the first character and abilities; of some men of shining talents and doubtful character: some of them were uniform republicans, others decided monarchists, with a few neutrals, ready to join the strongest party. It was not strange there was much clashing and debate, where such dissentient opinions existed: but after some modification and concession, a constitution was formed, which when the amendments took place immediately on its adoption, the government of the United States stood on a basis which rendered the people respectable abroad and safe at home.

riculture. Thus jealousies were diffused, with regard to the officers of the old army, the Cincinnati, and several other classes of men, whom they suspected as cherishing hopes and expectations of erecting a government too splendid for the taste and professions of Americans. They saw a number of young gentlemen coming forward, ardent and sanguine in the support of the principles of monarchy and aristocracy. They saw a number of professional characters too ready to relinquish former opinions, and adopt new ones more congenial to the policy of courts, than to the maxims of a free people. They saw some apostate whigs in public employments, and symptoms of declension in others, which threatened the annihilation of the darling opinion, that the whole sovereignty in the republican system is in the people: "that the people have a right to amend and alter, or annul their constitution and frame a new one, whenever they shall think it will better promote their own welfare and happiness to do it."*

6.14.44 This brought forward objections to the proposed constitution of government, then under consideration. These objections were not the result of ignorance; they were made by men of the first abilities in every state; men who were sensible of the necessity of strong and energetic institutions, and a strict subordination and obedience to law. These judicious men were solicitous that every thing should be clearly defined; they were jealous of each ambiguity in law or government, or the smallest circumstance that might have a tendency to curtail the republican system, or render ineffectual the sacrifices they had made, for the security of civil and religious liberty to themselves; they also wished for the transmission of the enjoyment of the equal rights of man to their latest posterity. They were of opinion, that every article that admitted of doubtful construction, should be amended, before it became the supreme law of the land. They were now apprehensive of being precipitated, without due consideration, into the adoption of a system that might bind them and their posterity in the chains of despotism, while they held up the ideas of a free and equal participation of the privileges of pure and genuine republicanism.

6.14.45 Warm debates in favor of further consideration, and much energetic argument took place, between gentlemen of the first abilities, in several of the state conventions. The system was however ratified in haste by a sufficient number of states to carry it into operation, and amendments left to the wisdom, justice, and decision of future generations, according as exigencies might require.† This was not sufficient to dissipate the apprehensions of gentlemen who had been uniform and upright in their intentions, and immoveably fixed in the principles of the revolution, and had never turned their eyes from the point in pursuit, until the independence of America was acknowledged by the principal monarchs in Europe.

*Lessons to a Prince.[5]

†Many amendments were made soon after the adoption of the constitution.

6.14.46 But while the system was under discussion, strong objections were brought forward in the conventions of the several states. Those gentlemen who were opposed to the adoption of the new constitution *in toto*, observed, that there was no bill of rights to guard against future innovations. They complained that the trial by jury in civil causes was not secured; they observed, that some of the warmest partisans, who had been disposed to adopt without examination, had started at the discovery, that this essential right was curtailed; that the powers of the executive and judiciary were dangerously blended: that the appellate jurisdiction of the supreme federal court, subjected the inhabitants of the United States, by a litigious process that militated with the rights formerly claimed by the individual states, to be drawn from one end of the continent to the other, for trial. They wished for a rotation in office, or some sufficient bar against the perpetuity of it, in the same hands for life; they thought it necessary there should be this check to the overbearing influence of office, and that every man should be rendered ineligible at certain periods, to keep the mind in equilibrio, and teach him the feelings of the governed, and better qualify him to govern in his turn. It was also observed by them, that all sources of revenue formerly possessed by the individual states were now under the control of congress.

6.14.47 Subsequent measures were not yet realized; banks, monopolies, and a funding system, were projects that had never been thought of, in the early stages of an infant republic, and had they been suggested before the present period, would have startled both the soldier and the peasant. The sober principled statesmen, and the judicious band of worthies, who originated the system of freedom, digested it in the cabinet, and conducted the public councils, which led to the independence of America, with a firm, disinterested magnanimity, and an energy seldom found in the courts of princes would have revolted at those ideas. Nor were they less alarmed at the contemplation of a president with princely powers, a sextennial senate, biennial elections of representatives, and a federal city, "whose cloud-capt towers" might screen the state culprit from the hand of justice, while its exclusive jurisdiction might, in some future day, protect the riot of standing armies encamped within its limits. These were prospects viewed by them with the utmost abhorrence.

6.14.48 Indeed the opinions of the gentlemen who formed the general convention, differed very widely, on many of the articles of the new constitution, before it was sent abroad for the discussion of the people at large. Some of them seceded, and retired without signing at all, other complied from a conviction of the necessity of accommodation and concession, lest they should be obliged to separate without any efficient measures, that would produce the salutary purposes for which many characters of the first abilities had been convened. The philosophic doctor Franklin observed, when he lent his signature to the adoption of the new constitution, "that its complexion was doubtful; that it might last for ages, involve one quarter of the globe, and

probably terminate in despotism,"* He signed the instrument for the consolidation of the government of the United States with tears, and apologized for doing it at all, from the doubts and apprehensions he felt, that his countrymen might not be able to do better, even if they called a new convention.

6.14.49 Many of the intelligent yeomanry and of the great bulk of independent landholders, who had tasted the sweets of mediocrity, equality, and liberty, read every unconditional ratification of the new system in silent anguish, folded the solemn page with a sigh, and wept over the manes of the native sons of America, who had sold their lives to leave the legacy of freedom to their children. On this appearance of a consolidated government, which they thought required such important amendments, they feared that a dereliction of some of their choicest privileges might be sealed, without duly considering the fatal consequences of too much precipitation. "The right of taxation, and the command of the military," says an ingenious writer, "is the completion of despotism."[7] The last of these was consigned to the hands of the president, and the first they feared would be too much under his influence. The observers of human conduct were not insensible, that too much power vested in the hands of any individual, was liable to abuses, either from his own passions, or the suggestions of others, of less upright and immaculate intentions than himself.

6.14.50 Of thirteen state conventions, to which the constitution was submitted, those of Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, and Georgia, ratified it unconditionally, and those of New Hampshire, Massachusetts, New York, Virginia, and South Carolina, in full confidence of amendments, which they thought necessary, and proposed to the first congress; the other two, of Rhode Island and North Carolina, rejected it. Thus, it is evident that a majority of the states were convinced that the constitution, as at first proposed, endangered their liberties; that to the opposition in the federal and state conventions, are the public indebted for the amendments and amelioration of the constitution, which have united all parties in the vigorous support of it; and that in a land of freedom, sovereignty, and independence, the great and important affairs of state will be finally subject to reason, justice, and sound policy.

6.14.51 Thus, notwithstanding the many dark appearances, that for a time spread a cloud over the United States; notwithstanding the apprehensions and prejudices against the new constitution, which had pervaded the minds of many; though strong parties had arisen, and acrimonious divisions were fomented, on the great and important question of ratification; yet, by the mode adopted by five states, of proposing amendments at the time of ratifying it, the fears of the people in general evaporated by degrees. The new constitution was adopted with applause and success, and the promise

*See doctor Franklin's speech, on his signing the articles of the new constitution of government, which was to be laid before the people.[6]

and the expectations of amendments, flattered all classes with every advantage that could be rationally expected.

6.14.52 The new system of government was ushered into existence under peculiar advantages; and no circumstance tended more rapidly to dissipate every unfavorable impression, than the unanimous choice of a gentleman to the presidential chair, at once meritorious, popular, and beloved, beyond any man. Washington, the favorite of every class of people, was placed at the head of a government of experiment and expectation. Had any character of less popularity and celebrity been designated to this high trust, it might at this period have endangered, if not have proved fatal to the peace of the union. Though some thought the executive vested with too great powers to be entrusted to the hand of any individual, Washington was an individual in whom they had the most unlimited confidence.

6.14.53 After the dissolution of the American army, and the retirement of the commander in chief from the conspicuous station in which he had been placed, the celebrity of his life and manners, associated with the circumstances of a remarkable revolution, in which he always stood on the foreground, naturally turned the eyes of all toward him. The hearts of the whole continent were united, to give him their approbatory voice, as the most suitable character in the United States, to preside at the head of civil government.

6.14.54 {The merits of the commander in chief of the united armies of America, have been duly noticed through the preceding pages of this work, in their order of time; and ample justice has been done to the integrity and valor, to the moderation and humanity, of this distinguished character.[8] The virtues and talents which he really possessed, have been appreciated in a measure consistent with a sacred regard to truth. Imputed genius and lustre of abilities ascribed beyond the common ratio of human capacity and perfection, were the result of his commanding good fortune, which attached to his person and character, the partiality of all ranks and classes of men.

6.14.55 {An exclusive claim to the summit of human excellence, had been yielded as a kind of prescriptive right, to this worthy and justly venerated citizen, from affection, from gratitude, and from the real services rendered his country, under existing circumstances that had never before, and perhaps never will again, take place. His remarkable retention of popular favor and good-will, carried him through a long and perilous war without a change in public opinion, or the loss of confidence in the commander first appointed by the congress of America, to meet the veterans of Britain and other European powers, on hostile ground.

6.14.56 {Thus, the renowned WASHINGTON, without arrogating any undue power to himself, which success and popularity offered, and which might have swayed many more designing and interested men, to have gratified their own ambition at the expense of the liberties of America, finished his career of military glory, with decided magnanimity, unimpeached integrity, and the

most judicious steps to promote the tranquillity of his country. He had previously published a circular letter to each governor of the individual states: this was an elegant address, replete with useful observations and excellent advice to the inhabitants of the United States, in their social, civil, and military capacities. Nor did he neglect on all occasions, after the approach of peace, to inculcate on the soldiery, and to impress on the minds of the people, the necessity of union, subordination, economy, and justice, in the punctual discharge of all contracts both public and private.

{In full possession of the confidence of the people, the applause of his country, the love of the army, the esteem of foreigners, and the warm friendship and respect of the Gallican nation, whose armies and treasures had aided him to glory and victory, general Washington disbanded the troops without noise, inconvenience, or any apparent murmur at his measures. By order of the commander in chief, the peace was celebrated at New York on the first day of December, one thousand seven hundred and eighty-three, with high demonstrations of satisfaction and joy; and on the twenty-third of the same month, general Washington resigned his commission to congress, and, after acting so conspicuous a part on the theatre of war, retired from public scenes and public men, with a philosophic dignity honorary to himself and to human nature. 6.14.57

{Before the separation of the army, the general took a very affectionate leave of his brave and faithful soldiers, and of each of the officers singly. His farewell to his brave associates through the perilous scenes of danger and war, was attended with singular circumstances of affection and attachment. His address to the army was warm, energetic, and impressive. While the sensibility of the commander in chief appeared in his countenance, it was reciprocated in the faces of both officers and soldiers; and in the course of this solemn *adieu*, the big tear stole down the cheeks of men of courage and hardihood, long inured to scenes of slaughter and distress, which too generally deaden the best feelings of the human heart.* 6.14.58

{The mutual recollection of past dangers and fatigue which they had endured together, and the contemplation of a retreat that would probably prevent their ever meeting again, rendered this period of separation, between this band of veteran chieftains and valiant soldiers, a moment of extreme sensibility. Many of them had left their pruning-hooks from principle, and had girded on the sword in defence of civil and religious liberty; they were now returning to the plough, uncertain what kind of matters would in future reap the reward of their labors: they had left many of their brethren on the field of death, the voluntary sacrifices to the independence of their country: they had freed themselves from the fetters of kings, and by their prowess and their perseverance, they had obtained a national independence. 6.14.59

*General Washington's farewell orders to the army of the United States, may be seen in Appendix, Note No. V.[9]

6.14.60 {General Washington was attended to the margin of the river, (where he embarked on his way to Annapolis,) by crowds of spectators of every sex and age; while the procession of officers and gentlemen who followed, with solemn steps and mournful visage, was indicative of a last adieu to their most beloved and respected friend.

6.14.61 {Congress was then sitting at Annapolis, where they received the resignation of the magnanimous and disinterested commander of the army of the United States, with the same emotions of veneration and affection that had agitated the breast of the soldier. He had refused all pecuniary compensation for his services, except what was sufficient for his necessary expenditures, and laid his accounts before congress: he then hastened with all possible celerity, to his peaceful mansion in the state of Virginia: there his return was hailed by the joyous acclamations of his friends, his neighbours, his servants, and the crown of his domestic felicity, his amiable partner. Mrs. Washington had long sighed for the return of her hero, whom she adored as the saviour of her country, and loved as the husband of her fond affection. In this lady's character was blended that sweetness of manners, that at once engaged the partiality of the stranger, soothed the sorrows of the afflicted, and relieved the anguish of poverty, even in the manner of extending her charitable hand to the sufferer.

6.14.62 {Thus possessed of all the virtues that adorn her sex, Mrs. Washington now contemplated the completion of her happiness; and observed afterwards in a letter to the author, that she little thought when the war was finished, that any circumstance could possibly happen to call the general into public life again; that she anticipated that from that moment they should have grown old together, in solitude and tranquillity:—this, my dear madam, was the first and fondest wish of my heart."*

6.14.63 {But general Washington had yet much to do on the theatre of public action; much for his own fame, and much for the extrication of his country from difficulties apprehended by some, but not yet realized.}

6.14.64 The splendid *insignia* of military command laid aside, the voluntary retirement of general Washington had raised his reputation to the zenith of human glory. Had he persevered in his resolution, never again to engage in the thorny path of public life, his repose might have been forever insured, in the delightful walks of rural occupation. He might, in his retirement on Mount Vernon, have cherished those principles of republicanism which he always professed, as well as the patriotism which he exhibited in the field; and by his disinterested example he might have checked the aspiring ambition of some of his former associates, and handed down his own name to posterity with redoubled lustre:† but man, after long habits of activity, in the

*Mrs. Washington's letter to Mrs. Warren, 1789.

†This was the opinion of some of his most intimate associates at the time; yet doubtless general Washington thought it his duty to aid his country at so critical an era.

meridian of applause, is generally restless in retirement. The difficulty of entirely quitting the luminous scenes on the great stage of public action, is often exemplified in the most exalted characters: thus, even the dignified Washington could not, amidst the bustle of the world, become a calm disinterested spectator of the transactions of statesmen and politicians. His most judicious friends were confident he had no fame to acquire, and wished him to remain on the pinnacle he had already reached; but, urged by the strong voice of his native state, and looked up to by every state in the union, the call was strong and impressive, and he again came forward in public life, though it appeared to be in counteraction of his former determinations.

6.14.65 Thus the former commander of the armies of America had been chosen one of the delegates for a general convention of the states, and lent his hand to the formation of a new constitution of civil government. This instrument, as above observed, appeared to the public eye to lie open to many objections: it was viewed as doubtful in its origin, dangerous in its aspect, and for a time very alarming to the feelings of men, who were *tremblingly alive* on the smallest encroachment of rights and privileges, for which they had sacrificed their fortunes, immolated their friends, and risked their own lives. General Washington himself observed, when he signed the new constitution, that "it was an experiment on which the destiny of the republican model of government was staked."[10] But the system was adopted with expectations of amendment, and the experiment proved salutary, and has ultimately redounded as much to the honor and interest of America, as any mode or form of government that could have been devised by the wisdom of man.

6.14.66 It is beyond a doubt, that no man in the union had it so much in his power to assimilate the parties, conciliate the affections, and obtain a general sanction to the new constitution, as a gentleman who commanded their obedience in the field, and had won the veneration, respect, and affections of the people, in the most distant parts of the union. Yet, soon after the organization of the new constitution of government, a struggle began to take place between monarchists and republicans, the consequences of which some future period must disclose. From a variety of new sources; of new objects of magnificence opening before them; of new prospects of wealth anticipated, the spirit of intrigue was matured even among the politicians of yesterday. Some of them were sighing for more liberty, without discretion or judgment to make a proper use of what they already possessed; others were grasping at powers, which neither reason or law, constitutions of their own forming, nor the feelings of nature could justify.

6.14.67 Thus it appeared, convulsions might ensue, great conflicts be sustained, and great spirits be subdued, before the minds of every class could be perfectly tranquillized, even under the wisest system of human government. But such a people as the Americans cannot suddenly be reduced to a state of slavery; it is a work of time to obliterate old opinions, founded in reason,

and fanned by enthusiasm, till they had become a part of the religious creed of a nation. Notwithstanding the apprehensions which have pervaded the minds of many, America will probably long retain a greater share of freedom than can perhaps be found in any other part of the civilized world. This may be more the result of her local situation, than from her superior policy or moderation. From the general equality of fortune which had formerly reigned among them, it may be modestly asserted, that most of the inhabitants of America were too proud for monarchy, yet too poor for nobility, and it is to be feared, too selfish and avaricious for a virtuous republic.

6.14.68 The people of America however were not yet prepared, like the ungrateful Israelites to ask a king, nor were their spirits sufficiently broken, to yield the "best of their olive-grounds to his servants, or to see their sons appointed to run before his chariots."[11] Yet it was to be regretted, that there soon appeared a class of men, who, though taken from the bar, the shop, or the more simple occupations of life to command armies, and to negociate with foreign nations, had imbibed ideas of distinguished rank and ostentatious titles, incompatible with republican principles, and totally repugnant to the views of the zealous advocates of American freedom. Indeed many of these had been swept off by the hand of time and death; those who still lived in the shade of retirement, observed with regret, that unless counteracted with firmness, the fiat of an individual might become more respected than the general will of the people.

6.14.69 There yet remained a considerable class of these firm adherents to the principles of the revolution; they were strongly impressed with the necessity of an energetic government, and the weakness of the old confederation. They were also sensible of the many difficulties that must arise in the fiscal arrangements of a people, who had been long without a stable medium of trade, while agriculture, commerce and every other pursuit, wore a new face, in consequence of a long war. But they had not contemplated the introduction of new projects, which were thought designed to enrich and ennoble some of the officers of the army, to create a splendid government, and to support the dignity of new orders in the state. These were articles that had made no part of their creed.

6.14.70 The spirit of finance, which, a sensible writer observes, "accumulates woes on the head of a people, by stripping them of the means of subsistence, and what is infinitely more to be regretted, saps the foundations of morality,"[12] had heretofore been only the dream of some overgrown public creditor. A funding system afterwards introduced, attended with all the intricacies of more aged financiers, which never could be understood, and a public debt thereby enhanced, which was probably never intended to be paid, was impregnated in the brain of a young officer* of foreign extraction, an adventurer of a bold genius, active talents, and fortunate combinations,

*Alexander Hamilton.

from his birth to the exalted station to which he was lifted by the spirit of favoritism in American arrangements. Yet when the system appeared, it was embraced with warmth by a considerable class, as the legitimate child of speculation. But it appeared a monster in the eye of a very large part of the community, who viewed it as the parent of a national debt that would hang on the neck of America to the latest generations.

Hence, a train of restless passions were awakened, that excited to activity, and created a rage for project, speculation, and various artifices, to support a factitious dignity, which finally ruined multitudes of unsuspecting citizens. Hence a spirit of public gambling, speculation in paper, in lands, in every thing else, to a degree unparalleled in any nation. Many other contingencies were felt too severely to require a particular specification. 6.14.71

When general Washington was placed in the presidential chair, he doubtless felt all the solicitude for the discharge of his duty, which such a sacred deposite entrusted to his integrity would naturally awaken. His own reputation was blended with the administration of government on those principles of republicanism, which he had always professed, and which he had supported by his sword; while time, circumstances and interests had changed the opinions of many influential characters. 6.14.72

Thus, the favored and beloved Washington, called from his first retirement to act as chief magistrate in the administration of civil government, whatever measures he sanctioned, were considered as the best, the wisest, and most just, by a great majority of the people. In most instances, it is true, he presided with wisdom, dignity, and moderation, but complete perfection is not to be attributed to man. Undue prejudices and partialities often imperceptibly creep into the best of hearts; and with all the veneration due to so meritorious a character, there were many who thought him too much under the influence of military favorites. 6.14.73

A very judicious gentleman well acquainted with ancient history, and with modern politics,* observed, during the administration of general Washington, that "the president of the United States held the hearts of all America in his hand, from the moment of his elevation to the command of her armies, to his honorable retirement to private life, and from his dignified retreat to his inauguration at New York. Placed in the executive chair by the united voice of all parties, it was expected the chief magistrate, whom flattery endows with all perfection, and to whom justice attributes many excellent qualities, would have felt himself above the partialities that usually hang about the human heart; and that, divesting himself of the little prejudices that obtrude and frequently sully the greatest characters, he would have been of no party in his appointments, and that real merit, whether *federal* or *anti-federal,* would have been equally noticed. 6.14.74

"It was not expected, that those gentlemen who wished for a more perfect 6.14.75

*Letter to the author.[13]

system of government, or some amendments to the present, would have been cut off from every social and political claim; and that only the officers of the late army, and the devotees to unconditional ratification, would have been thought worthy of confidence or place under a government that has yet the minds of a considerable part of the people to soothe, and the affections of a judicious and discerning party to conciliate.*

6.14.76 "True policy should have dictated the most impartial distribution of office in the new arrangement. It is a new and untried experiment, into which many of the people think they have been precipitated, without time for due consideration. They begin to feel the weight of taxes and imposts to which they have not been accustomed. They begin to inquire whether all the late energetic exertions, were designed only to subserve the interests of a certain party, and to furnish salaries, sinecures, and extravagant compensations for the favorites of the army and the sycophants of power, to the exclusion of all who had not adopted the creed of passive obedience."

6.14.77 A cool examiner, who may hereafter retrospect the period, from the establishment of the American constitution to the close of the administration of the first president, will judge, on the detail of facts, whether there was or was not just reason for the above observations. Future historic writers may scrutinize and survey past transactions with due criticism and candor, when, whatever may have been observed on any other subject, all will allow that no steps, during the civil functions of president Washington, were so unpopular as the Indian war, sanctioned by the president soon after the operation of the measures of the new government, and his ratification of a treaty with Great Britain, negociated by John Jay, Esq. The appointment of this gentleman to a diplomatic character, while chief justice of the supreme court of the union, was thought very objecionable, and very sensible protests were entered in the senate, against the blending of office. It was thought very incompatible with the principles of the constitution, to act in the double capacity of a negociator abroad and the first officer of justice at home.

6.14.78 Notwithstanding these objections, Mr. Jay was commissioned, and repaired to England, ostensibly to require the surrender of the western posts, the retention of which had brought on the war with the savages, as observed above, and to demand satisfaction for the depredations and spoliations that had for several years been made on American commerce, in defiance of the late treaty of peace. The war in which England was then engaged against France had given a pretext for those spoliations. The happiness and tranquillity of the English nation had not appeared to have been much enhanced, either by the struggle or the termination of the war with their former colonies. After the pacification of the nations at war, and the conclusion of peace between Great Britain and America, such feuds arose in England

*This letter was written before several important amendments were made.

from various sources and causes of discontent, as discovered that the nation were for a time far from being more tranquillized than the United States, previous to their adoption of the present constitution.

Indeed the English nation had few causes of triumph; their systems of 6.14.79
policy had been every where deranged, and their fatal mistakes exemplified in the distresses of their eastern dominions, as well as those in the west. The confusion in the East Indies, and the misconduct of their officers there, called aloud for inquiry and reform: and amidst the complicated difficulties which embarrassed the measures of administration, their king became insane, the royal family were at variance, and the heir apparent had many causes of discontent, besides the alienation of his parents, which had been some time increasing. The parliament and the ministry were intriguing for power, and various parties claimed their right to assume the reins of government during the king's disability, and the recollections of all were embittered, by a retrospect of the misfortunes they had experienced during the late war. Their losses had been incalculable, nor could the wisest of their statesmen devise methods for the payment of even the interest of the enormous national debt, and the recovery of the nation to that scale of honour, prosperity and grandeur they had formerly enjoyed.

In this summary view of the state of the British nation for the last ten 6.14.80
years, a treaty with England was not a very desirable object in the eyes of many of the most judicious statesmen in America. Perhaps no man was better qualified than Mr. Jay to undertake to negociate a business of so much delicacy and responsibility. He was a gentleman of strict integrity, amiable manners, and complacent disposition; whose talents for negociation had been evinced by his firmness, in conjunction with his colleagues, when they effected a treaty of peace at Paris, in one thousand seven hundred and eighty-three. But while in England, whether from the influence of the court of St. James, or from any predetermined system, with regard to England or France, or from the yielding softness of a mind, naturally urbane and polite, is uncertain. Yet whatever might have been the principal operative cause, it is beyond a doubt, that Mr. Jay fell from that dignified, manly, independent spirit which ought to have marked an American negociator. He was led to succumb too far to the dictations of lord Grenville; this condescension undoubtedly arose, more from an apprehension that he could not do better, than from any inclination to swerve from the interests of his country. The consequence was, he agreed to a treaty highly advantageous to Great Britain, degrading to the United States, very offensive to France, the ally of America in the days of her tribulation, and who was now herself at war with Great Britain, in conjunction with most of the European potentates, combined* to overthrow the newly established government in France.

This government they had erected, through civil convulsions that dis- 6.14.81

*See treaty of Pilnitz.

torted every thing from its ancient form and order. Monarchy was overthrown, their king decapitated, hierarchy abolished, and a superstitious priesthood annihilated, amidst the destruction of the lives of thousands of all classes, and a series of such bloody deeds of horror as freeze the soul of humanity on the recollection. These revolutionary scenes in every nation, are generally attended with circumstances shocking to the feelings of compassion; yet undoubtedly all nations have a right to establish such modes and forms of government as a majority of the people shall think most conducive to the general interest. The various causes which contributed to more distressful scenes of barbarity than are usually exhibited in so short a period, may be left to the discussion of those who have written, or may write the history of the late revolution in France, and the character and conduct of that *wonderful people*.

6.14.82 It was with apparent reluctance that president Washington signed the treaty negociated by Mr. Jay: he hesitated, and observed, "that it was pregnant with events." Many gentlemen of the first penetration foresaw and dreaded the consequences of this diplomatic transaction; some scrupled not to declare, that it was not only "pregnant with events," but "with evils." But, notwithstanding it wore so disgusting an aspect to more than one half the citizens of the United States, it was ratified by a majority in the senate, signed by the president, and became the supreme law of the land.

6.14.83 This ratification created a division of sentiment, which was artfully wrought up, until a disseveration of opinion appeared throughout the union. In congress, the parties on every great question seemed nearly equally divided; each had their partisans: the spirits of the people were agitated and embittered to an alarming degree, by the extreme point of opposition in which the instrument was viewed. The whole body of the people were designated under traits of distinction which never ought to exist in the United States; and a struggle took place, the consequences of which some future period must disclose.

6.14.84 It is disgraceful indeed to Americans, who had just broken the shackles of foreign domination, to submit to the unhappy distinction of British or French partisans. But the attachment of many to their old allies, to whom they felt themselves obliged, of many others to the British nation, its modes of government and its commerce, occasioned such a stigma to mark them for a time.

6.14.85 America should indeed forever have maintained a character of her own, that should have set her on high ground, whence she might have looked down from the pinnacle of independence and peace, and only have pitied the squabbles, the confusion, and the miseries of the European world. A quarter of the globe blessed with all the productions of nature, increasing astonishingly in population, improving rapidly in erudition, arts, and all the sciences necessary to the happiness of man; bounded by a vast ocean, by rivers, by

mountains, that have been the wonder of ages, ought forever to hold herself independent on any power on earth.

Imagination may indulge a pleasing reverie, and suppose for a moment, 6.14.86
that if the government of the United States had reared a defence around her sea-board, that might have reached to the heavens, by her bold inhibitions against all foreign connexions, or commercial and political intercourse with distant nations, it might have been the best barrier to her peace, liberty, and happiness. But there are no mounds of separation, either natural or artificial, and perhaps had it been practicable there should have been, they might have been penetrated by a thirst for wealth; commerce might have shaken them to the foundation, or ambition might have broken down the battlements.

{Those subsequent circumstances in American story which have been 6.14.87
cursorily mentioned above [the postwar conflicts with the British and Indians in the northwest] suggest the reflection, that it might have been happy for the United States, and happier for the individual "who weeps alone its lot of wo," if, instead of extending their views over the boundless desert, *a Chinese wall* had been stretched along the Apalachian ridges, that might have kept the nations within the boundaries of nature.[14] This would have prevented the incalculable loss of life and property, and have checked the lust of territory, wealth, and that ambition which has poured out streams of innocent blood on the forlorn mountains. The lives of our young heroes were too rich a price for the purchase of the acres of the savages, even could the nations be extinguished, who certainly have a prior right to the inheritance: this is a theme on which some future historians may more copiously descant.

{The acquisition and possession of territory seems to be a passion inwove 6.14.88
in the bosom of man: we see it from the peasant who owns but a single acre, to the prince who commands kingdoms, and wishes to extend his domains over half the globe. This is thought necessary at some times to distance troublesome neighbours, at others to preserve their own independence; but if the spring of action is traced, it may generally be found in the inordinate thirst for the possession of power and wealth.}

Instead of guarding round the infant republic of America, by a total de- 6.14.89
tachment from foreign connexions, affection, or influence, we have already seen the inhabitants of the United States, interesting themselves beyond the common feelings of humanity, in the operations of European wars, dissensions, politics, and government.

It is not strange that the astonishing revolution in France should be beheld 6.14.90
with very extraordinary emotions. The world had viewed the excision of a king, queen, and the royal family of the house of Bourbon. The existing generation had witnessed the extinction of the claims of a long line of ancestral dignitaries, that had been supported from Charlemagne to Lewis

the sixteenth, under all the appendages of despotism that had oppressed its millions, until they had reached that point of degradation and servility, beyond which the elastic mind of man can bend no farther. This yoke was broken, and the bars burst in sunder by the strong hand of the people, and by the operations of a resentment which discovered more than the imaginary reactions of nature, among the inhabitants of a vast domain. This people had been too long viewed as a nation of slaves, and their struggles for freedom and the equal rights of man ought to have been cherished by Americans, who had just obtained their own independence, by a resistance that had cost them much of the best blood of their citizens.

6.14.91 But the Gallican nation at this period was not viewed with that cordiality by some classes in America, which might have been expected. The government of the United States manifestly discovered a coolness to a nation which had so essentially aided the great American cause, in the darkest of its days; a nation with whom the United States had formed treaties, and become the allies, from interest, necessity and gratitude, and to whom they yet felt obligations that could not be easily cancelled.

6.14.92 The president had indeed published a proclamation of neutrality, and made great professions of friendship to the republic of France. He also sent an envoy to reside there, while the government of France was in the hands of the directory: but it was thought the appointment was not the most judicious.

6.14.93 A character eccentric from youth to declining age; a man of pleasure, pride, and extravagance, fond of the trappings of monarchy, and implicated by a considerable portion of the citizens of America, as deficient in principle, was not a suitable person for a resident minister in France at so important a crisis. The Gallican nation was in the utmost confusion: the effervescence of opposition to their revolution boiling high in most parts of Europe. Dissensions were heightening in America, and existing treaties in danger of being shaken. These circumstances required a man of stable principles, and respectability of character, rather than a dexterous agent of political mischief, whose abilities and address were well adapted either for private or court intrigue.

6.14.94 The exigencies of affairs, both at home and abroad, required an American negociator of different habits and manners. A supersedure took place. Mr. Munroe, a gentleman of unimpeachable integrity, much knowledge and information, united with distinguished abilities, great strength of mind, and a strong attachment to the republican system, was appointed and sent forward by president Washington.

6.14.95 A full detail of the state and situation of France, on the arrival of Mr. Munroe in a diplomatic character, impressions that had been made on the directory, relative to American affairs, the conduct of his predecessor,* and

*Governeur Morris.

his own negociations, may be seen at large in a general view afterwards given by him of existing prejudices which had arisen from misrepresentation, neglect or design, from the excision of the king of France, until the recal and return of Mr. Munroe to his native country. It was generally believed that America derived no advantage from the former minister's repairing to England, after his mission was ended in France. He there continued for some time, fomenting by his letters the jealousies which had already arisen between the United States of America and the republic of France.

These jealousies were increased by a variety of causes, and the dis- 6.14.96
sensions of party in America arose to such a height, as to threaten the dissolution of that strong cement, which ought to bind the colonies together forever. These differences of opinion, with the assuming demeanor of some of his officers, who often urged to measures that he neither approved nor wished for, rendered the president of the United States less happy than he was before he sanctioned by his name a treaty, which was disgusting to almost every state in the Union, and which perhaps he never would have signed, but from the impressive influence of heads of departments, and other favorites about his person. This was a class of men who had been implicated by a considerable portion of the people, as prompting the president of the United States to call out a body of militia, consisting of fifteen thousand men, ostensibly to subdue a trivial insurrection at the westward, which it was asserted by many judicious persons, acquainted with the circumstances, might have been subdued by five hundred only.* They attributed this effort to a wish to try the experiment of the promptitude with which an army might be called forth to subserve the purposes of government, to enhance the dignity of office, and the supreme power of the first magistrate.† There was certainly a class who aimed not so much to promote the honor of the national character, as to establish the basis of a standing army, and other projects approaching to despotic sway, which cannot be supported in America, without the aid of that dangerous engine.

It is dangerous indeed for the ear of the chief magistrate to be open to 6.14.97
favorites of such a complexion. Such an one will probably neglect his old associates, and confer places upon men of not the first abilities in the Union. These are selected only in times of imminent danger; after which their services, integrity and zeal, are too frequently repaid by the ingratitude of the people, which joins the cry of the artful, who have never labored in the vineyard, to send them into oblivion.

The men most opposed to the British treaty, negociated in one thousand 6.14.98
seven hundred and ninety-four, and who stated their objections on the most rational grounds, were generally those who had been distinguished for their

*See Findley's history of the disturbances in the back parts of Pennsylvania.[15]

†General Hamilton was believed to be the prime mover and conductor of this extraordinary business.

patriotism, firmness and abilities. They had been very influential in a variety of departments, previous to the year one thousand seven hundred and seventy-five. Nor had they ever relaxed in their energies during the course of the war, to effect the emancipation of their country from the tyranny of the crown of Britain, and to obtain the independence of the United States.

6.14.99 These circumstances, with the approach of a period when nature requires rest, rendered the weight of government oppressive to declining age. The man who had long commanded, in a remarkable manner, the affection, the esteem, and the confidence of his country, again abdicated his power, took leave of the cares of state, and retired a second time from all public occupations, to the delightful retreats of private life on his highly cultivated farm, on the banks of the Patowmack.

6.14.100 Previous to general Washington's second return to his rural amusements, he published a farewel address to the inhabitants of the United States, fraught with advice worthy of the statesman, the hero, and the citizen.[16] He exhorted them to union among themselves, economy in public expenditure, sobriety, temperance, and industry in private life. He solemnly warned them against the danger of foreign influence, exhorted them to observe good faith and justice toward all nations, to cultivate peace and harmony with all, to indulge no inveterate antipathies against any, or passionate attachments for particular nations, but to be constantly awake against the insidious wiles of foreign influence, observing, that "this was one of the most baneful foes of republican government." This was indeed, after they were split into factions; after an exotic taste had been introduced into America, which had a tendency to enhance thier public and to accumulate their private debts; and after the poison of foreign influence had crept into their councils, and created a passion to assimilate the politics and the government of the United States nearer to the model of European monarchies than the letter of the constitution, by any fair construction, would admit. It was also, after luxury had spread over every class, while the *stimulus* to private industry was in a degree cut off by the capture of their shipping by the belligerent powers, under various pretences of the breach of neutrality.

6.14.101 After this period new contingencies arose, and new discussions were required with regard to foreign relations and connexions, that had no pacific operation, or any tendency to conciliate the minds, or to quiet the perturbed spirits of existing parties.

6.14.102 The operations and the consequences of the civil administration of the first president of the United States, notwithstanding the many excellent qualities of his heart, and the virtues which adorned his life, have since been viewed at such opposite points, that further strictures on his character and conduct shall be left to future historians, after time has mollified the passions and prejudices of the present generation. A new constitution, and an extensive government, in which he acted eight years as chief magistrate, open a new field of observation, for future pens to descant on the merits or

demerits of a man, admired abroad, beloved at home, and celebrated through half the globe: this will be done according to the variety of opinions which will ever exist among mankind, when character is surveyed in the cool moments of calm philosophy, which contemplates the nature and passions of man, and the contingent circumstances, that lift him to the skies, or leave him in the shade of doubtful opinion.

Public opinion is generally grounded on truth; but the enthusiasm to which the greatest part of mankind are liable, often urges the passions to such a degree of extravagance, as to confound the just ratio of praise or reproach: but the services and merits of general Washington, are so deeply engraven on the hearts of his countrymen, that no time or circumstance will or ought ever to efface the lustre of his well earned reputation. 6.14.103

We have already seen, that after the peace, the infant confederated states exhibited scenes and disclosed projects that open too wide a field for discussion, to bring down a regular historical work, farther than the moment which winds up the drama of the military, political, and civil administration of a man, whose name will have a conspicuous place in all future historical records.

History may not furnish an example of a person so generally admired, and possessed of equal opportunities for making himself the despotic master of the liberties of his country, who had the moderation repeatedly to divest himself of all authority, and retire to private life with the sentiments expressed by himself in the close of his farewel address: he there observed—"I anticipate with pleasing expectation that retreat, in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow citizens, the benign influence of good laws under a free government—the ever favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors, and dangers." 6.14.104

The commander of the armies of the United States, has been conducted from the field of war, and from the zenith of civil command, to the delicious retreats of peaceful solitude. We now leave him in the shade of retirement, with fervent wishes that he may wind up the career of human life in that tranquillity which becomes the hero and the Christian.

The administration of his immediate successor we shall also leave, after some general observations on the character of a man who long acted in the most conspicuous departments of American affairs. The veracity of an historian requires, that all those who have been distinguished, either by their abilities or their elevated rank, should be exhibited through every period of public life with impartiality and truth. But the heart of the annalist may sometimes be hurt by political deviations which the pen of the historian is obliged to record.[17] 6.14.105

Mr. Adams was undoubtedly a statesman of penetration and ability; but his prejudices and his passions were sometimes too strong for his sagacity and judgment. 6.14.106

After Great Britain had acknowledged the independence of the dismembered colonies, Mr. Adams was sent to England, with a view of negociating a treaty of commerce; but the government too sore from the loss of the colonies, and the nation too much soured by the breach, nothing was done. He however resided there four or five years; and unfortunately for himself and his country, he became so enamoured with the British constitution, and the government, manners, and laws of the nation, that a partiality for monarchy appeared, which was inconsistent with his former professions of republicanism. Time and circumstances often lead so imperfect a creature as man to view the same thing in a very different point of light.

After Mr. Adams's return from England, he was implicated by a large portion of his countrymen, as having relinquished the republican system, and forgotten the principles of the American revolution, which he had advocated for near twenty years.

6.14.107 The political errors of men of talents, sometimes spring from their own passions; often from their prejudices imbibed by local or incidental circumstances; and not unfrequently from the versatile condition of man, which renders it difficult, at one period, to decide on the best system of civil government; or at another, on the most effectual means of promoting the general happiness of mankind. This may lead the candid mind to cast a veil over that ambiguity which confounds opinion, and that counteraction of former principles, which often sets a man in opposition to himself, and prevents that uniformity of conduct which dignifies, and that consistency which adorns the character.

Pride of talents and much ambition, were undoubtedly combined in the character of the president who immediately succeeded general Washington, and the existing circumstances of his country, with his own capacity for business, gave him an opportunity for the full gratification of the most prominent features of his character.

6.14.108 Endowed with a comprehensive genius, well acquainted with the history of men and of nations; and having long appeared to be actuated by the principles of integrity, by a zeal for the rights of men, and an honest indignation at the ideas of despotism, it was viewed as a kind of political phenomenon, when discovered that Mr. Adams's former opinions were beclouded by a partiality for monarchy. It may however be charitably presumed, that by living long near the splendor of courts and courtiers, with other concurring circumstances, he might become so biassed in his judgment as to think that an hereditary monarchy was the best government for his native country.* From his knowledge of men, he was sensible it was

*Circumstances may in some future day render it necessary to adopt this mode of government in the United States. Rome had not a master until the people had become prepared for the yoke by their dissensions and follies. These, more than the arm of Cæsar, rivetted their chains, and sunk them to a level with the most abject and servile nations.

easy to turn the tide of public opinion in favor of any system supported by plausible argumentation. Thus he drew a doleful picture of the confusion and dissolution of all republics, and presented it to the eyes of his countrymen, under the title of a "Defence of their constitutions."[18] This had a powerful tendency to shake the republican system through the United States. Yet the predilection of Americans in general, in favor of a republican form of government was so strong, that few had the hardiness to counteract it, until several years after the United States had become an independent nation.

6.14.109 On Mr. Adams's return from England, he undoubtedly discovered a partiality in favor of monarchic government, and few scrupled to assert for a time, that he exerted his abilities to encourage the operation of those principles in America. But any further strictures are unnecessary in this place on the character of a gentleman, whose official stations, abilities and services, amidst the revolutionary conflict, may probably excite some future historian to investigate the causes of his lapse from former republican principles, and to observe with due propriety on his administration and its consequences while president of the United States.

6.14.110 It is with more pleasure the writer records, that notwithstanding any mistakes or changes in political opinion, or errors in public conduct, Mr. Adams, in private life, supported an unimpeachable character; his habits of morality, decency and religion, rendered him amiable in his family, and beloved by his neighbours. The opinions of a man of such sobriety of manners, political experience, and general knowledge of morals, law and government, will ever have a powerful effect on society, and must naturally influence the people, more especially the rising generation, the young men, who have not had the opportunity of acquainting themselves with the character, police, and jurisprudence of nations, or with the history of their own country, much less with the principles on which the American revolution was grounded.

6.14.111 There is a propensity in mankind, to enlist themselves under the authority of names, and to adopt the opinions of men of celebrity, more from the fashion of the times, than from the convictions of reason. Thus with the borrowed language of their chieftain, they impose upon themselves, until they think his opinions are their own, and are often wrought up to such a fierce spirit of contention, that they appear ready to defend them in all the cruel modes of the savage, who is seldom actuated by motives of candor and forgiveness of injuries.

6.14.112 Both history and experience have proved, that when party feuds have thus divided a nation, urbanity and benevolence are laid aside; and, influenced by the most malignant and corrupt passions, they lose sight of the sacred obligations of virtue, until there appears little difference in the ferocious spirits of men in the most refined and civilized society, or among the rude and barbarous hordes of the wilderness. Though some symptoms of

this degradation of the human character have appeared in America, we hope the cloud is fast dissipating, and that no vicissitudes in human affairs, no intrigues of the interested, nor any mistakes of upright men will ever damp the prospect of the establishment and continuance of a republican system, which appears to be best adapted to the genius of Americans. This form of government has the voice of the majority; the energies and sacrifices of the sons of Columbia, have been exerted to leave a republican form, defined, modified and digested, as a model to promote the happiness of posterity.

6.14.113 Yet there is still a division of parties, and a variety of sentiment, relative to a subject that has heated the imaginations, and divided the opinions of mankind, from the rise of the Roman republic to the destruction of her splendid empire; and from that day to the present, when the divisions of the literati of every age, have called the attention of genius and ability to speculate and to dissent in their ideas of the best modes and forms of government.

6.14.114 It may be a subject of wonder and inquiry, that though so many ages have elapsed, and so great a part of the world been civilized and improved, that the science of politics is still darkened by the variety of opinions that prevail among mankind. It may be beyond the reach of human genius, to construct a fabric so free as to release from subordination, nor in the present condition of mankind ought it ever to be wished. Authority and obedience are necessary to preserve social order, and to continue the prosperity or even the existence of nations. But it may be observed, that despotism is not always the certain consequence of monarchy, nor freedom the sure result of republican theories.

6.14.115 It would be presumption in the writer, to entangle herself on a subject of such magnitude and importance, as to decide peremptorily, whether aristocratic, monarchic, or democratic government, is best adapted to the general happiness of the people. This shall be left to bolder pens; she will indulge little farther aberration of her's, after the expression of her wishes, that amidst the heterogeneous opinions of a theoretic age, America may not trifle away her advantages by her own folly and levity, nor be robbed of any of the essential rights which have cost her so dear, by the intrigues or ambition of any class of men.

6.14.116 {It is indeed true, that from a general attention to early education, the people of the United States were better informed in many branches of literature, than the common classes of men in most other countries.[19] Yet many of them had but a superficial knowledge of mankind; they were ignorant of the intrigues of courts, and though convinced of the necessity of government, did not fully understand its nature or origin; they had generally supposed there was little to do, but to shake off the yoke of foreign domination, and annihilate the name of *king*.

6.14.117 {They were not generally sensible, that most established modes of strong government are usually the consequences of fraud or violence, against the systems of democratic theorists. They were not sensible, that from age to

age the people are flattered, deceived, or threatened, until the hood-winked multitude set their own seals to a renunciation of their privileges, and with their own hands rivet the chains of servitude on their posterity. They were totally fearless of the intrigues or the ambition of their own countrymen, which might in time render fruitless the expense of their blood and their treasures. These they had freely lavished to secure their equality of condition, their easy modes of subsistence, and their exemption from public burdens beyond the necessary demands for the support of a free and equal government. But it was not long before they were awakened to new energies, by convulsions both at home and abroad.

{New created exigencies, or more splendid modes of government that might hereafter be adopted, had not yet come within the reach of their calculations. Of these, few had yet formed any adequate ideas, and fewer indeed were sensible, that though the name of *liberty* delights the ear, and tickles the fond pride of man, it is a jewel much oftener the play-thing of his imagination, than a possession of real stability: it may be acquired to-day in all the triumph of independent feelings, but perhaps to-morrow the world may be convinced, that mankind know not how to make a proper use of the prize, generally bartered in a short time, as a useless bauble, to the first officious master that will take the burden from the mind, by laying another on the shoulders of ten-fold weight. 6.14.118

{This is the usual course of human conduct, however painful the reflection may be to the patriot in retirement, and to the philosopher absorbed in theoretic disquisitions on human liberty, or the portion of natural and political freedom to which man has a claim. The game of deception is played over and over to mislead the judgment of men, and work on their enthusiasm, until by their own consent, hereditary crowns and distinctions are fixed, and some scion of royal descent is entailed upon them forever. Thus by habit they are ready to believe, that mankind in general are incapable of the enjoyment of that liberty which nature seems to prescribe, and that the mass of the people have not the capacity nor the right to choose their own masters. 6.14.119

{The generous and disinterested of all nations must, however, wish to see the American republic fixed on such a stable basis, as to become the admiration of the world. Future generations will then look back with gratitude, on the era which wafted their ancestors from the European shores: they will never forget the energetic struggles 9f their fathers, to secure the natural rights of men. These are improved in society, and strengthened by civil compacts: these have been established in the United States by a race of independent spirits, who have freed their posterity from the feudal vassalage of hereditary lords. It is to be hoped, that the grim shades of despotic kings will never hover in the clouds of the American hemisphere, to bedizzen the heads of the sons of Columbia, by imaginary ideas of the splendid beams of royalty. 6.14.120

6.14.121 {Let it never be said of such a favored nation as America has been, as was observed by an ancient historian, on the rise, the glory, and the fall of the republic of Athens, that "the inconstancy of the people was the most striking characteristic of its history."[20] We have, with the historian who depictured the Athenian character, viewed with equal astonishment, the valor of our soldiers and the penetration of the statesmen of America. We wish for the duration of her virtue; we sigh at every appearance of decline; and perhaps, from a dread of deviations, we may be suspicious of their approach when none are designed.}

6.14.122 The speculative of every age have theorized on a system of perfect republicanism, but the experiment has much oftener failed in practice, among all mankind, than been crowned with success. Those that have come nearest thereto, the free states of Greece, the Achean league, the Amphyctions, and other confederacies, fell under the power of Philip, Alexander, and their successors. The republic of Athens, the most conspicuous among the ancients, corrupted by riches and luxury, was wasted and lost by the intrigues of its own ambitious citizens.

6.14.123 The Roman commonwealth, the proud boast, the pattern, and exemplar of all republics, fell under the despotism of a long line of Cæsars, generally the most debauched and brutal race of emperors that ever disgraced human nature. More modern experiments, Venice, and indeed all the Italian states, who boasted their freedom, were subjected to the tyranny of an oligarchy or aristocracy, frequently more severe and cruel than that of monarchy. In England, the struggles of Hampden and his virtuous associates were lost, and the strong reasonings of the patriots of that day in favor of freedom were obliterated, after the death of Charles, by the artful, the hypocritical, and the arbitrary Cromwell; and the most voluptuous of kings was restored, and re-seated on the throne of Britain.

6.14.124 Thus, from the first of the Stuarts to the last of the line of Brunswick who have yet reigned, their republican opinions and the freedom of the nation have been in the wane, and have finally sunk into an empty name under the tyranny of George the third. Indeed the most enlightened, rational, and independent characters in Great Britain continue still to defend the principles of liberty with their pens, while they have had reason to apprehend its total extinction through the realm.

6.14.125 Innumerable other instances might be adduced of the defeat of republicanism, in spite of the efforts of its most zealous friends: yet this is no proof that this system of government may not be more productive of happiness to mankind than that of monarchy or aristocracy.[21] The United States of America have now a fair experiment of a republican system to make for themselves; they may perhaps be possessed of more materials that promise success than have ever fallen to the lot of any other nation. From the peculiar circumstances of the emigration of their ancestors, there is little reason to fear that a veil of darkness, tyranny, and barbarity will soon

overspread the land to which they fled. These were a set of men very different in principles and manners from any that are to be found in the histories of colonization, where it may be observed, the first planters have been generally either men of enterprise for the acquisition of riches or fame, or convicted villains transported from more civilized societies.

In the outset of the American revolution, the arm of foreign power was 6.14.126
opposed by a people uncontaminated by foreign luxury, the intricacies of foreign politics, or the theological jargon of metaphysical sceptics of foreign extract. Philosophy then conveyed honorable ideas of science, of religion, and morals: the character is since degraded by the unprincipled sarcasms of men of letters, who assume the dignity of philosophic thought. Instead of unfolding the sources of knowledge, and inculcating truth, they often confound without convincing, and by their sophistical reasonings leave the superficial reader, their newly initiated disciple, on the comfortless shores of annihilation.

{America has indeed obtained incalculable advantages by the revolution; 6.14.127
but in the innumerable list of evils attendant on a state of war, she, as well as Great Britain, has lost her thousands of brave soldiers, veteran officers, hardy seamen, and meritorious citizens, that perished in the field, or in captivity, in prison-ships, and in the wilderness, since the beginning of the conflict.[22] She has lost an immense property by the conflagration of her cities, and the waste of wealth by various other means. She has in a great measure lost her simplicity of manners, and those ideas of mediocrity which are generally the parent of content; the Americans are already in too many instances hankering after the sudden accumulation of wealth, and the proud distinctions of fortune and title. They have too far lost that general sense of moral obligation, formerly felt by all classes in America. The people have not indeed generally lost their veneration for religion, but it is to be regretted, that in the unlicensed liberality of opinion there have been some instances, where the fundamental principles of truth have been obscured. This may in some measure have arisen from their late connexions with other nations; and this circumstance may account for the readiness of many, to engraft foreign follies and crimes with their own weak propensities to imitation, and to adopt their errors and fierce ambition, instead of making themselves a national character, marked with moderation, justice, benignity, and all the mild virtues of humanity.

{But when the seeds of revolution are planted, and the shoots have ex- 6.14.128
panded, the various causes which contribute to their growth, and to the introduction of a change of manners, are too many to recount. The effervescence of party rage sets open the flood-gates of animosity, and renders it impossible to calculate with any degree of accuracy, on subsequent events. Not the most perspicacious human eye can foresee, amidst the imperious spirit of disunion and the annihilation of former habits and connexions, the benefits that may result from the exertions of virtue, or the evils that may

arise from problematic characters which come forward, the new-born offspring of confusion, and assume merit from the novelty of their projects, and the inscrutability of their designs. These are like hot-bed plants, started from extraneous causes; prematurely forced into existence, they are incapable of living but in the sunshine of meridian day. Such characters often hurry into irretrievable mischief, before time has ripened the systems of men of more principle and judgment.

6.14.129 {Thus, after the conclusion of peace, and the acknowledgment of the independence of the United States by Great Britain, the situation of America appeared similar to that of a young heir, who had prematurely become possessed of a rich inheritance, while his inexperience and his new felt independence had intoxicated him so far, as to render him incapable of weighing the intrinsic value of his estate, and had left him without discretion or judgment to improve it to the best advantage of his family.

6.14.130 {The inhabitants of the United States had much to experiment in the new rank they had taken, and the untrodden ground which they were now to explore, replete with difficulties not yet digested or apprehended by the most sagacious statesmen. They had obtained their independence by a long and perilous struggle against a powerful nation: we now view them just emancipated from a foreign yoke, the blessings of peace restored upon honorable terms, with the liberty of forming their own governments, enacting their own laws, choosing their own magistrates, and adopting manners the most favorable to freedom and happiness. Yet it is possible that their virtue is not sufficiently stedfast, to avail themselves of those superior advantages.

6.14.131 {The restless nature of man is forever kindling a fire, and collecting fuel to keep the flame alive, that consumes one half the globe, without the smallest advantage to the other, either in a moral or in a political view. Men profit little by the observations, the sufferings, or the opinions of others: it is with nations as with individuals, they must try their own projects, and frequently learn wisdom only by their own mistakes. It is undoubtedly true, that all mankind learn more from experience than from intuitive wisdom: their foolish passions too generally predominate over their virtues; thus civil liberty, political and private happiness, are frequently bartered away for the gratification of vanity, or the aggrandizement of a few individuals, who have art enough to fascinate the undistinguishing multitude.

6.14.132 {If the conduct of the United States should stand upon record, as a striking example of the truth of this observation, it must be remembered that this is not a trait peculiar to the character of America, it is the story of man; past ages bear testimony to its authenticity, and future events will convince the unbelieving.

{It is an unpleasing part of history, when "corruption begins to prevail, when degeneracy marks the manners of the people, and weakens the sinews of the state."[23] If this should ever become the deplorable situation of the

United States, let some unborn historian, in a far distant day, detail the lapse, and hold up the contrast between a simple, virtuous, and free people, and a degenerate, servile race of beings, corrupted by wealth, effeminated by luxury, impoverished by licentiousness, and become the *automatons* of intoxicated ambition.}

These observations are not confined to any particular nation or character; 6.14.133
the historians of Britain, and the philosophers and poets of France, Germany, and England, are perhaps equally culpable; and it is to be regretted that America has not preserved a national character of her own, free from any symptoms of pernicious deviation from the purest principles on morals, religion, and civil liberty. She has been conducted through a revolution that will be ever memorable, both for its origin, its success, and the new prospects it has opened both at home and abroad. The consequences of this revolution have not been confined to one quarter of the globe, but the dissemination of more liberal principles in government, and more honorable opinions of the rights of man, and the melioration of his condition, have been spread over a considerable part of the world.

But men, prone to abuse the best advantages lent by the beneficent hand 6.14.134
of providence, sometimes sport them away, or confound causes with effects, which lead to the most erroneous conclusions. Thus it has been the recent fashion of courtiers, and of a great part of the clergy, under monarchic governments, to impute the demoralization and scepticism that prevails, to the spirit of free inquiry, as it regards the rights of civil society. This fashion has been adopted by all anti-republicans in America; but it may be asked, whether the declamation and clamor against the dissemination of republican opinions on civil government, as originating the prevalence of atheistical folly, is founded on the basis of truth?

Examine the history of the ancient republics of Greece, and the splendid 6.14.135
commonwealth of Rome; was not the strictest regard paid to the worship of their gods, and a sacred observance of their religious rites enjoined, until the Grecian republics were overthrown by ambitious individuals? It was then that sceptical disputes more generally employed the philosophers; in consequence of which the rulers and the people sunk into an indifference to all religion. The rich city of Athens particularly, was early corrupted by the influx of wealth, the influence of aristocratic nobles, and the annihilation of every principle connected with religion.

Survey the Roman commonwealth before its decline, when it was most 6.14.136
worthy of the imitation of republicans. Was not a general regard paid to the worship of their deities, among this celebrated people, and a superstitious attention observed, relative to omens, prodigies and judgments, as denounced and executed by their gods, until republicanism was extinguished, the commonwealth subverted, and the sceptre of a single sovereign was stretched over that vast empire? It was then that Caligula set up his horse to be worshipped, as a burlesque on religion, and the sycophants of the court

encouraged every caprice of their emperor. The people did not become so universally corrupt as to throw off all regard for religion, and all homage to the deities of their ancestors, until the libidinous conduct of their august sovereigns, and the nobles of the court, set the example.

Nor do we read in more sacred history, through all the story of the Israelites, that the fool ever said in his heart, there is no God, until under the dominion of kings.

6.14.137 It may be observed in the character of more modern republics, that religion has been the grand palladium of their institutions. Through all the free states of Italy, democracy and religion have been considered in union; some of them have indeed been darkened by superstition and bigotry, yet not equally hoodwinked under republican governments, as are the neighbouring kingdoms of Spain and Portugal, subjected to monarchic despotism.

6.14.138 By no fair deduction can it be asserted, that the scepticism and the late appearance of a total disregard to religious observances in France, are in consequence of the democratic struggles of the nation. The dereliction of all religious principles among the *literati* of France, and the abominable opinions of some of their philosophers, cannot be too much detested; but they have sprung from various causes, remote from political freedom, and too complicated to trace their origin, in a page of cursory observations.

6.14.139 The French have long been a highly civilized, refined, luxurious nation, divided into two classes, the learned and the infidel, the ignorant and superstitious, both equally pursuing present pleasure, with little regard to moral principle, the laws of reason, of God, or of nature, any further than prompted by the gratifications of the moment. The first were patronised by the court; the rich and the noble had been generally infidel for more than a century before the revolution. The last were poor, depressed and degraded by monarchic and prelatic power, until their indigence and misery produced universal murmur, and revolution burst on a nation, too ignorant to investigate the sources of their own wretchedness, and too volatile and impatient to wait the operation of measures adapted for relief by men of more information and ability than themselves.

6.14.140 Thus from the ignorance and imbecility of a people degraded by oppression, and long the dupes of priestly as well as monarchic tyranny, they naturally followed the lead of their superiors. These had long been the infidel disciples of Voltaire, D'Alembert, and Diderot; the atheistical opinions of these men, and others of their character, had been cherished only by courtiers and academicians, until near the middle of the eighteenth century, when their numerous adherents, who had concealed their pernicious opinions under the veil of modesty, threw off the mask, came out openly, and set religion at defiance. But the shackles of superstition were not yet broken, nor were any remarkable struggles made in favor of civil liberty, until the flame was caught by their officers and soldiers, and resistance to tyranny taught them, while in union with the sober and pious Americans. They were

animated by the principles of freedom while they lent their arm in aid of the energies of a people, whose character had never been impeached as favorers of atheistical opinions, and who were only exerting their abilities, both in the cabinet and the field, in supporting the civil and social rights of men.

On the return of this veteran band of officers and soldiers to their own nation, they found as they had left, a voluptuous court, a licentious and extravagant nobility, a corrupted priesthood, and an ignorant multitude spread over the face of one of the finest countries on earth. Yet the murmurs against tyranny and oppression had become so general, that some ineffectual efforts for relief had been made without any digested system of means that might produce it. Previous to this period, some of their parliaments had discovered spirit and energy to resist the despotic mandates of the crown: but the arm of royalty was yet too potent to receive any check, while the whole nation was held in bondage by the strong hand of their *grand monarch.* 6.14.141

These combined circumstances brought forward an assembly of notables, and a national convention, neither of which were capable of quieting the universal discontent and disaffection to royalty that prevailed. Hence the destruction of the Bastile; the imprisonment and decapitation of their king and queen; the extermination of their nobility and clergy; the assassination of many of their first literary characters; and the indiscriminate murder of ladies of the fairest fame and virtue, and women of little consideration; of characters of the highest celebrity, of nobles, magistrates, and men without name or distinction. 6.14.142

These sudden eruptions of the passions of the multitude, spread, like the lava of a volcano, throughout all France, nor could men of correct judgment, who aimed only at the reform of abuses, and a renovation in all the departments, check the fury of the torrent. This confusion and terror within, and an army without, sent on by the combined despots of Europe, with the professed design of subjecting the nation, and reestablishing the monarchy of France, gave an opportunity to ambitious, unprincipled, corrupt, and ignorant men, to come forward, under pretence of supporting the rights and liberties of mankind, without any views but those of disorder and disorganization. Thus in the midst of tumult and confusion, was indulged every vicious propensity, peculation, revenge, and all the black passions of the soul. The guillotine was glutted with the blood of innocent victims, while the rapidity of execution, and their jealousy of each other, involved the most guilty, and cut down many of the blackest miscreants, as well as the most virtuous characters in the nation. 6.14.143

But from the rise and progress of this period of horror, this outrage of humanity, it is evident that it originated more from former monarchic and priestly oppression, than from the operation of infidel opinions, united with republican efforts. In consequence of this state of things, though there were very many characters of the best intentions, principles and abilities, ani- 6.14.144

mated and active for the promotion of civil liberty in France, they had to regret with all the humane, benevolent, and pious, that while engaged to eradicate the superstitions of their country, and the arbitrary strides of their civil rulers, law was annihilated and even the government of Heaven renounced. Thus, all religious opinions were set afloat, the passions let loose, and all distinctions levelled. Decency, humanity, and every thing else respected in civil society, disappeared, until the outrages of cruelty and licentiousness resembled the regions of pandemonium. Thus was republicanism disgraced by the demoralization of the people, and a cloud of infidelity darkened the hemisphere of France, but there is nothing to countenance the opinion, that scepticism was the origin or the result of the struggles of the Gallican nation in favor of civil liberty.*

6.14.145 This people may have had their day of licentious enjoyment, of literary fame, of taste, elegance and splendor; they have abused his gifts and denied the God of nature, who, according to the usual course of his government among men, may devote them to that ruin which is the natural consequence of luxury and impiety. Yet the God of providence, when national punishment has been sufficiently inflicted, may bring them back again to a due sense of religion and order; while the seeds of liberty, which they have disseminated far and wide, may ripen in every soil, and in full maturity extend the branches of general freedom, through Europe, and perhaps throughout the world. After all, we are inadequate to any calculation on future events; the ways of heaven are hidden in the depths of time, and a small circumstance frequently gives a new turn to the most probable contingencies that seem to measure the fate of men or of empires.†

6.14.146 We will now leave this extraordinary nation, which has furnished materials for history of the most interesting nature, as it regards the character of man; their civil, political, and religious institutions, and the moral and social ties that connect society. From them we will look over to the island of Britain, and survey the gradations of principles, manners, and science, there. We shall find that lord Herbert, one of the first and most notorious infidels in England,[24] sprung up under kingly government; and none will deny that scepticism has prevailed, and has been gathering strength both in France and England, under monarchy, even before the correspondencies of British infidels with St. Evremond, and other sceptical Frenchmen. Hobbes,

*The above summary of the French revolution was written several years before monarchy was re-established in France.

†The duke D'Alencour, who visited the family of the author, in his exile under the tyranny of Robespierre, observed justly, that "the sources of disorder in France were so innumerable, that it was impossible to conjecture when tranquillity would be again restored, or what masters or what government the nation would sit down under, after their violent convulsions subsided." Through a very interesting conversation relative to the causes and consequences of the revolution, the deepest marks of grief and sensibility sat on the countenance of the noble sufferer, expressive of the pain he felt for the miseries of his country, and the misfortunes of his family.

Hume, and Bolingbroke, were subjects of a king of England; and while their disciples have been increasing, and their deistical opinions have poisoned the minds of youth of genius, and shaken the faith of some even in clerical professions, yet no democratic opinions have been generally spread over the nation.

6.14.147 In the zenith of British monarchy, and the golden age of nobility, while republicanism has been quite out of fashion, has not the cause of Christianity suffered by the fascinating pen of a Gibbon, whose epithets charm while they shock, and whose learned eloquence leads the believer to pause and tremble for the multitudes that may be allured by the sophistry of his arguments, his satirical wit, the elegance of his diction, and the beautiful antithesis of many of his periods.

The elegance of his style confers an "alarming popularity on the licentiousness of his opinions." The rise and fall of the Roman republic will probably be read by many who have not the inclination or the opportunity to study the writings of Locke, Boyle, Butler, Newton, Clarke, and many others, who have by their example and by the pen supported and defended the Christian system on principles of reason and argument, that will forever adorn the character of Englishmen. A writer of ingenuity has observed, that, "there are probably more sceptics in England than in any other country";* yet we do not infer that the examples of infidelity that disgrace the world, by blasting the principles of truth, though nurtured under princely patronage, are in consequence of the cherishing influence of monarchy. Nor is it more just to suppose that the writings of French philosophists, or the jejune trumpery that has for years exuded from the brain of other theorists of that nation, is the result of speculative opinions, with regard to civil liberty.

6.14.148 It is neither a preference to republican systems, nor an attachment to monarchic or aristocratic forms of government that disseminates the wild opinions of infidelity. It is the licentious manners of courts of every description, the unbridled luxury of wealth, and the worst passions of men let loose on the multitude by the example of their superiors. Bent on gratification, at the expense of every moral tie, they have broken down the barriers of religion, and the spirit of infidelity is nourished at the fount; thence the poisonous streams run through every grade that constitutes the mass of nations.

6.14.149 It may be further observed, that there is a variety of additional causes which have led to a disposition among some part of mankind, to reject the obligations of religion, and even to deny their God. This propensity in some may easily be elucidated, without casting any part of the odium on the spirit of free inquiry relative to civil and political liberty, which had been widely disseminated, and had produced two such remarkable revolutions as those

*Dr. F. A. Wenderburne. He gives his reason for his assertion, page 475 of his view of England at the close of the eighteenth century.[25]

of America and France. It may be imputed to the love of novelty, the pride of opinion, and an extravagant propensity to speculate and theorize on subjects beyond the comprehension of mortals, united with a desire of being released from the restraints on their appetites and passions: restraints dictated both by reason and revelation; and which, under the influence of sober reflection, forbid the indulgence of all gratifications that are injurious to man. Further elucidations, or more abstruse causes, which contribute to lead the vain inquirer, who steps over the line prescribed by the Author of nature, to deviations from, and forgetfulness of its Creator, and to involve him in a labyrinth of darkness, from which his weak reasonings can never disentangle him, may be left to those who delight in metaphysical disquisitions.

6.14.150 The world might reasonably have expected, from the circumstances connected with the first settlement of the American colonies, which was in consequence of their attachment to the religion of their fathers, united with a spirit of independence relative to civil government, that there would have been no observable dereliction of those honorable principles, for many ages to come. From the sobriety of their manners, their simple habits, their attention to the education and moral conduct of their children, they had the highest reason to hope, that it might have been long, very long, before the faith of their religion was shaken, or their principles corrupted, either by the manners, opinions, or habits of foreigners, bred in the courts of despotism, or the schools of licentiousness.

6.14.151 This hope shall not yet be relinquished. There has indeed been some relaxation of manners, and the appearance of a change in public opinion not contemplated when revolutionary scenes first shook the western world. But it must be acknowledged, that the religious and moral character of Americans yet stands on a higher grade of excellence and purity, than that of most other nations. It has been observed, that "a violation of manners has destroyed more states than the infraction of laws."* It is necessary for every *American,* with becoming energy to endeavour to stop the dissemination of principles evidently destructive of the cause for which they have bled. It must be the combined virtue of the rulers and of the people to do this, and to rescue and save their civil and religious rights from the outstretched arm of tyranny, which may appear under any mode or form of government.

6.14.152 Let not the frivolity of the domestic taste of the children of Columbia, nor the examples of strangers of high or low degree, that may intermix among them, or the imposing attitude of distant nations, or the machinations of the bloody tyrants of Europe, who have united themselves, and to the utmost are exerting their strength to extirpate the very name of *republicanism,* rob them of their character, their morals, their religion, or their liberty.

6.14.153 It is true the revolution in France had not ultimately tended to strengthen

*Montesquieu.[26]

the principles of republicanism in America. The confusions introduced into that unhappy nation, by their resistance to despotism, and the consequent horrors that spread dismay over every portion of their territory, have startled some in the United States, who do not distinguish between principles and events, and shaken the firmness of others, who have fallen off from their primary object, and by degrees returned back to their former adherence to monarchy. Thus, through real or pretended fears of similar results, from the freedom of opinion disseminated through the United States, dissensions have originated relative to subjects not known in the constitution of the American republic. This admits no titles of honor or nobility, those powerful springs of human action; and from the rage of acquisition which has spread far and wide, it may be apprehended that the possession of wealth will in a short time be the only distinction in this young country. By this it may be feared that the spirit of avarice will be rendered justifiable in the opinion of some, as the single road to superiority.

The desire of distinction is inherent in the bosom of man, notwithstanding the equality of nature in which he was created. Few are the numbers of elevated souls, stimulated to act on the single motive of disinterested virtue; and among the less powerful incentives to great and noble actions, the pursuit of honour, rank, and titles, is undeniably as laudable as that of riches. The last too generally narrows the mind, debases it by meanness, and renders it disgracefully selfish, both in the manner of hoarding and squandering superfluous wealth; but the ambitious, stimulated by a thirst for rank, consider the want of generosity a stain on the dignity of high station. 6.14.154

It may be asked, are not those states the most likely to produce the greatest number of wise and heroic spirits, where some mark of elevation, instead of pecuniary compensation, is affixed to the name and character of such, as have outstripped their contemporaries in the field of glory or integrity? A Roman knight ennobled for his patriotism or his valour, though his patrimonial inheritance was insufficient for a modern flower-garden, was beheld with more veneration than the most wealthy and voluptuous citizen. But we shall not here decide, how far honorary rewards are consistent with the principles of republicanism. Indeed some have asserted, that "nobility is the Corinthian capital of polished states"; but an ingenious writer has observed, that "a titled nobility is the most undisputed progeny of feudal barbarism; that the august fabric of society is deformed and encumbered by such Gothic ornaments. The massy doric that sustains it is labor, and the splendid variety of arts and talents that solace and embellish life, form the decorations of its Corinthian and Ionic capitals."* 6.14.155

It is to be regretted that Americans are so much divided on this point as well as on many other questions; we hope the spirit of division will never be wrought up to such a height as to terminate in a disseveration of the states, 6.14.156

*Mackintosh's Vindiciæ Galliciæ, p. 77, 79.[27]

or any internal hostilities. Any civil convulsions would shake the fabric of government, and perhaps entirely subvert the present excellent constitution; a strict adherence to which, it may be affirmed, is the best security of the rights and liberties of a country that has bled at every vein, to purchase and transmit them to posterity. The sword now resheathed, the army dismissed, a wise, energetic government established and organized, it is to be hoped many generations will pass away in the lapse of time, before America again becomes a theatre of war.

6.14.157 Indeed the United States of America embrace too large a portion of the globe, to expect their isolated situation will forever secure them from the encroachments of foreign nations, and the attempts of potent Europeans to interrupt their peace. But if the education of youth, both public and private, is attended to, their industrious and economical habits maintained, their moral character and that assemblage of virtues supported, which is necessary for the happiness of individuals and of nations, there is not much danger that they will for a long time be subjugated by the arms of foreigners, or that their republican system will be subverted by the arts of domestic enemies. Yet, probably some distant day will exhibit the extensive continent of America, a portrait analogous to the other quarters of the globe, which have been laid waste by ambition, until misery has spread her sable veil over the inhabitants. But this will not be done, until ignorance, servility and vice, have led them to renounce their ideas of freedom, and reduced them to that grade of baseness which renders them unfit for the enjoyment of that rational liberty which is the natural inheritance of man. The expense of blood and treasure, lavished for the purchase of freedom, should teach Americans to estimate its real worth, nor ever suffer it to be depreciated by the vices of the human mind, which are seldom single. The sons of America ought ever to bear in grateful remembrance the worthy band of patriots, who first supported an opposition to the tyrannic measures of Great Britain. Though some of them have long since been consigned to the tomb, a tribute of gratitude is ever due to their memory, while the advantages of freedom and independence are felt by their latest posterity.[28]

6.14.158 The military character of the country has rung with deserved applause; many of the heroes who have been sacrificed in the field, are justly recollected with a sigh, but the laborious statesmen who with ability and precision defined the rights of men, and supported the freedom of their country; without whose efforts America never would have had an army, are many of them neglected or forgotten. Private virtue may be neglected; public benefits disregarded, as they affect the individual, while at the same time society feels their cherishing beams, which like the silent rills that water the great garden of nature, pour forth their bounties, unasked, on the whole family of ungrateful man.

6.14.159 It has been justly said, that "there is seldom any medium between grat-

itude for benefits, and hatred to the authors of them; a little mind is hurt by the remembrance of obligations, begins by forgetting, and not uncommonly ends by persecution."—And, that "that circle of beings, which dependence gathers around us, is almost ever unfriendly; they secretly wish the terms of this connexion more equal. Increasing the obligations which are laid upon such minds, only increases their burden; they feel themselves unable to defray the immensity of their debt."[29] Thus the names of many of the men, who laid the foundations of American independence, and defended the principles of the revolution, are by the efforts of the artful, depreciated, if not vilified. The ancient Persians considered ingratitude as the source of all enmities among men. They considered it "an indication of the vilest spirit, nor believed it possible for an ungrateful man to love the gods, or even his parents, friends, or country."

The partiality to military honor, has a tendency to nourish a disposition for arbitrary power; and wherever there is a tyrannic disposition, servility is its concomitant: hence, pride of title and distinction, and an avarice for wealth to support it. Where these passions predominate, ingratitude is usually added; this makes a *tripodium* to lift the ambitious to the summit of their nefarious designs. Under an established despotism mankind are generally more prone to bend than to resist; losing their ideas of the value of independence, the timid, the doubtful, and the indiscreet, for the most part, determine in favor of whatever wears the appearance of established authority. This should be a lasting admonition, which should forever prevent the vesting any individual or body of men with too much power. 6.14.160

The people of the United States are bound together in sacred compact and a union of interests which ought never to be separated. But the confederation is recent, and their experience immatured; they are however generally sensible, that from the dictatorship of Sylla to the overthrow of Cæsar, and from the ruin of the Roman tyrant to the death of the artful Cromwell, deception as well as violence have operated to the subversion of the freedom of the people. They are sensible, that by a little well-concerted intrigue, an artificial consideration may be obtained, far exceeding the degree of real merit on which it is founded. They are sensible that it is not difficult for men of moderate abilities, and a little personal address, to retain their popularity to the end of their lives, without any distinguished traits of genius, wisdom, or virtue. They are sensible, that the characters of nations have been disgraced by their weak partialities, until their freedom has been irretrievably lost in that vortex of folly, which throws a lethargy over the mind, till awakened by the fatal consequences which result from arbitrary power, disguised by specious pretexts, amidst a general relaxation of manners. 6.14.161

An ingenious writer has observed, that "the juvenile vigor of reason and freedom in the new world, where the human mind was unencumbered with that vast mass of usage and prejudice, which so many ages of ignorance had 6.14.162

accumulated to load and deform society in Europe," brought forward those declarations of the rights of men, which hastened the emancipation of their own country, and diffused light to others.[30]

It is equally just to observe, that in the eighteenth century, the enlightened writers of Europe had so clearly delineated the natural rights of men, and the equal freedom of the human race, before they by compact had yielded a part for the preservation and safety of the whole, as to have a powerful effect on public opinion. This had manifestly, in some degree, broken the fetters that had long enthralled and dissipated the darkness that shrouded the mind, under the influence of superstitious bigotry, and their ideas of the divine right of kings. The Colossus of tyranny was shaken, and the social order meliorated by learned sages, who evinced that government, as elegantly expressed by one,* is not "a scientific subtilty, but a practical expedient for general good; all recourse to elaborate abstractions is frivolous and futile, and the grand question in government is not its source, but its tendency; not a question of right, but a consideration of expediency."

"All the governments in the world," the same writer adds, "have been fortuitously formed;[31] they are the produce of chance, not the work of art. They have been altered, impaired, improved, and destroyed by accidental circumstances, beyond the foresight or control of wisdom. Their parts thrown up against present emergencies, formed no systematic whole. It was certainly not to have been presumed, that these *fortuitous governments* should have surpassed the works of intellect, and precluded all nearer approaches to perfection."

6.14.163 Perfection in government is not to be expected from so imperfect a creature as man; experience has taught, that he falls infinitely short of this point; that however industrious in pursuit of improvements in human wisdom, or however bold the inquiry that employs the human intellect, either on government, ethics, or any other science, man yet discovers a deficiency of capacity to satisfy his researches, or to announce that he has already found an unerring standard on which he may rest.

6.14.164 Perhaps genius has never devised a system more congenial to their wishes, or better adapted to the condition of man, than the American constitution. At the same time, it is left open to amendments whenever its imperfections are discovered by the wisdom of future generations, or when new contingencies may arise either at home or abroad, to make alterations necessary. On the principles of republicanism was this constitution founded; on these it must stand. Many corrections and amendments have already taken place, and it is at the present period† as wise, as efficient, as respectable, as free, and we hope as permanent, as any constitution existing on earth. It is a system admired by statesmen abroad, envied by distant

*Mackintosh.

†The beginning of the nineteenth century, which circumscribes the limits of these supplementary observations subjoined to the History of the Revolution.

nations, and revered by Americans. They pride themselves on this palladium of safety, fabricated at a dangerous crisis, and established on the broad basis of the elective voice of the people. It now depends on their own virtue, to continue the United States of America an example of the respectability and dignity of this mode of government.

Notwithstanding the advantages that may be derived, and the safety that may be felt, under so happy a constitution, yet it is necessary to guard at every point, against the intrigues of artful or ambitious men, who may subvert the system which the inhabitants of the United States judged to be most conducive to the general happiness of society. 6.14.165

It is now indeed at the option of the sons of America to delegate such men for the administration of government, as will consider the designation of this truth as a sacred deposite, which binds them to the indispensable duty of aiming solely at the promotion of the civil, the economical, the religious, and political welfare of the whole community. They therefore cannot be too scrutinous on the character of their executive officers. No man should be lifted by the voice of his country to presidential rank, who may probably forget the republican designation, and sigh to wield a sceptre, instead of guarding sacredly the charter from the people. It is to be hoped, that no American citizen will hereafter pant for nobility. The senators of the United States should be wise, her representatives uncorrupt, the judiciary firm, equitable, and humane, and the bench of justice ever adorned by men uninfluenced by little passions, and adhering only to the principles of law and equity! The people should be economical and sober; and the clergy should keep within their own line, which directs them to enforce the moral obligations of society, and to inculcate the doctrines of peace, brotherly kindness, and the forgiveness of injuries, taught by the example of their Divine Master, nor should they leave the appropriate duties of their profession, to descant on political principles or characters!* Such a happy combination of propriety and dignity in each department might prevent all apprehensions of danger to religion from the sceptical absurdities of unprincipled men; neither the foolish, the learned, or licentious, would be able to sap the foundations of the kingdom of Christ. In the present state of society and general information, there is no reason to fear the overthrow of a system, by the efforts of modern infidels, which could not be shaken by the learned 6.14.166

*It is true that this respectable order of men interested themselves on the great subject of opposition to the aggressions of the British parliament; this was sometimes done at the request of legislators, who thought every aid necessary to awaken the people to a sense of their rights. But the ground on which the clergy came forward on political subjects, was then very different from the present party disputes. There was then, (with few exceptions) a united opposition of the whole collective body of the people, against a foreign power aiming to deprive them of their civil and religious privileges, and to load them with taxes, impositions and innovations, novel and grievous. The dissensions are now wholly internal, which render the influence of every pious clergyman necessary to soothe the passions and heal the animosities enkindled among the people of his own particular charge.

unbelievers of Greece, the persecutions of the Cæsars, nor the power of the Roman empire.

6.14.167 All who have just ideas of the equal claims of mankind to share the benefits of a free and benign government, and virtue sufficient to aid its promotion, will fervently pray, that the narrow passions of the selfish, or the ambitious views of more elevated minds, may never render fruitless the labors of the wise and vigilant patriot, who sacrificed much to this noble purpose, nor defeat the severe efforts of the soldier, who fell in the field, or stain the laurels of such as have survived the conflict.

6.14.168 However literature has been improved, and knowledge diffused by the pen of genius, and the industry of liberal minded and erudite instructors, there has been a conspiracy formed against the dissemination of republican opinions, by interested and aspiring characters, eager for the establishment of hereditary distinctions and noble orders. This is a conspiracy formidable for the wealth and talents of its supporters in Europe, and not less so from the same description of men in America. This should stand as a beacon before the eyes of an infant republic, recently established by the suffrages of the inhabitants of the United States, who already have had to fear the *progress of opinion,* which produced the American revolution, might change its complexion, and there might yet be a tyranny to depose, more formidable than kings.

6.14.169 Public opinion, when grounded on false principles, and dictated by the breath of ambitious individuals, sometimes creates a tyranny, felt by the minority more severely, than that usually inflicted by the hand of the sceptred monarch. From this tyranny of opinion often starts a political enthusiasm, which, as expressed by the cardinal de Retz, "would at one period exalt to a throne, and at another, conduct the enthusiast to a gallows."[32] This tyranny of opinion is spread or extinguished by factitious circumstances, sometimes combining to exalt the mind to the most sublime ideas of human freedom; at others, beclouding it with prejudices which sink it into habitual servility, when reason languishes until overwhelmed by a torpor became too general to awaken, without producing convulsions more to be dreaded than submission, and too painful for the contemplation of benevolent minds.

6.14.170 Great revolutions ever produce excesses and miseries at which humanity revolts. In America indeed, it must be acknowledged, that when the late convulsions are viewed with a retrospective eye, the scenes of barbarity were not so universal as have been usual in other countries that have been at once shaken by foreign and domestic war. Few histories have recorded examples of equal moderation and less violation of the feelings of humanity, where general revolt and revolution had pervaded such an extensive territory. The enthusiasm of opinion previous to the year one thousand seven hundred and seventy-five, bore down opposition like a torrent, and enkindled the flame which emancipated the United States. Yet, it was not stimu-

lated by a fierce spirit of revenge, which, in similar circumstances too frequently urges to cruelties which can never be licensed by the principles of justice or freedom, and must ever be abhorrent to humanity and benevolence.

The United States may congratulate themselves on the success of a revolution which has done honor to the human character, by exhibiting a mildness of spirit amidst the ferocity of war, that prevented the shocking scenes of cruelty, butchery, and slaughter, which have too often stained the actions of men, when their original intentions were the result of pure motives and justifiable resistance. They have been hailed by distant nations in terms of respect and applause for the glorious and successful stand made by them in favor of the liberties of mankind. They have now to maintain their well-earned fame, by a strict adherence to the principles of the revolution, and the practice of every public, social and domestic virtue. 6.14.171

The enthusiastic zeal for freedom which had generally animated all classes throughout the United States, was retained, with few exceptions, to the conclusion of the war, without any considerable appearance of relaxation in any part of the union, until the sword was resheathed, and the conflict terminated by a general peace. After this indeed, though the spirit for freedom was not worn down, a party arose, actuated by different principles; new designs were discovered, which spread suspicions among the people, that the object of their exertions was endangered, from circumstances they had never calculated as probable to take place in their country, until some ages had elapsed. But notwithstanding the variety of exigencies, and the new opportunities which offered to interested individuals, for the aggrandizement of family, and the accumulation of wealth, no visible dereliction appeared, nor any diminution of that general partiality in favor of republicanism which had taken deep root in the minds of the inhabitants of the United States. These principles did not apparently languish, until some time after the adoption of the new constitution; exertions were then made to damp their ardor by holding up systems of government asserted by some to be better adapted to their happiness, and absolutely necessary for the strength and glory of the American states. The illusion was however discovered, and a constitutional ardency for general freedom revived among the people. The feelings of native freedom among the sons of America, and their own good sense taught them, that they did not need the appendages of royalty and the baneful curse of a standing army to support it. They were convinced, that rational liberty might be maintained, their favorite system of republicanism might be revived, established, and supported, and the prosperity of their country heightened, at a less gorgeous expense than a resort to the usages of monarchic states, and the introduction of hereditary crowns and the proud claims of noble ancestry, which usually involve the mass of the people in poverty, corruption, degradation, and servility. 6.14.172

Under the benediction of Divine Providence America may yet long be 6.14.173

protected from sanguine projects, and indigested measures, that have produced the evils felt or depictured among less fortunate nations, who have not laid the foundations of their governments on the firm basis of public virtue, of general freedom, and that degree of liberty most productive of the happiness of mankind in his social state. But from the accumulated blessings which are showered down on the United States, there is reason to indulge the benign hope, that America may long stand a favored nation, and be preserved from the horrors of war, instigated either by foreign combinations or domestic intrigue, which are equally to be deprecated.

6.14.174 Any attempt, either by secret fraud, or open violence, to shake the union, to subvert the constitution, or undermine the just principles, which wrought out the American revolution, cannot be too severely censured. It is true, there has been some agitation of spirits between existing parties; but doubtless the prudence of the inhabitants of the United States will suffer this to evaporate, as the cloud of the morning, and will guard against every point that might have the smallest tendency to break the union. If peace and unanimity are cherished, and the equalization of liberty, and the equity and energy of law, maintained by harmony and justice, the present representative government may stand for ages a luminous monument of republican wisdom, virtue, and integrity. The principles of the revolution ought ever to be the pole-star of the statesman, respected by the rising generation; and the advantages bestowed by Providence should never be lost, by negligence, indiscretion, or guilt.

6.14.175 The people may again be reminded, that the elective franchise is in their own hands; that it ought not to be abused, either for personal gratifications, or the indulgence of partisan acrimony. This advantage should be improved, not only for the benefit of existing society, but with an eye to that fidelity which is due to posterity. This can only be done by electing such men to guide the national counsels, whose conscious probity enables them to stand like a Colossus, on the broad basis of independence, and by correct and equitable arrangements, endeavor to lighten the burdens of the people, strengthen their unanimity at home, command justice abroad, and cultivate peace with all nations, until an example may be left on record of the practicability of meliorating the condition of mankind.

6.14.176 The internal strength of America is respectable, and her borders are fenced by the barriers of nature. May the wisdom, vigour, and ability of her native sons, teach her to surmount every difficulty that may arise at home or abroad, without ever calling in the aid of *foreign* relations! She wants not the interference of any other nation, to give a model to her government, or secretly influence the administration by bribes, flatteries, or threats. The enterprising spirit of the people seems adapted to improve their advantages, and to rival in grandeur and fame those parts of creation which for ages have been meliorating and refining, until the period of decay seems to have arrived, that threatens the fall of some of the proudest nations. Humanity

recoils at a view of the wretched state of vassalage, in which a great part of mankind are involved. Yet, America may sit tranquil, and only extend her compassion to the European world, which exhibits the shambles of despotism, where the purple of kings is stained by the blood of their subjects, butchered by thousands to glut the ambition of a weak individual, who frequently expires himself before the cup of his intoxication is full. The vesture of royalty is however still displayed, and the weapons of war spread death over three fourths of the globe, without satiating the thirst that drinks up rivers of human gore, when the proud victor wipes the stained lip and covers the guilty visage with a smile at the incalculable carnage of his own species, by his mandates and his myrmidons.

6.14.177 It will be the wisdom, and probably the future effort of the American government, forever to maintain with unshaken magnanimity, the present neutral position of the United States.* The hand of nature has displayed its magnificence in this quarter of the globe, in the astonishing rivers, lakes, and mountains, replete with the richest minerals and the most useful materials for manufactures. At the same time, the indigenous produce of its fertile lands yields medicine, food, and clothing, and every thing needful for man in his present condition. America may with propriety be styled a land of promise; a happy climate, though remarkably variegated; fruitful and populous, independent and free, both necessity and pleasure invite the hand of the industrious to cherish and cultivate the prolific soil, which is ready to yield all that nature requires to satisfy the reasonable wishes of man, as well as to contribute to the wealth, pleasure, and luxury of the inhabitants. It is a portion of the globe that appears as a fair and fertile vineyard, which requires only the industrious care of the laborers to render it for a long time productive of the finest clusters in the full harvest of prosperity and freedom, instead of yielding thorns, thistles, and sour grapes, which must be the certain fruits of animosity, disunion, venality, or vice.

6.14.178 Though in her infantile state, the young republic of America exhibits the happiest prospects. Her extensive population, commerce, and wealth, the progress of agriculture, arts, sciences, and manufactures, have increased with a rapidity beyond example. Colleges and academies have been reared, multiplied, and endowed with the best advantages for public instruction, on the broad scale of liberality and truth. The effects of industry and enterprise appear in the numerous canals, turnpikes, elegant buildings, and well constructed bridges, over lengths and depths of water that open, and render the communication easy and agreeable, throughout a country almost without bounds. In short, arts and agriculture are pursued with avidity, civilization spreads, and science in full research is investigating all the sources of human knowledge.

*The limits of the present work preclude any historical record subsequent to the year 1801.

6.14.179 Indeed the whole country wears a face of improvement, from the extreme point of the northern and western woods, through all the southern states, and to the vast Atlantic ocean, the eastern boundary of the United States. The wisdom and justice of the American governments, and the virtue of the inhabitants, may, if they are not deficient in the improvement of their own advantages, render the United States of America an enviable example to all the world, of peace, liberty, righteousness, and truth. The western wilds, which for ages have been little known, may arrive to that stage of improvement and perfection, beyond which the limits of human genius cannot reach; and this last civilized quarter of the globe may exhibit those striking traits of grandeur and magnificence, which the Divine Œconomist may have reserved to crown the closing scene, when the angel of his presence will stand upon the sea and upon the earth, lift up his hand to heaven, and swear by Him that liveth for ever and ever, that there shall be time no longer.

1. Paragraphs 6.14.4–13 (enclosed in braces) are taken from chapter 30.

2. [David Williams], *Lessons to a Prince by an Old Statesman* (London 1791), lesson 3.

3. Blackstone, *Commentaries* III, 381.

4. Beccaria, *An Essay on Crimes and Punishments*, introduction.

5. Although the principle is consistent with Williams' *Lessons to a Prince*, the quotation is from the Massachusetts Constitution (Bill of Rights), Art. VII; Thorpe, *Federal and State Constitutions* III, 1890.

6. Franklin's speech was widely reprinted in Boston as elsewhere; but Mrs. Warren's reference is to a distorted account and criticism appearing in the *Massachusetts Gazette* on 14 December by a Newbury-Port correspondent who objected that "it is beneath the dignity of a statesman to consent to a constitution he confessedly dislikes, and to recommend a mode of government that may last for ages, and involve one quarter of the globe—because it is his opinion that no future convention may have abilities and integrity to hit on a better system. It is not at all strange, that the doubting Doctor . . . should at that advanced period, express his *doubts* of the propriety of lending his signature to a system he seems to intimate will finally terminate in despotism." What Franklin said, according to the published report to which this correspondent was referring, was that the Constitution "can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other." There is nothing about involving one quarter of the globe. The *Massachusetts Gazette* 3 December 1787; see the reply of Clito on 18 December. For Madison's account of this speech, see Farrand II, 641–43 (17 September).

7. The "ingenious writer" has not been identified.

8. Paragraphs 6.14.54–63 are taken from chapter 30. Mercy Warren's view of Washington should be compared with that of John Marshall, *Life of George Washington* (1804–7), 5 vols.

9. These orders are not reprinted here.

10. The source of this quotation has not been found.

11. I Samuel 8:14, 11.

12. The "sensible writer" has not been identified.

13. Not found in published works.

14. Paragraphs 6.14.87–88 are taken from chapter 30, pp. 313–14.

15. William Findley, *History of the Insurrection in the Four Counties of Pennsylvania in the Year MDCCXCIV* (Philadelphia 1796).

16. "Farewell Address," 19 September 1796, Washington, *Writings* XXXV, 214–38.

17. The following characterization of Adams was the cause of a lengthy warm correspondence between him and the author, causing a rupture of several years between these old friends, mended finally with the aid of Elbridge Gerry. The very interesting correspondence between the Adams and Warren families is printed in *Collections of the Massachusetts Historical Society,* 5th ser., IV (1878), 317–511.

18. *Defence of the Constitutions of the United States,* 3 vols. 1787–89 (*Works* IV, 271–588, and V).

19. Paragraphs 6.14.116–21 are taken from chapter 30, pp. 324–27.

20. Polybius, *The Histories* VI, 44.

21. Cf. *The Federalist* no. 9, 50–51.

22. Paragraphs 6.14.127–32 are taken from chapter 30, pp. 333–37.

23. The source of this quotation has not been found.

24. Lord Edward Herbert of Cherbury (1583–1648), known as father of the Scottish School of intellectualist philosophers, foreshadowers of eighteenth-century Deism.

25. G. F. A. Wendeborn, *A View of England Towards the Close of the Eighteenth Century* (London 1791), 2 vols.

26. *The Spirit of Laws* XIX, ch. 12.

27. Sir James Mackintosh, *Vindicae Gallicae, A Defense of the French Revolution and its English Admirers* (*Miscellaneous Essays* [New York 1886] 416–17).

28. Cf. Impartial Examiner 5.14.14 n.15. See Abraham Lincoln, "Address before the Young Men's Lyceum of Springfield, Illinois, 27 January, 1838," *Collected Works* I, 108–15.

29. The source of this quotation has not been found.

30. The source of this quotation has not been found.

31. *Vindicae Gallicae* (*Miscellaneous Essays* 422–23). Mackintosh says that all the governments *except* that in the United States have been fortuitously formed.

32. The source of this quotation has not been found.

The Complete Anti-Federalist

The Complete Anti-Federalist

Edited, with Commentary and Notes, by

Herbert J. Storing

With the Assistance of Murray Dry

VOLUME 7

Index

Prepared by John Robinson

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Contents of Other Volumes

VOLUME ONE

Foreword by Joseph Cropsey
Preface by Murray Dry
Prefatory Notes by Herbert J. Storing

What the Anti-Federalists Were *For*

1 Introduction
2 Conservatives
3 The Small Republic
4 Union
5 The Federalist Reply
6 The Aristocratic Tendency of the Constitution
7 Complex Government
8 Bill of Rights
9 Conclusion

The Articles of Confederation, Keyed to the Principal Anti-Federalist Discussions
The Constitution of the United States, Keyed to the Principal Anti-Federalist Discussions

VOLUME TWO

PART I

Objections of Non-Signers of the Constitution

2.1 Elbridge Gerry (3 November 1787)
2.2 George Mason (1787)
2.3 Robert Yates and John Lansing (14 January 1788)
2.4 Luther Martin (1788)
2.5 Edmund Randolph (10 October 1787)

PART 2

Major Series of Essays at the Outset

2.6 Cato (September 1787–January 1788)
2.7 Centinel (October 1787–April 1788)
2.8 The Federal Farmer (1787 and 1788)
2.9 Brutus (October 1787–April 1788)

VOLUME THREE

Pennsylvania

3.1 William Findley (28 September 1787)
3.2 Minority of the Pennsylvania House of Representatives (4 October 1787)
3.3 An Old Whig (October 1787–February 1788)
3.4 Montezuma (17 October 1787)
3.5 A Democratic Federalist (17 October 1787)
3.6 A Federal Republican (1787)
3.7 John Humble (29 October 1787)
3.8 An Officer of the Late Continental Army (6 November 1787)
3.9 Philadelphiensis (November 1787–April 1788)
3.10 Alfred (13 December 1787)
3.11 Minority of the Convention of Pennsylvania (18 December 1787)
3.12 William Penn (January 1788)
3.13 Deliberator (20 February 1788)
3.14 A Farmer (April 1788)
3.15 None of the Well-Born Conspirators (23 April 1788)
3.16 Aristocrotis (1788)

VOLUME FOUR

Massachusetts and New England

4.1 Anon., "A confederation" (9 October 1787)
4.2 A Gentleman in a Neighbouring State (October 1787)
4.3 John DeWitt (October–December 1787)
4.4 Vox Populi (October–November 1787)
4.5 William Symmes (15 November 1787)
4.6 Agrippa (November 1787–February 1788)
4.7 A Federalist (26 November 1787)
4.8 One of the Common People (3 December 1787)

4.9 Candidus (December 1787–January 1788)
4.10 Cornelius (December 1787)
4.11 Poplicola (24 December 1787)
4.12 Helvidius Priscus (December 1787–February 1788)
4.13 A Republican Federalist (December 1787–February 1788)
4.14 Samuel (10 January 1788)
4.15 Hampden (January–February 1788)
4.16 A Customer (March 1788)
4.17 A Farmer (January–June 1788)
4.18 Charles Turner (17 January and 6 February 1788)
4.19 The Yeomanry of Massachusetts (25 January 1788)
4.20 An American (28 January 1788)
4.21 A Bostonian (4 February 1788)
4.22 A Watchman (February 1788)
4.23 A Friend to the Rights of the People, A Friend to the Republic (February 1788)
4.24 David (7 March 1788)
4.25 A Newport Man (March 1788)
4.26 Consider Arms, Malichi Maynard, and Samuel Field (April 1788)
4.27 Phileleutheros (May 1788)
4.28 A Columbian Patriot (1788)

Volume Five

PART 1

Maryland

5.1 A Farmer (February–April 1788)
5.2 A Farmer and Planter (April 1788)
5.3 Samuel Chase (April 1788)
5.4 Minority of the Maryland Ratifying Convention (May 1788)
5.5 John Francis Mercer (April or May 1788)

PART 2

Virginia and the South

5.6 Richard Henry Lee (16 October 1787)
5.7 Cato Uticensis (17 October 1787)
5.8 A Proposal for Reviving Christian Conviction (October 1787)
5.9 A Georgian (15 November 1787)
5.10 Cato (November–December 1787)
5.11 Tamony (9 January 1788)

5.12 Rawlins Lowndes (January 1788)
5.13 Republicus (February and March 1788)
5.14 The Impartial Examiner (February–June 1788)
5.15 Brutus (14 May 1788)
5.16 Patrick Henry (June 1788)
5.17 George Mason (4 June 1788)
5.18 Denatus (11 June 1788)
5.19 A Delegate Who Has Catched Cold (June 1788)
5.20 Sentiments of Many (18 June 1788)
5.21 James Monroe (1788)

Volume Six

PART 1

New York

6.1 Cincinnatus (November–December 1787)
6.2 A Son of Liberty (8 November 1787)
6.3 Brutus, Jr. (8 November 1787)
6.4 An Observor (19 November 1787)
6.5 A Citizen (24 November 1787)
6.6 A Countryman from Dutchess County (November 1787–February 1788)
6.7 A Countryman (December 1787–January 1788)
6.8 Sidney (February–March 1788)
6.9 Sydney (June 1788)
6.10 Albany Antifederal Committee (26 April 1788)
6.11 A Plebeian (1788)
6.12 Melancton Smith (June 1788)
6.13 George Clinton (June–July 1788)

PART 2

Conclusion

6.14 Mercy Warren (1805)

Index

Index

References to the Anti-Federalist writings are by paragraph number. The first number denotes the volume, the second the position of the essay or series within that volume, and the third the paragraph. The abbreviation "intro." is used for Herbert J. Storing's introductions to volumes or parts of volumes as well as his introductions to individual writings. References to volume I are by volume and page number. Notes to the Anti-Federalist writings are referred to by volume, selection, and note number; notes to the introductions by volume, selection, "intro.," and note number; and notes to volume I by volume, page, and note number. An italicized number at the beginning of an index entry denotes a complete writing by (rather than a reference to) the Anti-Federalist under whose name that entry appears; see Contents of Other Volumes, pp. v–viii above.

Abraham, 4.6.68
absentees, British, 4.6.42
academies, 5.18.9
accident, in formation of government, 4.12.1
accountability of public officials, 2.9.20, 2.9.197
accounts, public, 4.2.7
accused
  confrontation of witnesses by, 2.8.200, 2.9.27, 5.14.10
  rights of, 2.8.86
Achaean League, 4.12.5
Actaeon, fable of, 6.6.46
Adair, Douglass, 1.5n49
Adams, Charles Francis, 2.4n9
Adams, John, 3.7.1, 4.9.15, 6.12.22
  ambassador to Great Britain, 4.2.4
  on balanced government, 1.55–56, 2.7 intro., 2.7.6–7, 2.7.10
  on bicameral legislature, 2.4.38
  on class favoritism, 2.8.54
  on constitution of Senate, 5.12.4
  Countryman on, 6.6.52
  Defence of the Constitutions of Government of the United States, 2.4n9, 6.14.108
  on House of Representatives, 4.3.14
  inconsistency of, 4.26.15
  influence of, on federal convention, 1.95n15
  and Mercy Warren, 6.14n17
  Mercy Warren on administration of, 6.4.105–10
  on natural aristocracy, 2.8n64
  on passions, 4.6.73
  private virtues of, 6.14.110
  pro-British sentiments of, 6.14.106
  on San Marino, 1.45
  on sources of inequality, 1.57
  on superiority of Boston, 4.6n19
  on universities, 2.8n65
Adams, John Quincy, 1.83n44

Adams, Samuel
at Massachusetts convention, vol. 4 intro.
opponent of John Hancock, 4.13 intro.
possible author of Candidus essays, 4.9 intro.
possible author of Helvidius Priscus essays, 4.12 intro.
Addison, Joseph
on efforts to reduce influence of Parliament, 6.8.7–10
quoted by Patrick Henry, 5.16.8
on republic of Lucca, 4.25.4, 4.25n4
Address to the People of the State of New York, on the Subject of the New Constitution (John Jay), 6.11.28–33
Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania, 3.11. *See also* Pennsylvania Convention Minority
Adelos, 4.26n3
administration, Federalist emphasis on, 1.41–42, 1.51, 4.11.1
administration, good
as cure for defects in government organization, 2.7.101
representation more important than, 2.9.45
admirals, 2.8.176
admiralty courts, 2.7n20
admiralty jurisdiction, 3.2.7, 5.9.3
Aesop, 3.3.51
affection, of people for government, 2.9.18
affections, popular, divorce of, from popular interest, 3.6.21
Africans
comparison of, to Indians, 5.13.14
enslavement of, 4.26.8
importation of, 4.2.9
resistance to enslavement by, 4.26.15
vindication of the injured rights of, 4.27.3
See also slaves
age requirements
for Congress, 4.22.4
for presidency, 2.8.179
agrarian laws, 5.1.30
Agricola, P. Valerius, 1.88n27
agriculture
in ancient Greece and Rome, 4.6.6
promotion of, 4.9.9
and trade, 1.45–46
Agrippa (pseud.), *4.6;* 1.11–12, 3.10n3, 4.6n13
attitude of, toward commerce, 1.87n6
on bill of rights, 1.40
on immigration policy, 1.19–20
on minority rights, 1.68
reasons of, for using pseudonym, 4.6.44
rejection of consolidation by, 1.24–25
resolution proposed by, 4.6.41–42, 4.6.55–56
summary of essays of, 4.6 intro.
Agrippa (biblical character), 6.11.1
aid, voluntary, from states to federal government, 3.3.38
Alba (Alva), Duke of, 5.1.47
Albany Antifederal Committee, *6.10*
Albany Gazette, 6.8
ale, taxation of, 2.9.73
Alexander VI (pope), 5.1.107
Alexander the Great, 4.6.68, 5.1.75
Alfred (pseud.), *3.10*
Alfredus (pseud.), 1.64, 3.3n17
identification of, 4.17 intro. n1
[New Hampshire] Farmer's reply to, 4.17.12–25
on trial by jury, 4.17.16
Algerians (Algerines)
American disputes with, 6.11.30
American slavers compared to, 4.2.9
allegiance
basis of, 3.9.80
subversion of, 4.10.5
alliances, among states, 2.4.45, 3.13.3
alliances, foreign, 3.16.10
and partial confederacies, 2.5.29
possibility of a state concluding, 2.5.18
allies, loans from, 2.7.79
ambassadors
appointment of, 2.2.4, 2.8.170
necessity of, 2.8.169
ambassadors, foreign
cases involving, 2.9.160, 2.9.183,

ambassadors (*continued*)
4.8.1
exemptions and privileges of, 2.9.168–69
life style of, 4.10.9
relations of, with Senate, 3.11.43
support of, by federal government, 2.9.63
Supreme Court and, 2.9.168, 4.6.42, 4.9.22
ambiguities, in federal Constitution, 2.5.41
ambition, 2.4 intro. n9
human tendency toward, 3.12.13
of large states, 2.4.31
opinions of great men dictated by, 2.7.140
presidential, 2.6.25
projects of, 4.28.3
voice of aristocracy, 6.12.21
ambitious men, Constitution's failure to guard against, 5.11.2
Ambrose, Saint, 5.1.106
amendment, constitutional
Countryman on, 6.7.8
desirability of, before ratification, 2.1.7, 2.5.36, 4.6.74, 5.3.17
difficulty of, under proposed constitution, 3.3.2–3, 3.3.55, 4.13.19
federal government's ability to prevent, 5.16.27
Hampden on, 4.15.2, 4.15.5–7
in Massachusetts, 4.13.14
opportunity for, 2.6.3
in Pennsylvania, 2.7.70n, 3.11.12
Plebeian on, 6.11.3–4, 6.11.12–17, 6.11.20, 6.11.27
on proportion of representatives to population, 6.12.10
state legislatures excluded from, 2.5.36
Virginia Plan, 2.4.16
See also Articles of Confederation, amendment of
amendment, governmental, 5.14.43
amendment procedure
inadequacy of, 2.5.37, 2.7.56, 2.8.58
intricacy of, 3.3.50, 3.3.55
amendments, 1.53, 2.8.229, 6.14.164
agreement among states on, 2.8.63, 3.3.45
Albany Antifederal Committee on, 6.10.15–17
communication of, to Congress, by state conventions, 3.3.46
Congress not empowered to consider, 4.21.1
desire of Massachusetts and Virginia for, 4.6.12
disagreements on, in Virginia, 5.6.4
Federalist agreement to, 6.11.1
George Clinton on, 6.13.27
George Mason on, 5.17.2
indefiniteness of, 4.13.19
ineffectiveness of, 5.19.3–4
judicious application of, 5.14.1
limitations proposed on, 5.16.2
at Maryland Convention, 5.4.4–13
Mercy Warren on, 6.14.45, 6.14.49–51
necessity of, to preserve the states, 2.9.64, 2.9.194
Patrick Henry on, 5.16.2
people's right to propose, 3.3.44, 5.3.3
post-ratification, 3.9.92, 4.13.13
proposal of: by Citizen, 6.5.4; by Congress, 5.16.2; by Agrippa, 4.6.74–75; by Hampden, 4.15.4; by Massachusetts convention, 2.7.166, 3.14.22, 3.16.19, 4 intro., 4.28.5; by president, 3.9.79
ratification of, 4.14.6
state conventions barred from making, 3.3.2
tendency of, to multiply, 4.15.6
timing of, 3.3.50, 5.5.4
use of, as ploy by Federalists, 2.8.71
vote on, in Maryland, 5.4.10
amendments, conditional, 5.1.60, 5.5.4
amendments, essential, 6.6.42–44
amendments, recommendatory, 1.36, 4.5 intro., vol. 5 intro., vol. 6 intro.
America (Noah Webster), 3.3n17
America
aristocracy of, 5.1.28
asylum of the poor and oppressed, 3.9.37
British policy in, 4.11.4

America (*continued*)
condition of, compared to other nations, 4.9.5, 6.8.18, 6.14.120
economic development of, 4.6.37
future development of, 6.14.179
happy isolation of, 4.28.6
immaturity of, 4.28.12
last home of liberty, 2.8.107
natural wealth of, 3.10.2–3, 6.14.177–78
progress of, 2.7.118
protection of, by geography, 4.3.29
remedy for the ills of, 1.82n34, 3.9.71
unique history of, 4.3.1
American (pseud.), *4.20*
American Citizen (Tench Coxe), 2.6n19
on congressional control over elections, 3.6.16
and Countryman, 6.6n7
criticism of, by Officer of the Late Continental Army, 3.8.7
on presidential powers, 3.9.96
American citizenship, rights of, 2.5.18
American experiment, 4.28n17
American Herald (Boston), 4.3, 4.20, 4.21
American people
ability of, to awe their rulers, 2.8.127
ambitions of, for their country, 3.9.26
belief of, in their own wisdom, 5.1.19
and bills of rights, 5.6.5
defense of liberty by, 1.72–73, 4.28.2
degradation of, after independence, 6.14.126–27
desire of, for expansion, 6.14.87–89
distinguished by their government, 5.1.102
expectations of, from their rulers, 6.14.8–9
freedom of, from European prejudices, 6.14.162
genius and habits of, 2.4.44
innocence and inexperience of, 6.14.116–17, 6.14.129–30
negative attitudes of, toward their own country, 4.3.1
pioneer experience of, 6.14.2
political character of, 6.14.67–68
political knowledge of, 3.12.9
propensity of, to imitate foreigners, 6.14.127
restlessness and inconsistency of, 5.14.1
security of, in possession of their rights, 4.6.71
sense of freedom of, 2.8.74
strong and manly habits of, 2.8.59
susceptibility of, to despotism, 5.1.31
virtue of, 4.3.17, 5.1.102, 5.21.3
will of, to resist tyranny, 2.6.34
American Revolution, 4.13.13
Aristocrotis on, 3.16.16n
evidence of national greatness, 2.6.3
example of, to American youth, 4.12.2
influence of, on attitudes toward government, 1.71
lessons of, forgotten, 3.3.17
Massachusetts' record in, 3.9.78, 4.12.7
Mercy Warren on, 6.14.133, 170
old habits destroyed by, 2.7.4
principles of, 1.8, 2.4.96, 3.3.3
See also revolution principles; Revolutionary War
Ames, Fisher, 1.11, 1.13
amity, treaty of, among the states, 4.9.22
Ammianus Marcellinus, 5.1.104, 106
amnesty, general, 3.9.98
Amphictyonic Council, 2.4.30, 2.8.205, 5.21.17
precedent for proposed government, 4.12.1
resemblance of, to federal republic, 4.12n6
anarchy, 2.1.5, 2.2n7
alternative to efficient government, 2.7n74
alternative to proposed government, 4.20.3
danger of, denied by Brutus, Jr., 6.3.9
danger of, urged by Federalists, 3.9.70

anarchy (*continued*)
evils of, 2.7.139
fear of, exploited by Federalists, 3.16.17
fear of, not realistic, 2.7.141
Federalist fear of, 6.7.8
possible result of rejecting Constitution, 2.7.140, 4.9.4
preferability of, to despotism, 2.7 intro.
transition from, to tyranny, 5.7.4
Anglo-Saxons. *See* Saxons
Annapolis convention, 1.9–10, 2.8.7, 5.7.4, 6.14.38
Anne, Queen, letter of, to Scottish Parliament, 6.4.1
Anne Arundel County, Maryland, 5.1n1, 5.2n1, 5.2.2
Anon., A Confederation . . ., *4.1*
anonymity, of Centinel, 2.7 intro.
anonymous publications, 2.4.5. *See also* pseudonymous publications
Anti-Cincinnatus (pseud.), 6.1 intro. n4
Anti-Federalism, 4.9.21
Anti-Federalist (name)
appropriateness of, 22.8.72
Candidus' rejection of, 4.9.41
Countryman on inaccuracy of, 6.7.4
Impartial Examiner on, 5.14.25–26
Luther Martin on, 2.4.43
Melancton Smith on, 6.12.5
origins of, 1.9–10
preferred form of, 1.79n6
Sidney on, 6.8.3
as term of opprobrium, 4.3.25
Anti-Federalist authors
exposure of, to retaliation, 3.9.54
use of pseudonyms by, 3.9.2
Anti-Federalists, 2.4.26–27
alleged attempts of, to alarm the people, 2.9.111
alleged faintheartedness of, 1.6
amendments suggested by, 6.14.50
Aristides' attack on, 5.1n3
attitude of, toward slavery, 1.9n20
belief of, in federalism, 2.4n36, 5.14.26
boycott of Pennsylvania Assembly by, 3.2 intro., 3.2.3
Centinel's characterization of, 2.7.93
characterized as placemen and pensioners, 4.19.1
concern of, for the Union, 5.16n18
conservatism of, 1.7, 1.8, 1.22, 1.59
consistency of, 6.11.27
county organization of, urged, 2.7.160
description of, vol. 6 intro.
desire of, to conceal their names, 3.9n1
emphasis of, on America's security, 1.27
exclusion of, from Federal Convention, 2.7.166
Federalist attempts to discredit, 3.16.17
James Wilson on motives of, 6.1.49
John DeWitt on, 4.3.10
lack of agreement among, 1.5
liberalism of, 1.83n7
in Maryland, vol. 5 intro.
in Massachusetts, 3.3.27, vol. 4 intro., 4.26.16
Mercy Warren on, 6.14.44
mistaken judgment of Federal Convention, 3.2n1
numerical strength of, 3.9.42, 5.16.8
objections of, to the Constitution, 6.14.46–47, 6.14.49
in Pennsylvania, 3.2.3, 3.11.7, vol. 4 intro.
and Pennsylvania Constitutionalists, vol. 3 intro.
points of agreement with Federalists, 1.5
reassessment of, 1.3–4
and revolutionary Patriots, 3.9.57
role of, in founding process, 1.3
self-interested motives attributed to, 4.6.45, 5.11.1
and separate confederacies, 1.82n2
substantial agreement among, 3.3.45
traditional view of, 1.3–4
and the Union, 1.86n2
views of, on representation, 1.44–45

Anti-Federalists (*continued*)
in Virginia, vol. 5 pt.2 intro., 5.16 intro.
weak arguments of, 1.71–72
Anti-Federalist position
basic dilemma of, 1.6
development of, 1.32
Anti-Federalist writings, wide and speedy distribution of, 2.7n68
Anti-Foederalist, No. I, *4.23.1–3*
Anti-Foederalist, No. II, *4.23.4–8*
anti-republicanism, encouragement of, by French Revolution, 6.14.153
anti-republicans, Federalists characterized as, 2.8.72, 2.9.119
anti-slavery movement, 6.6.12
Antony, Mark, 4.28.2
appeals, judicial
amendment restricting, 5.4.6
civil law and, 3.5.6, 3.11.38
Columbian Patriot on, 4.28.4
expense and inconvenience of, 4.5.2, 6.2.2
James Monroe on, 5.21.35
appellate jurisdiction
Aristocrotis' approval of, 3.16.13
of federal courts, 2.7.42, 4.9.16
possible congressional limitation of, 2.9.176
of Supreme Court, 2.4.91–92, 2.8.43, 2.8.45, 2.9.168–77; lack of congressional power over, 3.3.51; possible use of as political weapon, 2.9.171; with respect to both law and fact, 2.4.92, 2.4.94, 2.9.175, 3.2.7, 3.5.6, 3.11.38–39
appellate power, federal, burden of, on poor and middle classes, 2.9.177
appointment of officers, power of, 2.8.169–75
federal executive and, 2.9.20
role of Senate in, 4.3.12, 6.1.27
Aragon, 5.1.40, 5.1.66
arbitrary government. *See* government, arbitrary
arbitrary power
right of people to resist, 2.4.96
trial by jury and, 2.4.93
archons, 5.1.23
Arians, 5.1.106
Aristides (Alexander Contee Hanson), *5.1*
on bill of rights, 5.1.5, 5.1.10–11, 5.1.18
on congressional powers, 5.1.61–62
criticism of anonymous authors, 5.1n2
on concurrent jurisdictions, 5.1.89, 5.1n59
on general warrants, 5.1n8
and judiciary, 5.1.88
[Maryland] Farmer's debate with, 5.1.84–90
on Montesquieu, 5.1n13
reasons of, for revealing his name, 5.1.88
on standing armies, 5.1.45
on state courts, 5.1.89
aristocracy, 2.2.15, 2.6.31
Alexander Hamilton on, 6.12n17
compound of, with monarchy, 3.9.62
detestation of, 4.26.7
encouragement of, by federal Constitution, 2.6.43, 2.7.24, 4.3.11, 4.13.29, 5.6.2, 6.12.16
encroachment of, 5.11.2
essential difference of, from democracy, 3.12.11
fear of, 5.14.40
foe to public virtue, 4.28.8
irresponsibility of, 2.7 intro.
[Maryland] Farmer on, 1.57–58, 5.1.26–32
in Massachusetts, 4.4.28
[Pennsylvania] Farmer on, 3.14.2
Robert Livingston on, 6.12n23
role of, in legislation, 6.12.18
and security for popular rights, 6.8.14–15
and Senate, 2.7.48, 6.1.26–28, 6.1.34–36
tenacity of, 3.3.51
Timothy Pickering on, 2.8n6
transformation of republican government into, 4.19.4
Watchman's warning against, 4.22.1–3
aristocracy, artificial, 4.8.1
aristocracy, constitutional, 2.8.97
aristocracy, hereditary, 4.11.4

aristocracy, moderate, 3.9.41
aristocracy, natural, 1.17, 3.16.3
  characteristics of, 2.8.97
  Federalist view of, 1.44
  John Adams on, 2.8n64
  [Maryland] Farmer on, 1.57–58
  men of wealth and ability, 2.8.25
  and Senate, 2.9.42
aristocracy, Venetian, 2.7.67, 3.5.13, 4.25.3
aristocratic government
  and influence of Senate, 2.8.170
  prevention of, 5.9.2
aristocratic party, 3.4.1
  influence of, over a weak president, 3.9.65
aristocratic principles
  correspondence of, to one aspect of human nature, 5.18.6
aristocrats, Roman, 4.23.3(4)
Aristocrotis (pseud.), *3.16*
  argument of, 3.4 intro.
  on powers of Federal Government, 1.66
Aristotle, 1.80n2, 5.1.21
Armed Neutrality, League of, 3.9.44
armies
  congressional right to maintain, 4.1.2
  difficulty of disbanding, 4.2.8
  dissipation of, 5.1.56
  power to raise and support, 2.4.59, 2.8.39. 2.8.202, 2.8.220, 2.9.6, 2.9.112–14, 3.16.8, 4.5.2, 4.23.3(4); Candidus on, 4.9.11; lack of limits on, 2.9.96; in wartime, 2.9.125
  relationship of, to money, 5.14.15
  taxation necessary to support, 6.1.25
  use of, to gain political power, 2.9.100
arms
  possession of, by the people, 2.8.217
  purchase of, 4.5.2
  recourse to, 4.10.12, 4.19.4
  right to bear, 3.11.13, 5.1.44
army, British
  attempt to reduce size of, 2.9.99–101
  seizure of power by, under Cromwell, 2.9.117
  seizure of slaves by, 4.26.10
  seldom employed in executing laws, 2.9.17
army, federal
  expense of, 3.9.46–47
  method of raising, 4.9.15
  possible threat to republican government by, 2.9.119–20, 3.3.31
  power of president to fill vacancies in, 5.10.2
  president as commander-in-chief of, 2.4.85–86, 5.10.2
  problems created by, 6.14.43
  proposed limit on movements of, 4.6.75
  two-year limit on appropriations for, 3.6.20, 4.2.8
  use of, to collect taxes, 3.7.2, 3.16.18
army, peacetime, 2.9.96, 3.2.7, 4.14.3, 6.6.34
  Brutus on, 2.9.125
  congressional discretion concerning, 4.23.3(4)
  congressional power to raise, 3.13.4
  Democratic Federalist on, 3.5.10–12
  proposed amendment banning, 5.9.7
  Samuel Chase on, 5.3.16–17
  and state bills of rights, 5.1.44
  test of value of, 2.9.104
  Watchman on, 4.22.4
  See also standing army
army, Roman, 2.9.100
arsenals, 2.9.124–26
Articles of Confederation
  admission of new states under, 5.20n5
  amendment of, 2.1.3, 2.3.4, 2.6.9, 2.6n7, 3.2.2, 3.3.42, 3.11.3, 4.3.26, 4.6.43, 4.6.78, 4.13.6–7, 4.14.10, 5.3.1; Citizen on, 6.5.4; Countryman on, 6.7.4, 6.7.8; Countryman from Dutchess County on, 6.6.20; Georgian on, 5.9.3; Impartial Examiner on, 5.14.24; Sidney on, 6.8.13
  Anti-Federalists on inadequacies of, 1.28
  apportionment of taxes under, 3.6.43

Articles of Confederation (*cont.*)
basic flaw of, 1.71–72
compact among states, 4.13.16
competition of, with new Constitution, 3.1.4
debts and contracts under, 2.7.167
defects of, 2.1.8, 2.4.32, 2.5 intro., 5.14, 5.14.41–43
disregard of, by Federalists, 2.4.36
embodiment of principles of Revolution, 1.8
equality of states under, 2.4.28, 2.4.33, 2.4.35, 2.4.45, 3.6.12
failure of, to maintain harmony among states, 2.5.6
fair trial not given to, 5.14.1
formulation of, in war crisis, 3.6.2–3
framers of, 3.8.10, 5.12.2
fundamental soundness of, 5.14.49
general dissatisfaction with, 3.3.18
Impartial Examiner on, 5.14.1
James Monroe on, 5.21.5–11
limitation of Congress to powers expressly granted in, 3.3.8
not nullified by violations, 4.4.18
original compact of government, 2.6.3
points of agreement with new Constitution, 5.14.45
power to raise troops under, 2.9.112–14, 4.2.8
prohibition of standing armies in the states by, 2.9.112
proposed amendment to, 4.6.42, 4.6.56
publication of congressional proceedings under, 5.16n33
ratification of, 2.5.20, 4.4.13
restricting effect of in wartime, 5.12n2
Richard Henry Lee's opinion of, 5.6 intro.
rotation of representatives under, 2.8.147
second article, 2.5.9
state sovereignty affirmed in, 2.7.37, 2.7.98, 3.6.51, 3.11.27
subversion of, 4.10.4
superiority of, to state constitutions, 4.13.16
tax quotas under, 2.8.123
time allowed for consideration of, 4.4.13
unanimous consent needed for dissolution of, 2.4.110–14, 4.2.11, 4.10.4
undelegated powers reserved to states by, 3.5.2
violation of, by federal convention, 1.7, 3.11.9n, 5.12.2
want of energy in, 5.7.4
See also Confederation
arts, in ancient Greece and Rome, 4.6.6, 4.6.49
Asiatic monarchies, 4.6.68
assemblies, numerous, 2.8.178
assemblies, popular, 3.8.5
assemblies, provincial, 4.28.4
assemblies, state. *See* legislatures, state
assembly, freedom of, 2.7.55, 2.8.86, 5.6.5
assent, royal, 5.1.10, 5.15.1
assessments, unequal, 4.3.21
assessors, federal, 4.3.21
assizes, lords justices of, 6.7.1
associations, civil, 4.3.1
Assyrian empire, 3.16.16
atheism, as sign of social decay, 6.14.134, 6.14.136
atheists
eligibility of, for public office, 4.23.3(9)
exclusion of, from toleration, 1.22, 4.25.5
Athens
corruption of, by luxury, 6.14.122, 6.14.135
government of, 5.1.23
rivalry of, with Sparta, 2.6.13
ruin of, by overconfidence, 2.6.48
Thirty Tyrants of, 3.3.51
attainder, bills of, 6.13.5
in Josiah Philips case, 5.16n13
injury to community by, 2.9.103
prohibition of, 2.8.51, 2.9.30, 4.9.22
attorney-general, 4.15.4, 4.6.21
augurs, Roman, 3.16.14, 4.12.6
Augustine (Austin) of Hippo, 5.1.106
Augustus (Octavian), 2.7.36, 5.1.96,

Augustus (*continued*)
5.9.2, 4.28.2
Austin, Benjamin, 4.9 intro.
Austria, House of, 5.1.25, 5.1.40, 5.1.74
authority
basis of, 3.14.2
division of, between state and nation, 5.1.57
doubtful cases resolved in favor of, 4.6.51
establishment of, 3.14.2
inequality of, in different states, 4.6.29
necessity of, for good government, 2.5.22
nonexistence of, in State of Nature, 2.4.29
not given by nature to any man, 2.9.24
universal abuse of, 4.3.17
authority, hereditary, 5.1.74
avarice, 2.4 intro. n9
Federalist reliance on in government, 1.48
neglect of public duty and, 4.18.1
Mercy Warren on, 6.14.153–54

Bacon, Francis, 6.8.1, 6.8.32
bail, excessive, 2.7.55, 2.9.28, 3.11.13, 5.6.5, 5.14.10, 5.16.36–37
Bailey, Francis, 2.7.165, 2.7n97
Baird, John, 3.11.56
Baird, Richard, 3.11.56
balance
among classes in legislature, 2.8.97
constitutional, and legislative balance, 1.62
balanced government, 2.8.125, 2.8.173, 2.9n112
Federalist views of, 1.55–56, 1.59–60
impossibility of, 2.7.7
not contained in federal Constitution, 2.8.30
proposed by John Adams, 2.7 intro.
See also mixed government
balance of power, 5.1.111
balancing of orders, distinguished from separation of powers, 2.7n4
ballot, suffrage by, Congress enabled to abolish, 2.7.73
ballots, use of in elections, 3.16.5, 6.9.17
Baltimore, Federalist sentiment in, 5.3 intro.
Baltimore Advertiser, 2.4 intro.
Bancroft, George, 2.8 intro.
on George Clinton's speeches, 6.13n1
papers of, 5.3 intro.
transcripts of, 2.6 intro.
bankers, 4.7.1
Bank of North America
charter of, repealed, vol. 3 intro.
Robert Morris and, 2.7.127
bankruptcy, 2.8.10, 2.8.35, 4.3.21, 6.13.20
bankruptcy laws
Federal Farmer on, 2.8.35, 2.8.40
means of increasing federal power, 2.8.221
states forbidden to enact, 3.13.5
bankrupts
Anti-Federalists branded as, 4.7.1
federal city a refuge for, 3.16.2
and federal office, 4.14.3
banks, early American prejudice against, 6.14.47
Barbary pirates. *See* Algerians
Barnwell, Robert, 5.12n14
barons, English, allied with people against king, 2.8.103
Basque (Biscayan) Republic, 5.1.108
Beard, Charles
on Cornelius essay, 5.10n4
on *Federalist* no. 10, 1.92n49
Beardian critique, 1.3–4
Beccaria, Cesare (marquis)
cited by Cato [South Carolina], 5.10n9
on large and small republics, 2.9.11
on limits of political society, 6.8.1n
on origin of laws, 6.14.39
on standing armies, 4.3.29, 4.3n22
on tendency toward inequality, 2.8.97, 2.8n61, 6.7.1, 6.12.17
Bedford, Duke of (George Neville), 5.1.27

Bedford County, Pennsylvania, 2.7.184
beer, tax on, 2.9.59, 5.2.2, 6.7.7
Berks County, Pennsylvania, 2.7.184
Berkshire County, Massachusetts, 6.14.33
biblical prophecies, 4.6. intro.
bigotry, 3.3.27, 5.1.105
Billias, George A., 2.1 intro.
bill of rights, 1.3, 1.64–70, 2.7.29, 2.7.54, 2.8.96, 3.3.53, 3.8.3, 3.9.18, 3.9.43, 4.6.51, 6.6.34, 6.10.10
  Agrippa and [Maryland] Farmer on, 1.40, 4.6.24, 4.6.71, 5.1.4–9
  Anti-Federalists and, 1.8, 3.3.45
  Benjamin Rush on, 3.16n6
  Brutus on, 2.9.23, 2.9.25
  Brutus [Virginia] on, 5.15.1
  Candidus on, 4.9.11
  check on Federalist designs, 3.4.5
  Cincinnatus on, 6.1.4
  Citizen on, 6.5.2
  citizen's defenselessness without, 3.9.67
  Delegate on, 5.19.13–17
  Denatus on, 5.18.7
  Federal Farmer on, 2.8.52
  encroachment of, on the powers of government, 3.16.12
  Federalist positions on, 2.2n1
  Federalist Republican on, 3.6.46–50
  framing of, left to future rulers, 3.3.51
  Friend to the Republic on, 4.23.6
  George Mason on, 2.2.1, 2.2.13
  Impartial Examiner on, 5.14.5
  ineffectiveness of, under national government, 2.3.7
  James Wilson on, 3.5.2, 4.17.2
  John DeWitt on, 4.3.7
  John Francis Mercer on, 5.5.10
  and judiciary control of Congress, 3.3.12
  Luther Martin on, 2.4 intro. n9
  in Maryland, 2.6.42, 5.1.44, 5.1.86, 5.3.7
  in Massachusetts, 4.4.23, 4.6.70–71, 4.13.13, 4.13.16, 5.1.44, 5.15.1
  necessitated by imprecision of language, 4.3.8
  negative nature of, 5.1.15
  [New Hampshire] Farmer on, 4.17.2, 4.17.9
  in North Carolina, 5.1.44
  Old Whig on, 3.3.21–30
  omission of, from New York constitution, 6.9.4–5
  One of the Common People on, 4.8.1, 4.8nn1–2
  Patrick Henry on, 5.16.34–41
  in Pennsylvania, 5.1.44
  possible dangers of, 1.67, 1.69, 4.17n9, 5.1n3
  practicability of, 2.8.20
  press freedom and, 4.17.3
  protection against despotism, 3.11.32
  and protection of minority rights, 4.6.73
  by royal grant, 5.1.5
  Samuel on, 4.14.5
  Sentiments of Many on, 5.20.2
  and social compact, 2.8.19
  and state constitutions, 2.9.25, 2.9.102
  and trial by jury, 3.3.16
  use of, to control legislature, 4.17.2
  in Virginia, 5.15.1, 5.16.2, 5.16.5
  Vox Populi on, 4.4.22–24
Bill of Rights, British, 2.2n1, 2.9.25, 5.1n4, 5.5.11, 6.9.4
  explicit guarantees of, 3.3.23
  limitation of royal prerogatives by, 2.8.103
  [Maryland] Farmer on, 5.1.6–7
  Patrick Henry on, 5.16.24
  and standing armies, 5.1.42
bill of rights, federal, unnecessary in a true confederation, 5.18.7
bill of rights, partial, 1.66, 2.8.51
bills of rights
  belief of Americans in, 5.6.5
  Sir Robert Filmer on, 5.1.5, 5.1n4
  and unwritten constitutions, 4.8n1
bills of rights, state, 2.9n23
  amendments to protect, 4.6.75, 5.4.6
  and Congress, 3.3.15, 5.1.12
  James Wilson on, 5.14.5
  nullification of, 5.3.2

bills of rights, state (*continued*)
and state legislatures, 2.8.50
subordination of, to Constitution, 1.66–67
substantial agreement of, 5.1.11
Bishop, John, 3.11.56, 4.6n32
bishop, appointment of, 6.6.18
Blackstone, William, 3.3n8
cited by Columbian Patriot, 4.28.4
cited by Publius, 5.11n2
cited by Richard Henry Lee, 5.6.3
on combination of executive and judicial powers, 3.6.23
on Court of Exchequer, 2.9.143
on Court of King's Bench, 2.9.157
defense of monarchy by, 2.8n106
on equity, 2.9.137
on excise laws, 5.14.7
on general verdicts, 2.8.190
on impeachment of ministers, 5.15.1
on naturalization, 4.13.26
on open examination of witnesses, 6.1.19
on trial by jury, 2.7.44, 4.15.4, 4.17.22, 6.14.10
on Scottish law courts, 3.11.40
blasphemy, 1.3n49
Blenheim, Battle of, 5.16.11
blood, corruption of, 3.14n11
Bobbé, Dorothie, 6.7 intro. n1
body politic, 3.6.53
growth, decline, and dissolution of, 5.19.11
money the vital principle of, 5.16n36
natural lifespan of, 5.1.113
Bolingbroke, Henry St. John (viscount), 6.14.146
bondage, penalty for nonpayment of tax, 3.14.11
books, tax on, 2.9.59, 3.14.11
Borden, Morton, 2.9 intro., 5.5 intro. n1, 6.7 intro. n1
Borden collection, 3.4 intro.
Borgia, Cesare, 5.1.107
borrowing power
of Federal government, 2.4.57, 2.9.93
need for limitations on, 2.9.94–95
Boston, 3.9.51
contrasted with Philadelphia, 4.3.3, 4.6n19
disadvantage of, under new Constitution, 4.12.8
influence of, 2.7.166
interference with free discussion in, 2.8.63, 2.7.181
intimidation of Anti-Federalists in, 3.3.27, 6.3.12
newspapers of, 4.13.3
press freedom threatened in, 3.9.4
prosperity of, 4.6.65
Boston Athenaeum, 2.8 intro.
Boston Gazette, 4.7.8, 4.7.11
Bostonian (pseud.), *4.21*
Bourbon, Charles (constable of Bourbon), 5.1.67
Bourbon, House of, 5.1.25
Bowdoin, James
governor of Massachusetts, 6.14.34
James Warren and, 4.13 intro.
boycotts
of nonconfederating states, 4.26.11
of Pennsylvania Assembly, 3.2 intro., 3.2.3
Brackenridge, Hugh, 3.1 intro., 3.1n3
Bracton, Henry, 5.1.10
Bradford, Thomas, 2.7n48
Braxton, Carter, 1.91–92n44
Breading, Nathaniel, 3.11.56
breweries, 2.9.73
bribery
of excise officers, 5.2.2
judicial officers removable for, 2.9.131, 2.9.192
legislators exposed to, 2.4.48, 2.9.42
use of, to influence Massachusetts convention, 3.9.77
bridges
federal jurisdiction over, 3.13.3
state contracts for, 3.14.18
Britain, Roman expedition against, 5.1.103
British rule
errors and vices of, 2.6.11
[Maryland] Farmer on America under, 5.1.112
preferability of, to proposed government, 6.6.35
British subjects, undefined rights of, 4.8.1

Brittany, 5.1.108
Brown, Robert E., 4.10n4
Brunswick, House of, 6.14.124. *See also* Hanover, House of
Brutus (pseud.), *2.9;* 2.7.77, 2.7.133, 2.7.163, 6.9 intro.
  alleged distortion of Constitution by, 2.9.58
  Candidus on, 4.9.20
  cited by [New Hampshire] Farmer, 4.17.15
  cited by Samuel Chase, 5.3.18
  on homogeneity in republics, 1.45, 1.47
  identity of, 2.9 intro.
  legal knowledge of, 2.9 intro. n8
  [Maryland] Farmer on, 5.1.80
  outline and assessment of essays of, 2.9 intro.
  on reservation of rights, 1.67–68, 1.70
  on need to restrain federal power, 1.66
  on standing armies, 2.9.126
  on Supreme Court, 1.50
  on tyranny, 1.39
  theoretical importance of, 1.6
  vindication of Anti-Federalist position by, 3.9.16
Brutus [Virginia] (pseud.), *5.15*
Brutus, (pseud.; Federalist), 2.2 intro.
Brutus, Jr. (pseud.), *6.3*
Bryan, George, 2.7.186, 3.1 intro., 3.2n1
  identified as author of Pennsylvania House Minority Address, 3.2 intro.
  lampoon by Francis Hopkinson, 2.7n94
  on name "Federalist," 1.9–10
  reputed author of Centinel Essays, 2.7 intro., 2.7 intro. n5, 2.7n99
Bryan, Samuel
  and Centinel essays, 2.7 intro., 2.7 intro. n4, 2.7n99
  and Pennsylvania Convention Minority, 3.2 intro n1, 3.11n2
Bunker Hill, Battle of, 3.5.10, 4.3n12
bureaucracy, increase of, under new Constitution, 2.8.120, 4.3.23
Burgh, James, 3.5.10, 6.8n2
  argument of, against checks on the people's will, 1.39–40
  on depravity of human nature, 1.94n24
  on legal tyranny, 6.8.23
Burgoyne, John, 3.5.10
Burke, Aedanus, vol. 5, pt. 2, intro.
  on Rawlins Lowndes, 5.12 intro. n3
  Society of Cincinnati and, 4.2.10
Bute, Earl of (John Stuart), 6.6.33

Cabot, George, 2.8 intro.
Caesar (pseud.), 3.3n3, 2.6 intro., 2.6nn3–6
  Cato's reply to, 2.6.7–9
  Countryman on, 6.7.12
Caesar, Julius, 2.9.117, 4.3.29, 4.25.3, 5.1.101
  destruction of Roman liberties by, 2.7.67
  example of a tyrant, 2.6.34, 4.28.2, 5.18.13
  possibility of a president imitating, 3.3.31
  and power of military, 2.9.100, 3.6.21
  Sidney on, 6.8.37
  use of oracles by, 4.12.6
Caligula, 2.6.34, 2.7.36, 3.10.1, 4.13.10, 6.14.136
Calvin, John, 5.1.68
Camden, Charles Pratt, Earl, 6.1.15
Cambridge, Mass., 4.6 intro., 4.12.8
Canada, 2.8.224, 6.7.12
  letter of Congress to, 6.7.1
  possible admission of, to Union, 2.8.85, 5.20n5
canals
  federal jurisdiction over, 3.13.3
  state contracts for, 3.14.18
candidates, rural, allied to town interests, 4.10.11
Candidus (pseud.), *4.9;* 1.26–27, 4.9.22, 4.17.15
  summary of essays, 4.9 intro.
candles, tax on, 3.16.17, 5.2.2
Capet, Hugh, 5.1.25
capital cases
  congressional authority in, 2.9.27
  rights of accused in, 3.11.13

capitation tax, 2.4.55, 6.7.7. *See also* poll tax
captures, cases of, 2.8.185
Caracalla, 5.1.106
Carlisle Gazette, 3.14.1
Carlisle junto, 2.7.132
Carrington, Edward, 2.8 intro., 6 intro. n3
Carroll, Charles, 5.2n1
Carroll, James, 5.2n1
carrying trade, 5.12.2
Carter, Charles, 4.20n2
Carthage
  contrast of with Rome, 4.6.49
  destruction of, 5.1.108
  large assembly in, 2.8.136
  loss of liberty by, 4.17.22
  Polybius on, 5.12.13
  tranquil government of, 4.6.6, 4.6.49
cash, scarcity of, 2.4.77. *See also* specie
Cassius (pseud.), 3.10 intro. n1
  attacks of, on Richard Henry Lee, 5.15 intro.
  British ideas of, 5.15.1
  Brutus [Virginia]'s reply to, 5.15
  identified as James Sullivan, 4.15 intro. n1
  on impeachment, 5.15.1
  on House of Representatives, 1.51
  [Maryland] Farmer on, 5.1.80
  on oaths of allegiance, 4.4n10
  reply of, to Agrippa, 4.6n9
  reply of, to Vox Populi, 4.4 intro. n1
  on threat of anarchy, 2.7n74
  on treaties, 5.20n3
Castile, 4.28.12, 5.1.40
Caswell, Richard, 2.8n5
Catalonia, 5.1.40
Catherine the Great, 5.18.13
Cato (pseud.), *2.6;* 2.7.133, 2.7.163, 2.9 intro. n2, 4.23n3
Cato [South Carolina] (pseud.), *5.10*
Cato the Censor, 5.1.108
Cato Letters, 5.15.1
Cato Uticensis (pseud.), *5.7*
Cato the Younger, 4.25.3, 4.28.12, 5.1.52
censors, council of, 2.7.70, 3.3.11, 3.11.8, 5.1.82, 5.19.7
censors, Roman, 2.7.36, 2.7.67
censorship, 3.3.3
census-taking, provision for, 2.6.39, 4.13.25
Centinel (pseud.), *2.7;* 1.50–51, 3.16.3, 6.6.49
  attack of, on checks and balances, 1.55
  on combining executive and judicial powers, 3.6.23
  on consolidation, 2.9 intro. n1
  demagoguery of, 2.8n73
  on distribution of Anti-Federalist literature, 3.11 intro. n1
  on ex post facto clause, 3.16.18
  Federal Republican on, 3.6.7
  on freedom of press, 1.64
  identity of, 2.7 intro., 2.7.186, 2.7n99
  on Massachusetts Anti-Federalists, vol. 4 intro. n3
  on separation of powers, 1.60–61
  summary of essays, 2.7 intro.
certiorari, 2.9.175
chancellor (Great Britain), 2.7.41
chancellor (New York), 2.8.90
chancery, Court of, 2.9.159, 2.9.178, 3.5.5, 3.5.6, 3.11.29
Charles V (emperor), 4.28.12, 5.1.40
Charles I (England), 2.7.113, 3.3.23, 5.1.73, 5.16.24
Charles II (king of England), 3.3.23, 4.18.1, 5.1.102
Charles Edward (prince), 5.1.75
Charleston, South Carolina, 5.12 intro.
Charlestown, Capitulations of, 4.25.2
charters, 4.6.25, 5.12.1, 5.12.2
Chase, Jeremiah T., 5.2n1, 5.4.4, 5.4.11
Chase, Samuel, *5.3;* 5.2n1
  on bill of rights, 1.67, 2.2n1
  career of, 5.3 intro.
  at Maryland Convention, 5.4.4, 5.4.11
  Maryland opposition leader, vol. 5 intro.
  on representation, 5.1 intro.
Chatham, Earl of (William Pitt), 6.8.18
checks and balances
  Alexander Hamilton on, 1.54–56
  Anti-Federalist attitudes toward,

checks and balances (*continued*)
1.54–56, 1.58–59
in bicameral legislature, 2.8.146
in British government, 5.16.14
John Adams on, 2.7.7, 2.7.10
limitation of democratic influences by, 3.16.4
necessitated by temptations of power, 4.3.12
Patrick Henry on, 5.16.2, 5.16.14
in state governments, 2.8.89
See also balanced government
Chesapeake Bay, 2.4.73
chief justice
and impeachments, 2.4.88
James Wilson's ambition to become, 2.7.159, 2.7n85
possible choice of, as president, 4.16.2
Chitwood, Oliver Perry, 2.8 intro. n17, 5.6 intro. n2
Christian II (of Sweden), 5.1.35
Christian charity, 3.9.82
Christianity
Aristocrotis on, 3.16.14
corruption of, 5.1.106–7
recognition of, as America's religion, 2.4.108
social effects of, 3.16.15, 5.8.5
Christianity, nonsectarian, instruction of the people in, 5.18.5
Christian piety, 4.18.2
church, national, 3.3.29
Cicero, 3.12.11, 5.1.21
cider
monopolies on production of, 2.9.72
taxes on, 2.9.59, 2.9.72, 5.2.2, 6.7.7
Cincinnati, Society of the, 3.9.76, 6.14.43
George Washington and, 4.20.1
public support for, 4.2.10
and support for the Constitution, 4.7.1
Cincinnatus (ancient Roman), 4.25.3
Cincinnatus (pseud.), *6.1;* 2.7.133, 2.7.163
and Democratic Federalist, 3.5 intro.
identification of, 6.1 intro. n2
Citizen (pseud.), *6.5;* 1.87n9, 1.96n32, 2.7n5
Citizen of America (Noah Webster), 3.6.7, 3.6.22, 4.4n1
Citizen of New Hampshire (pseud.), 3.3n33
Citizen of New York (John Jay), 2.8n54, 6.11 intro., 6.11n23
Citizen of Pennsylvania (pseud.), 3.2 intro.
Citizen of Philadelphia (pseud.), 2.8n54
citizenry, republican, characteristics of, 1.19–20
Citizens (Swedish social order), 5.1.35
citizenship, common, among states, 2.9.156
civil cases
appellate jurisdiction in, 2.9.172–74
determination of law and fact in, 2.9.173
federal jurisdiction in, 2.4.92
government party to, 3.3.16
and trial by jury, 2.7.43–44, 4.17.22, 5.1.62
civil connections
Philanthrop on, 4.26n12
Phileleutheros on, 4.27.5
civil establishment
characteristics of, 2.8.168
expense of, 2.9.63
civil law
connection of, with arbitrary power, 6.1.21
corruption facilitated by, 2.8.192
and federal judicial power, 3.11.38
and new Constitution, 6.1.22
secret testimony and, 6.1.19
and Supreme Court, 2.8.189
and use of torture, 2.8.105
civil law courts, 3.5.5
civil laws, execution of, 4.3.27
civil list, 3.10.7, 4.28.4, 5.3.18
in Great Britain, 5.9.7
civil prosecutions, use of, to oppress people, 3.3.16
civil service, 1.7n36
civil war
Anti-Federalists accused of helping to provoke, 3.9.60
bitterness of, 2.5.18
Brutus on, 2.9.53
consequence of rejecting the Con-

civil war (*continued*)
stitution, 4.9.4, 2.6n4
Edmund Randolph on, 2.5.14
Luther Martin on, 2.4.114
Melancton Smith on, 6.12.3
necessity of to achieve consolidation, 2.8.4
Plebeian on, 6.11.8–10
Republican Federalist on, 4.13.27
Civil War, English, 2.9.101, 5.1.75
Civil War crisis, 1.76
Civis Rusticus (pseud.), 1.99n6, 2.2n1
Clarendon, Earl of (Edward Hyde), 5.15.1
Clark, Abraham, 2.8n5
class conflict, 5.1n20
classes, economic, representation of, 5.14.30
classes, social
natural division of society into, 6.12.16
representation of, 2.8.97, 2.9.42, 5.3.20
Claudius (emperor), 4.12.6
Clay, Henry, 1.6n28
clergy, 4.17.5
exclusion of, from public office, 2.8.87, 6.9.29
Mercy Warren on, 6.14.166
support for Constitution among, 3.16.15n
support of, by law, 4.24.4
clergy, Popish, 2.8.191
clergy, Swedish, 5.1.35
clerks (Episcopal church), 5.8.5
climate, effect of, on people's character, 4.6.16, 4.6.48
Clinton, DeWitt, 6.6 intro., 6.7 intro.
Clinton, George, *6.13;* 2.3 intro., 2.4.2
and Alexander Hamilton, 2.6 intro. n9
career of, 6.13 intro.
on Countryman's letters, 6.7 intro. n4
and New York Convention, 6 intro.
on people's will, 1.39
possible author of Cato letters, 2.6 intro.
Clymer, Daniel, 3.9n31
Clymer, George, 3.1 intro., 3.2.2, 3.2.5
Cockey, Edward, 5.4.11, 5.4.13
coercion
government by, 5.1.52
of nonconfederating states, 4.26.11
role of, in government, 1.42–43, 2.5.10
of states by federal government, 2.5.18, 2.8.209
Cogswell, Thomas
identified as Friend to the Republic, 4.23 intro. n1
identified as Friend to the Rights of the People, 4.23 intro. n1
identified as [New Hampshire] Farmer, 4.17 intro.
coinage, federal control of, 2.8.10, 2.8.35, 6.10.4
Coke, Edward, 6.13.10
on certainty in political compacts, 2.6.34
on general verdicts, 2.8.190
on people's possession of their liberties, 6.1.10
and Petition of Right, 5.1.8
Colden, Cadwallader, 2.7.45
collectors, federal, 4.3.21
Colonial America, [Maryland] Farmer on, 5.1.112
Columbian Patriot (pseud.), *4.28*
commerce
Anti-Federalist attitude toward, 1.20–21, 1.87n6
decline of, 3.6.3
duties on, 2.4.45, 2.6.40
establishment of, on permanent basis, 4.9.24
federal Constitution's expected benefits to, 4.9.13
federal power over, 2.8.10, 2.8.35
handmaid of liberty, 2.7.126
inability of states to protect, 3.3.32
growth of, 2.9.92
national system of, 4.6.65, 4.9.35
principle of union in large state, 4.6.30
promotion of, 1.30–31
spirit of, 4.6.6
treaties of. *See* treaties, commercial

commerce (*continued*)
under Confederation, 2.5.4
See also trade
commerce, American, British hindrances to, 2.7.86–87, 5.7.4
commerce, state, effect of treaties on, 4.14.4
commercial agents, British, 6.14.20
commercial towns
desire of to regulate trade, 2.8.7
effect of proposed government on, 4.17.8
Committee, Select, compromise on representation, 2.4.34, 2.4.36
Commodus, Emperor, 5.1.96, 5.1.106
common consent, 2.9.24
common defense
under Confederation, 5.14.44
purposes of government, 2.9.150
responsibility of federal head, 2.8.208
responsibility of legislature, 2.9.5
common defense restriction, ineffectiveness of, 2.9.77–78
common good, 2.9.24, 5.14.2, 5.14.6
common law
and appellate jurisdiction, 2.9.175, 3.5.7
federal procedures inconsistent with, 3.11.39
foundation of, 2.2.1
and innovation, 2.7.4
instruction of people in, 5.18.9
legislature's right to alter, 4.6.23
in New York, 6.9.22
in proposed Constitution, 6.1.22
separation of law and equity in, 2.8.42
and Supreme Court, 2.8.189
and trial by jury, 3.3.16
use of, in states, 2.8.19, 3.5.5
in Virginia, 5.16.36
common law principles
and government of Federal City, 2.8.223
subordination of, to Constitution, 1.66–67
common law procedures, need for guarantee of, 5.6.5
common law rights, peril to, 5.1.13
common pleas, courts of, 3.11.40, 4.6 intro., 4.17.5
common sense
in juries, 2.8.190
value of, in government, 4.23.8, 4.23n3
Common Sense (Paine), 2.7.177, 3.9.44
Commonwealth, English, 4.18.1
Commonwealthmen, 1.39
commotions, popular, 2.9.151
and security of state governments, 4.6.21
community, in Anti-Federalist terminology, 1.86n4
compact, original, 2.6.3, 6.13.20
compacts
between government and people, 4.3.7, 4.3.8
sacredness of, 5.12.2
source of rights, 2.8.200
compacts, fundamental, 4.10.5
compacts, political and social
frame of government established by, 5.14.2
necessity of explicitness in, 2.6.34, 2.8.63, 4.3.7
Plebeian on, 6.11.2
protection for fundamental rights in, 2.8.19
compromise, political, 5.5.5
comptroller, 2.8.176
confederacies, separate (partial), 1.24, 4.2n8
Federalists and Anti-Federalists on, 1.4n2
Federalist warnings against, 2.7n75
improbabilty of, 2.7.142
objections to, 2.5.26–30
Observer on, 6.4.3
prohibited by Articles of Confederation, 5.21.5
confederacy, nine-state, 5.16.1
confederation (confederacy, confederate government)
alleged novelty of, 6.11.29
desirability of, 5.1.17
distinguished from national government, 2.4.39, 2.4.83, 5.1.50
elements of, 6.13.18
favored by advocates and opponents of proposed government, 2.9.56
Federalist opinion on, 1.12

confederation (*continued*)
league of friendship among states, 2.8.81
proposed Constitution a departure from principles of, 6.13.19
role of states in, 6.13.23
See also republics, federal
Confederation (U.S.)
alteration of, by unanimous consent, 6.11.8
annihilation of, 2.6.9, 2.7.67, 3.14.22
authority of Congress under, 5.14.5
basic soundness of, 6.5.4
criticisms of, 2.7.5, 3.7.1, 5.12.2
declared ended by Washington, 4.20.3
defects of, 5.19.1
defects of, magnified, 2.8.207
dependence of, on voluntary exertion, 2.8.6
desirability of retaining, 5.12.2
economic policy of, 2.5.15
essential change required in, 2.5.22
Federalist desire to supersede, 3.1.4
federal republic in strict sense, 4.6.33
finances of, 2.7.80, 2.8.206
John Quincy Adams on failure of, 1.83n44
Mercy Warren on, 6.14.5
new Constitution's improvement on, 2.8.69
Patrick Henry on value of, 5.16.2
powerlessness of, 2.5.8, 2.8n54, 5.16n11
Rawlins Lowndes on, 5.12.1
rebellion against, 4.4.13
reform of, 6.11.12–13
renunciation of allegiance to, 6.6.22
Sidney on, 6.8.19
subversion of, 3.6.3., 6.9.2
taxing power of, during Revolution, 2.9.88
unanimous consent for abolition of, 2.8.229, 3.11.9n
unauthorized dissolution of, 5.3.1, 5.9.3
unicameral legislature, 2.8.134
union of separate republics, 5.14.23
unsoundness of its governments, 5.1.113
virtual dissolution of, by states, 5.12.4, 5.12n13
See also federal government, old
confederation, balanced, 5.14.13
confederation, commercial, 4.9.22–37
confederations, European, 2.4.30
confessions, criminal, 5.16.37
confidence, mutual, 4.6.26
confidence in government, 1.50–52
danger of too much, 2.6.48
and execution of laws, 2.9.48
and familiarity with rulers, 2.9.18
Impartial Examiner on, 1.84n11
restoration of, 4.9.26
confiscation laws, 5.12.1
confiscation of property, 2.9.59, 3.14n11, 4.6.42
Congress (federal legislature), 2.4.32
accountability of, to states, 2.9.114
additional powers for, 2.5.22, 2.7.92, 2.9.146, 3.3.32, 4.10.15, 6.8.1, 6.8.23
alienation of people from, 5.14.31
alleged superior merit and wisdom of, 4.5.2, 5.16.17
and approval of new Constitution, 2.4.111–12, 3.1.3
basic similarity of House and Senate, 4.3.14
bill of rights standard for, 5.20.2
borrowing power of, 3.14.12, 4.22.4
Brutus on, 2.9.37–63
choice of, by small majority, 4.4.20
confession of guilt by, 4.26.15
conflict of, with states, 2.7.99, 3.8.3
control of congressional salaries by, 2.5.41, 4.10.8–9, 4.23.3(2), 4.28.4, 5.3.17
control of western territories by, 4.2.6
controversies between House and Senate, 2.4.51
and convention delegates, 3.1.2
credit of, 3.9.48

Congress (*continued*)
destruction of balance in, 4.13.28
discrimination among states by, 4.14.2
disposal of land by, 4.6.10
division of, against itself, 2.6.14
division of, into three branches, 4.22.4
encroachments on rights of, 2.5.6
excessive powers given to, 3.6.17
exclusion of, from ratification process, 4.28.4, 4.13.21
expression of states' will in, 6.13.18
expulsion of members by, 2.8.28, 4.10.10
extravagance of, with public money, 4.23.8
and federal city, 2.8.224
foreign influence in, 2.5.22, 4.6.45, 4.6.59
and foreign titles, 5.10.4
heterogeneity of, 4.5.20
Impartial Examiner on, 5.14.13
impotence of, 2.7.103
inability of, to serve whole country, 2.9.19
increase of attendance rate in, 2.8.118
independence of people, 4.9.11
and Indian wars, 3.5.12
influence of courts on, 2.9.148
insufficient size of, 5.5.7
interpretation of Constitution by, 2.9.196
irresponsibility of, 5.14.10
James Monroe on, 5.21.21, 5.21.31
judge of constitutionality of laws, 2.7.122
judge of propriety of taxes, 2.7.96
judge of what is "necessary and proper," 3.3.12
judicial powers of, 3.11.28
levy of imposts by, 3.3.33
likelihood of corruption in, 6.12.34
limitation of taxing power of, 4.15.4
limited concerns of, 2.8.130
mediation of disputes between states, 4.6.57
medium of communication between states, 3.3.3
monopoly of revenue by, 5.16.16
omnipotence of, 2.7.15, 2.7n92
people's lack of confidence in, 3.11.50
people's liberty dependent on virtue of, 3.3.13, 4.8.1
periodic accountability of, 5.16.8, 5.16.14, 5.16.20
possession of powers not reserved, 2.8.198
postponement of elections by, 4.6.78, 4.26.5
power of, to abolish juries, 5.1.62, 5.6.3, 6.7.2
power of, to designate president, 3.13.3
power of, to interfere in behalf of people, 2.8.163
power of, to legislate on presidency, 4.5.2
power of, to levy execution on states, 2.9.166
power of, to perpetuate itself, 4.18.1
power of, to raise and support armies, 2.8.39, 2.8.220, 2.9.6, 3.16.7, 4.23.3(4)
powers of, 2.5.41, 2.8.82, 2.9.5, 3.3.12
power to fill vacancies in, 4.6.60
president's independence of, 5.21.27
president's power to adjourn, 5.10.2
president's power to convene, 5.12.4
regulation of elections by, 2.4.43, 2.6.46–47, 2.7.16, 2.7.22, 2.7.73–74, 2.8.152, 3.11.24, 4.4.2–3, 4.4.6, 4.6.60, 4.10.10, 4.13.28, 5.15.1
repeal of state laws by, 2.9.8, 3.3.33, 3.6.33, 3.14.18, 3.16.6, 5.3.16
role of, in amending Articles of Confederation, 4.13.7
safety of entrusting government to, 3.14.11
secret proceedings of, 3.13.5, 4.5.2
and state constitutions, 2.8.51, 3.13.3, 4.4.24

Congress (*continued*)
and state legislatures, 2.4.16, 2.8.10
supposed incorruptibility of, 2.8.138
suppression of state taxes by, 2.8.195, 3.3.33, 3.11.21, 3.16.6
Supreme Court and, 2.9.176
supremacy of, 5.14.4
taxing powers of, 2.4.55–56, 2.7.11, 2.9.63, 3.9.80, 3.16.6, 4.10.8, 5.14.6
time and place of sessions, 5.12.4
training of militia by, 3.13.3
transmission of federal plan to states, 4.13.10
tripling of its membership, 3.9.24
warmaking powers of, 3.6.20, 5.16.23
wide discretion of, 2.8.49, 2.9.57, 4.5.2
Congress, Commercial Committee of, 2.7.168
Congress, members of. *See* legislators, federal
Congress, new, 6.10.2–3
amendments recommended to, 3.14.22
comparison of, with old Congress, 4.5.2, 5.14.34
consideration of amendments by, 4.15.3
enforcement of its will, 4.3.27
Impartial Examiner on, 5.14.5
not representative of people, 3.9.81
and payment of interest on national debt, 6.1.41
probable abuse of power by, 3.9.94, 4.5.12
proposal of amendments by, 5.16.2
restraint of federal officers by, 5.16.6
Congress, old
annual elections for, 4.3.9, 4.13.5
executive nature of, 3.5.2, 2.8.135
financial problems of, 6.14.18
James Monroe on, 5.21.9–11
letters of, to England, Ireland, and Canada, 6.7.1, 6.12.17
limitations on power of, 6.12.23
[Maryland] Farmer on, 5.1.54
New England delegates to, 5.7.8
no judicial jurisdiction, 3.5.2
noninterference of, in state affairs, 5.14.5
no power to raise money, 3.5.2
representation of sovereign states in, 5.14.34
request for additional powers by, 6.8.25
requisitions of, 2.7.79, 3.9.86, 3.11.2, 4.5.10, 6.1.45
role of, in raising troops, 2.9.114
ruinous fiscal policy of, 2.7.79
states' defiance of, 5.10.2
unicameral body, 4.4.38, 2.8.135
use of secrecy by, 6.9.2
vices of, 6.8.24
Congress lands, 4.6.14
congressional powers
Agrippa on, 4.6.17, 4.6.36
effect of, on states; 3.11.18
and power of federal courts, 2.9.142
purposes of, 3.6.34
William Symmes on, 4.5.2
congressional proceedings, monthly publication of, 5.16n33
Connecticut, 2.4.34
choice of counselors in, 2.8.159
definition of rights in, 5.16.24
democratic government of, 4.22.5
dispute of, with New York, 4.12.10
Federalist activity in, 6.3.12
governor's membership in upper house, 3.12.16
model government of, 5.1.113
mode of election in, 2.8.89, 6.6.30
motives of, for ratification, 4.28.11
and New Jersey Resolutions, 2.4.21
noncommercial state, 4.6.28
popular election of legislature in, 2.8.81, 2.8.88
ratification in, 6.11.10
revenue and representation in, 4.14.2
tax contribution of, 4.14.1
vigorous government of, 4.6.8
Connecticut Courant, 2.2 intro. n6, 2.6 intro., 2.8 intro.
Connecticut Journal, 4.2

conscience, liberty of, 3.3.23, 6.14.8
Anti-Federalist position on, 1.64
Cincinnatus on, 6.1.19
Countryman on, 6.7.13
inviolability of, 3.11.13
peril to, 5.16.2
silence of new Constitution on, 3.9.13, 3.9.21
conscience, rights of, 5.16.24
conscientious objectors
influence of, in Pennsylvania, 3.9.12
lack of provision for, in proposed system, 1.97n2, 2.7.75, 3.8.3, 3.8n5, 3.9.11, 3.11.53, 5.3.17, 5.4.7, 6. 10n2
conscription, military, and pacifists, 3.9.11
consent
of parties to a contract, 4.3.11
society founded upon, 4.3.1
conservatism, Anti-Federalists and, 1.7, 1.20–21, 1.58
Consider Arms et al., *4.26*
motivation of, 4.27.2
sympathy of, for African slaves, 4.27.3
Consolidation (consolidated government)
Albany Antifederal Committee on, 6.10.2
Aristocrotis on, 3.16.17n
and bill of rights, 1.65
coercion necessary for, 2.8.4
consistency of, with liberty, 3.11.31
cover for special interests, 4.28.4
creation of, by direct taxation, 5.17.1
definition of, 3.14.9
distinguished from federal principle, 2.8.132, 2.8.205, 6.6.45
expectations from, not justified, 3.13n1
and Federal Farmer, 2.8 intro.
Federalist denial of intention to establish, 2.7.162, 6.13.14
George Washington on, 1.10–11
inappropriateness of, to large countries, 4.6.39
incompatibility of, with free principles, 2.8.9–23
inimical to personal and property rights, 4.6.39
James Monroe on, 5.21.12
Patrick Henry on, 5.16.9
Pennsylvania Convention Minority on, 3.11.17–30
[Pennsylvania] Farmer on, 3.14.9–13
Plebeian on, 6.11.15
probable effects of, 4.6.51–59
proposed by Federal convention, 5.16.1–2
and proposed Constitution, 2.7.100, 2.8.1, 2.9.36, 3.3.20, 4.6.18, 4.13.10
and relationship among states, 3.9.29
safeguards necessary with, 3.6.53
Sidney on, 6.8.1
unauthorized by people, 4.28.4
unsuitability of, for United States, 2.9.5–23, 6.12.40
William Symmes on, 4.5.3
See also national government
consolidation, partial, 2.8.13, 2.8n9
consolidation, plan of, 6.6.45
conspiracy
in Connecticut, 4.6.8
to promote Constitution, 2.7 intro., 2.7.145–47
conspiracy, antirepublican, 6.14.168
conspiracy (word), 3.15.2
constituents
access of, to representatives, 2.8.99, 2.9.49, 4.3.14
inability of, to control representatives, 5.5.5
and Pennsylvania Convention, 3.2.3
constitution
Brutus on formation of, 2.9.23
compact between people and rulers, 2.9.196
definition of, 2.8.196
fundamental law, 3.14.4
legislative power circumscribed by, 5.13.5
needed to restrain bad rulers, 2.9.54
popular rights not guaranteed by, 4.6.66
Republicus on characteristics of, 5.13.2–6
See also Constitution, federal

constitution, British, 2.4.50, 2.4.51
Citizen of America on, 3.6.7
form and spirit of, 3.12.17
judiciary not interpreters of, 2.9.187
[Maryland] Farmer on, 5.1.6–8, 5.1.75
mixture of monarchy, aristocracy, and democracy, 3.14.2
Patrick Henry on, 1.58, 5.16.14
Rawlins Lowndes on, 5.12.4
royal prerogative in, 3.3.31
superiority of, 5.5.11
supposed example of balanced government, 2.7.7, 2.7.10
and trial by jury, 2.4.93, 4.17.22–23
unsuitability of, to American conditions, 5.1.113
U.S. admirers of, 5.1.56
war powers in, 3.6.20
Constitution, federal
and abolition of slavery, 4.26.12
acceptance or rejection of, without change, 4.9.3, 4.9.7, 4.9.9
agreement of whole people, 2.9.150
ambiguities of, 2.9.141, 3.14.22, 5.16.2
amendment of, 3.3.2, 4.3.14, 4.13.20; before ratification, 2.1.7, 2.5.36, 3.3.19, 4.6.74, 4.9.8
ancient customs threatened by, 2.8.47
aristocratic character of, 1.48–52, 2.8.7, 5.2.1
artful and deceptive clauses of, 2.7.130
and Articles of Confederation, 3.1.4, 4.13.16
benefits claimed for, 5.19.1, 6.11.21–22
and British constitution, 5.5.11
British reaction to adoption of, 3.9.40
Brutus, Jr., on, 6.3.2
cases arising under, 2.9.134–35
Cato on, 2.6.7
Cato [South Carolina] on, 5.10 intro.
Centinel on, 2.7.153
choices involved in considering, 2.1.5
circumstances of its framing, 6.9.2
combination of executive and legislative powers in, 5.15.1
compact among individuals, 2.4.39, 3.11.30, 4.6.69, 4.16.2, 5.1.12, 5.3.2
comparison of, with New York's constitution, 6.9.6–30
complexity of, 4.2.2
compromise nature of, 3.3.14, 3.11.5, 4.3.6
Congress favorable to, 3.1.3
conscientious objectors unprotected by, 3.3.29, 3.8.3, 3.9.11
consequences of ratification, 4.13.24
consideration of each part separately, 6.5.4
consistency of, 4.5.10
and consolidation, 2.7.100, 2.8.1, 2.9.36, 3.3.20, 4.6.18, 4.13.10
conspiracy to promote, 2.7.145–47, 5.2.1–4, 6.1.37
construction of, for national purposes, 4.3.11
contrary to people's habits, 4.1.4
correction of evils left to future in, 5.6.1
Countryman on, 6.6.28
customary revision of, 5.19.7
danger to liberty from, 2.6.9
and Declaration of Independence, 3.9.56, 5.9.16
delay caused by revisions of, 2.7.140
departure of, from republican principles, 2.8.230
desire for hasty approval of, 2.8.62, 3.2.2, 4.3.2, 4.28.8, 6.1.39
destruction of state governments by, 3.3.20
devised to find employment for ambitious men, 4.3.15
difficulty of amendment after ratification, 2.9.3, 4.3.6
dissolution of all contracts inconsistent with, 2.9.57
divine sanction claimed for, 2.7.149, 4.9.9
divison of nation by, 4.14.10

Constitution, federal (*continued*)
encouragement of extravagance by, 4.10.9
encouragement of slavery by, 4.26.8
effects of, on industry and debt, 5.16.10
ephemeral nature of, 3.9.89
experimental nature of, 2.8.208, 5.12.1
extraordinary manner of its submission to people, 5.21.2
faults of, admitted by Framers, 4.3.3
favored by printers, 2.7.163
federal-state balance in, 5.21.36
founding generation's view of, 1.3
fundamental law, 2.9n101
human qualities fostered by, 1.73
illegality of, 5.18.4
imagined reaction of foreigner to, 5.14.1
and imposition of military rule, 3.9.58
inability of, to serve general good, 5.14.6
incoherence of, 1.54
indulgence of toward delinquent states, 3.9.86
inspired by nature, 3.16.11
interpretation of, 2.9.135, 2.9.141, 2.9.149, 2.9.158, 2.9.193
John DeWitt on, 4.3.4, 4.3.18
judgment of on its own merits, 6.3.8
liberty of conscience not protected in, 3.9.13
maneuvers to secure popular approval of, 2.7.31, 2.7.64, 2.7.89–91
and Maryland constitution, 2.4.42
and Massachusetts constitution, 4.4.26–27, 4.4.36–38, 4.13.15
Mercy Warren on, 6.14.164
mixed nature of, 5.16n40
national rather than federal in nature, 2.4n12
need for careful consideration of, 3.3.4–5, 3.12.1, 4.3.2, 4.9.6, 5.16.8
no historical precedent for, 4.12.1
no real check on government, 3.16.15
novel features of, 1.7n45
oath of support for, 2.7.168, 2.9.31, 4.4.34, 4.14.6
objectionable articles in, 5.9.3
oligarchic principle of, 5.6.2
omission of explanatory articles, 2.8.197
original compact, 2.9.31, 2.9.57
partly national, partly federal character of, 1.11–12
Pennsylvania penalized under, 3.9.85
perpetual nature of, 4.3.6
points of agreement with Articles of Confederation, 5.14.45
power to raise troops under, 2.9.112–14
presentation of, as only alternative, 2.7.91
prestige of its Framers, 3.6n4, 4.3.3
protection of property rights by, 5.5.9
questions settled by, 1.3
ratification, 2.4.110–12
relief expected from, 2.7.5
restraints on federal government in, 6.1n10
revision of, by new convention, 3.3.47
revolution proposed by, 5.16.2
and state constitutions, 2.9.26, 4.3.7, 6.1.16
strength of opposition to, 6.11.10
supreme law of land, 2.7.15
transfer of power from people to few, 2.8.115
Virginia's possible rejection of, 5.16.8
William Penn on, 3.12.1
constitution, Roman, 3.6.7, 5.10.2
Constitutional Convention, federal, 2.8.7
accommodations and deals made during, 3.3.14
accountability of, to people, 3.3.42
advisory function of, 5.3.2
aristocratic influence in, 6.1.36
authority delegated to, 5.16.1
authority of, nullified, 4.13.10
betrayal of people's hopes by, 3.9.75

Constitutional Convention (*cont.*)
Centinel's criticism of, 2.7.92
Citizen on purpose of, 6.5.4
competence of, to formulate bill of rights, 5.1.12
composition of, 2.8.73, 3.11.5, 4.12.1
compromise of on representation, 2.4.34–37, 4.3.16
Consider Arms et al. on, 4.27.3
and consolidation, 4.13.10
crimes of, against people, 3.9.83
dissenters in, 4.12.1
dissolution of, 4.3.6
distrust of people, 2.9.50
Elbridge Gerry at, 2.1 intro., 2.1.8, 2.1n1
extent of its authority, 3.3.41
George Mason at, 2.2 intro.
George Washington and, 4.20.1
illegality of, 3.1 intro., 3.11.9, 6.9.7–8
intentions of, 3.6.34
internal taxation and, 4.3.20
isolation of, 4.17.10
James Monroe on, 5.21.26
legal actions, objections to, 1.7
Mercy Warren on, 6.14.38, 6.14.40, 6.14.48
missing delegates, 2.8.7
New Jersey Resolutions, 2.4.21, 2.4.28
not authorized by people, 3.14.22
origins of, 4.9.9
parties in, 2.4 intro., 2.4.23–26
Pennsylvania delegates, 3.1.2, 3.11.4
people's confidence in, 2.1.7
popular mandate of, 2.3.5
possibility of reconvening, 3.3.19
powers of delegates to, 2.4.13, 4.13.9
powers exceeded by, 2.3.3, 2.6.9, 3.2.6, 4.13.10
prestige of delegates, 4.9.1, 4.26.15
pro-British members of, 4.12.1
procedural rules of, 2.4.13
publication of its debates, 3.9.55
public defaulters among delegates, 2.7.168
public expectations from, 3.3.18
purpose of, 2.1.3, 4.3.2
reasons for choice of delegates, 6.5.4
religious opinions of delegates, 3.9.13
and representation, 2.4.28–35, 2.8.116
right of, to propose new government, 4.13n6
secrecy of, 2.4.7, 2.4.13, 2.6.8, 2.7.30, 3.6.9, 3.8.9, 3.11.5, 3.16.18, 4.28.5, 5.16.21, 6.6.22; Albany Antifederal Committee on, 6.10.10; Citizen on, 6.5.4; Plebian on, 6.11.13
and state legislatures, 6.6.22
suppression of its journals, 3.8.9
unanimity of, 2.7.139
unauthorized acts of, 6.6.3, 6.10.2
usurpation of power by, 2.6.9, 3.14.22
violation of Articles of Confederation, 3.11.9n, 4.2.11
Virginia Resolutions, 2.4.14–16, 2.4.18, 2.4.21, 2.4.26, 2.4.28–35
withdrawal of delegates from, 3.11.5
Constitutional Convention, second
Agrippa on, 4.6.13
Candidus on, 4.9.12
Centinel on, 2.7.17
Citizen on, 6.5.4
Edmund Randolph on, 2.5.35, 2.5.38
George Clinton on, vol. 6, pt. 1, intro.
George Washington on, 6.6.53
[New Hampshire] Farmer on, 4.17.10
Old Whig on, 3.3.46
Philadelphiensis on, 3.9.68, 3.9.81
Plebeian on, 6.11.13
Rawlins Lowndes on, 5.12.2
Richard Henry Lee on, 5.6.4
Samuel Chase on, 5.3.17
constitutional council. *See* executive council; presidential council
Constitutionalists, vol. 3 intro.
constitutions
frequent changes of, predicted, 4.15.4
people's right to alter or annul, 6.14.43

constitutions (*continued*)
permanency of, 4.6.65
rule for dissolution of, 4.4.27
constitutions, state, 2.8.50, 2.8.202
amendment protecting, 5.4.6
comparison of, with federal Constitution, 2.9.26, 4.3.7
and conscientious objectors, 3.9.12
conflicts of, with federal Constitution, 4.4.34
criticism of, 4.7n1
delegation of powers in, 1.65, 3.5.2
discordant principles of, 4.1n1
European admiration for, 3.10.4, 4.3.2
Federal Constitution's threat to, 5.14.10, 5.18.7
and interpretation of federal Constitution, 2.8.199
inviolability of, 3.11.13, 6.5.4
James Monroe on, 5.21.2, 5.21.12
nullification of, 2.9.5, 3.3.13, 3.11.32, 4.3.9, 4.13.13, 5.7.4, 6.1.16
power to destroy, 4.6.1
restrictions on legislatures in, 2.9.102
results of their abolition, 6.12.39
and revision of laws, 3.3.19
separation of powers in, 6.1.31
Sidney on, 6.8.19
and standing armies, 2.9.112, 2.9n76
subordination of, to Articles of Confederation, 4.13.16
constitutions, unwritten, 4.8n1
consuls, diplomatic, 2.8.169, 2.9.160, 2.9.168
consulship, Roman, 2.7.36, 2.7.67, 2.8.178–79, 5.10.2
Continental Congress, first, 4.26.15, 5.16 intro.
continental courts. *See* courts, federal; judiciary, federal
contracts
between individuals and states, 2.9.161
conditions for voiding, 4.4.27, 5.12.4
interpretation of, 2.6.47, 4.3.11
invalidation of, 2.7.167
modification of, 5.16.24
questions concerning, 2.4.55
regulation of, 3.11.13
states forbidden to impair obligation of, 2.9.182, 3.13.5, 4.9.22
contradictions, Anti-Federalist attempts to reconcile, 1.6
convention
for amendment of Massachusetts constitution, 4.13.14
for commercial purposes, 2.8.7
procedure for summoning, 4.13.19
Convention (pseud.), 4.1n1
Convention debates, 2.7.151–52
Convention Parliament, 5.1.6–7, 5.1.11
conventions, state
and amendment of federal Constitution, 2.5.35, 2.8.62, 3.3.40, 3.3.45
Brutus, Jr., on, 6.3.12
characterization of, 2.8.62
dangerous courses facing, 2.8.70
exclusion of Framers from, 4.12.4
and federal convention, 1.7
forum for consideration of Constitution, 5.21.2
Gentleman in a Neighbouring State on, 4.2.11
lack of preparation for their task, 4.13.10
Mercy Warren on, 6.14.50
partisans of monarchy in, 4.28.6
postponement of, 4.13.4
and ratification of Constitution, 2.4.112, 2.5.36, 3.16.3
right of, to judge proposed government, 3.3.43
sanction for Constitution, 2.7.164
and second Constitutional Convention, 4.9.12
and state legislatures, 6.6.22
convicts, 2.8.150, 3.9.27
Cooke, Jacob, 2.6 intro., 2.6n6
Cornelius, *4.10*
and Beard thesis, 4.10n4
corporate bodies, 3.14.4, 3.14.9
corporations, 2.7.36, 2.8.147, 4.3.9
corruption
antidotes against, 5.13.2, 6.12.9, 6.12.19
impossibility of, in popular government, 5.1.53

corruption (*continued*)
infrequent elections and, 2.8.147
in judiciary, 2.9.192
legislators exposed to, 2.4.46, 3.11.36, 6.12.34
Corsica, 3.9.39
Cortes (of Spain), 4.28.4, 5.1.40
Corwin, Edward S., 2.9 intro. n.3, 5.3 intro.
counsel, right to, 2.8.200
counterfeiting, 2.8.214
country, in Anti-Federalist terminology, 1.86n4
Country Journal (Poughkeepsie), 2.8 intro.
Countryman (pseud.), *6.7;* 2.8n3, 2.8n20
Countryman (pseud., Federalist), 6.7 intro. n2
Countryman from Dutchess County (pseud.), *6.6;* 1.89n61
relation of, to Countryman, 6.7 intro.
court officers, 2.4.58
court party (British), 3.9.40, 5.9.9
Court of Requests (Great Britain), 2.9.100
courts
accessibility of, 2.8.16
enlargement of jurisdiction by, 2.8.224, 6.13.24
in Massachusetts, 4.6.8
resentment against, vol. 4 intro.
See also judiciary
courts, federal
amendment to limit jurisdiction of, 5.4.6
under Confederation, 2.8.185
debtors and, 5.16.24
inconvenience of using, 2.7.46
and independence of states, 2.9.7
James Monroe on, 5.21.35
not bound by local laws, 4.6.19
original jurisdiction of, 5.1.89
powers of, 4.6.23
rules governing, 4.6.19, 4.6.23
transfer of cases to, 5.1n59
courts, state
amendments to protect, 5.9.14–15
under Confederation, 2.8.185
impartiality of, 4.9.17
independence of, destroyed, 5.7.7
jurisdiction in revenue cases, 5.4.6
[Maryland] Farmer on, 5.1.89
transfer of cases from, 5.1n59
courts-martial, 2.8.113, 2.8.200
Coxe, Tench, 1.6, 2.5n6, 3.14 intro.
author of American Citizen essays, 2.6n19
author of Freeman Essays, 2.7n84, 3.13 intro. n1
Examination of the Constitution, 3.8n8
Coxe, William, 5.1.78, 5.1.99
credit
of state governments, 2.8.2
state policies on, 2.8.221
credit, bills of, 6.10.4
under Confederation, 4.6.75
congressional control of, 2.4.75, 2.9.5
depreciation of, 2.7.79
reserved to Congress only, 2.4.57, 3.14.12
states forbidden to emit, 3.13.5
See also money, paper
credit, public
and payment of interest on national debt, 6.1.47
restoration of, 2.4.75, 4.9.26
Sidney on, 6.8.27–28
stagnation of, 2.8.206
creditors
laws injurious to, 4.6.10
money owed to, by states, 2.9.162–66
oppression of industrious debtors by, 2.4.77
and paper money laws, 2.8.6
security for, 2.8.61
unfair treatment of, by states, 2.9.180–82
creditors, foreign, 2.5.29, 4.9.17, 4.18.2, 4.25.2
creditors, public
demands of, on new government, 6.1.48
government's inability to pay, 2.7.53
[Maryland] Farmer on, 5.1.56
reasons of, for complaint, 4.6.10
criminal cases
congressional legislation on, 5.16.36
effect of Constitution on, 4.6.21

criminal cases (*continued*)
federal jurisdiction in, 2.4.92
rights of accused in, 3.11.13, 5.14.10
and Supreme Court, 2.9.170
and trial by jury, 2.7.43, 4.17.22
critical period, 1.26, 1.87n11, 1.87n15, 2.7.91, 2.7n45, 2.8.3, 2.8n4, 2.9.2, 3.9.17, 6.11.25
Cromwell, Nathan, 5.4.11, 5.4.13
Cromwell, Oliver, 6.14.123
Denatus on, 5.18.13
dissolution of Parliament by, 5.1.73, 5.10.2
example of tyrant, 2.7.108
kingly power of, 3.4.4
Newport Man on, 4.25.3
use of army by, 2.9.117
cross-examination, 2.8.53, 2.9.177
Crosskey, William W., 2.8 intro., 4.1 intro.
crown lands, 2.4.107
Cumberland County, Pennsylvania, 2.7.184, 3.9.32
Cumberland Gazette, 4.16
currency
circulation of, 4.9.6
depreciated, 5.16.24
scarcity of, vol. 4 intro.
Curtis, George Ticknor, 2.2 intro., vol. 5 pt. 2 intro., 5.16 intro.
Customer (pseud.), *4.16*
customs officers, 5.1.13
Cybles. *See* Sibyl

Daily Advertiser (New York), 3.3n17, 3.11 intro. n1, 6.6.51
Daily Patriotic Register, 6.5.1
Dana, Francis, 4.13.6
Dauphin County, Pennsylvania, 2.7.184, 3.2.3
David, King, 5.1.102
David (pseud.), *4.24*
Dawes, Thomas, 4.26n9
debate, freedom of, 4.9.42, 4.13.13
debt
accumulation of, 6.14.17–19
arrest of federal officers for, 3.4.3
cases of, involving an ambassador, 2.9.169
in cases of libel, 3.11.41
caused by imported luxuries, 2.7.103
Constitution no cure for, 4.23.3(4)
effect of Constitution on, 5.16.10
imprisonment for, 5.2.4
See also debts
debt, domestic
miscalculation of, 3.11.2
payment of, by states, 3.14.11
payment of interest on, in paper, 6.1.47
debt, foreign, 2.4.45, 4.25.2, 6.11.6
danger of war and, 4.17.7
government's inability to pay interest on, 3.10.6
payment of, in gold and silver, 4.9.30
debt, national, 2.9.81
Cincinnatus on, 6.1.41
effect of Constitution on, 4.3.4
Friend to the Rights of the People on, 4.23.3(3)
increase in, 2.5.28
payment of, by Congress, 3.16.17
payment of, from impost revenues, 4.3.20, 5.3.16
Pennsylvania's contribution to payment of, 3.9.84
plan for payment of, 2.9.89
problem of providing for, 3.9.47
responsibility of federal government, 2.7n30, 2.9.63
state contributions toward, 4.9.22
debt, public, 3.3.16, 3.16.19
delays in payment of, 4.6.10
opposing views on, 5.1.54
payment of interest on, 2.8.2, 6.3.10
public's right to information on, 4.2.7
debtors
differences in state policies on, 2.8.221
favored by state governments, 2.9.180–82
and federal courts, 5.16.24
grievances of in Massachusetts, 2.9.176
laws favoring, 4.6.10
property of, 2.8.40
relief of, 2.4.77
debts
authority of legislature to contract, 2.9.5
cancellation of, 2.7.167, 5.1.30

debts (*continued*)
liquidation of, by time and industry, 4.28.8
payment of, forced by Constitution, 5.12.1
states unable to compel payment of, 3.13.5
to and from Union, 2.8.229
debts, municipal, 4.6.33
debts, state, 2.7 intro., 2.8.39, 2.8.209, 2.9.63, 4.1.3
incorporation of, into national debt, 4.6.33
nonpayment of interest on, 4.9.32
owed to individuals, 2.9.162
payment of, by state resources, 4.6.33
Decalogue, 4.9.9, 4.12.5
Decemviri, 3.3.51, 6.1.27
Declaration of Independence
Anti-Federalist appeals to, 1.7
Constitution contrasted with, 5.9.16
Countryman on, 6.7.6
Elbridge Gerry and, 2.1 intro. n2
Mercy Warren on, 6.14.11–13
model for American government, 5.9.1
not unanimously approved, 3.9.56
Rawlins Lowndes and, 5.12.1
Samuel Chase and, 5.3 intro.
Declaratory Act (1766), binding force of Parliamentary Laws, 3.3.12, 3.16.16n, 3.16n10, 5.9n2
declaratory articles (bill of rights), 2.8.197
defaulters, 4.13.28
Defence of the Constitutions of Government of the United States, 2.4n9, 2.7n3, 6.14.108
defense, national, 5.3.10
under Confederation, 4.2.8
expense of, 2.9.90
Federalist emphasis on, 1.30–31
and formation of government, 2.9.4
and partial confederacies, 2.5.28
responsibility for, shared by states, 2.9.86
Deists, 4.23.3(9)
Deity, 3.16.15, 4.18.2. *See also* God
Delaware
compact population of, 2.8.114
instructions of, to Convention delegates, 2.4.13
and New Jersey Resolutions, 2.4.21
religious restrictions in, 3.12.18
representation of, 2.4.45, 2.8.99, 4.5.2, 4.14.2
seduction of, by hope of gain, 4.28.10
small state, 2.4.31
Delaware convention, 4.12.8
Delaware Indians, 5.1.47
Delaware Senate, 2.8.89
Delegate Who Has Catched Cold (pseud.), *5.19*
ratification recommended by, 5.19.2
delegation, all governmental power derived from, 5.13.2
deliberation, wise, 1.61
Deliberator (pseud.), *3.13*
DeLolme (De Lome), Jean Louis
on British constitution, 2.8.102, 2.8.105, 2.8.109, 5.1.75
on division of executive power, 6.1.33
on freedom of press, 2.8.203
Federal Farmer's use of his writings, 2.8nn67–68
on general verdicts, 2.8.190
on judiciary, 5.1.66
on legislative abuses, 5.21n11
on separation of powers, 6.1.33
demagoguery, 3.9.31
Cato accused of, 2.6n4
Centinel accused of, 2.8n73
demagogues, 2.8.113
democracy (form of government)
correspondence of, to one aspect of human nature, 5.18.6
Federalist opposition to, 1.39
Federalist views of, 1.90n19
laws of, distinguished from those of other governments, 4.21.1
imperiled when representatives are chosen by plurality, 2.8.154
[Pennsylvania] Farmer on, 3.14.2
unsuitability of, to large territory, 2.7.17, 2.9.13
William Penn on, 3.12.11–19
democracy (common people), 2.8.97
conflict of, with aristocracy, 5.1.30

democracy (*continued*)
humiliation of, by Senate, 6.1.29
underrepresentation of, in small legislature, 2.8.113
weakness and confusion of, 6.8.14–15
Democratic Federalist (pseud.), *3.5;* 3.6.7, 6.1 intro.
democrats
Anti-Federalists as, 1.40
[Maryland] Farmer on, 5.1.58
Demosthenes, 2.6.48, 5.1.21
Denatus (pseud.), *5.18*
conditional ratification recommended by, 5.18.14, 5.18.15
Denmark
absolutism in, 2.8.178
judicial abuses in, 5.1.67
surrender of liberties by, 5.1.36, 5.1.49
union of executive and senate in, 5.1.31
DePauw, Linda Grant, 2.6 intro., 2.9 intro., 6.7 intro. n1, 6.8 intro., 6.9 intro.
depression, economic, 2.8.206, vol. 4 intro.
Descartes, René, 5.18.17
despotism (despotic government), 2.9.13
alternative to anarchy, 2.7 intro.
alternative to war, 2.7.142
deceptively gentle foundations of, 3.6.52
compatibility of, with republican forms, 5.14.4, 5.14.20
correspondence of, to one aspect of human nature, 5.18.6
establishment of, by new Constitution, 3.3.20, 4.26.6
falsely distinguished from arbitrary government, 5.14.18
and fear, 4.13.21
hereditary, 2.7.122
John Locke on origin of, 2.6.14
in large countries, 2.7.18, 2.7.94
Poplicola on, 4.11.2
possible weakness of, 4.10.15
support for, 2.8.3
Thomas McKean on, 1.51, 4.11.2, 4.13.21
uncertain nature of, 4.6.50
weakening of national character by, 3.9.26
wise administration of, 4.11.2
despotism, Roman, 2.9.117
despots
alleged wisdom of, 4.11.2
representation of people by, 5.5.6
DeWitt, Jan (Dutch leader), 6.8.11
DeWitt, John (pseud.), *4.3;* 4.22 intro.
Deye, Thomas Cockey, 2.4.1
Diamond, Martin, 2.8n9
Dickinson, John
Countryman's imitation of, 6.7 intro.
Fabius, 1.90n20
Farmer's Letters, 2.7.33
inconsistency of, 6.6.8–11
on jealousy of liberty, 2.8.58
revolutionary principles of, 6.14.7
on subversion of colonial legislatures, 2.7.40
dictatorship
American, 1.49, 5.16.11
Roman, 2.7.67, 2.8.178, 5.10.2, 6.13.34
Digby, Lord George, 2.7.112
Dionysius of Syracuse, 4.3.29
diplomatic immunity, 2.9.168–69
diplomatic service, litigation involving, 2.4.89
discipline, military, 5.14.8
discretionary power, 2.9.89
discussion, free
attempts to inhibit, 2.6.9, 2.7.150, 3.9.54, 4.3.25
promotion of, by free press, 4.3.10
disorders, people's weariness with, 2.8.1
dispensing act, 5.12.3
dissention, civil, 3.6.3, 4.3.2. *See also* civil war
District of Columbia. *See* federal city
distrust of government, benefits of, 2.6.48. *See also* jealousy
diversity, necessity of, to a confederacy, 5.1n35
divide et impera (divide and govern)
Federalist application of, 1.47
maxim of princes, 3.12.13
divines. *See* clergy; ministers
dockyards, federal, 2.8.222–23

doctors, at federal convention, 2.7.166
doge, Venetian, 3.6.38, 5.1.25
domestic affairs
  primary concern of people, 2.9.81, 2.9.86
  of states, 4.3.11
domestic employments, in ancient Greece and Rome, 4.6.6, 4.6.49
domestic tranquillity, 2.9.151, 5.14.44
domination, desire for, 2.7.105, 2.7.110, 5.14.14
Domitian, Emperor, 2.6.34, 3.10.1, 5.1.96, 5.1.103
Don Quixote, 4.17.19, 4.28.1
Draconian code, 4.12.1
drunkenness, 1.3n49
Dudley, Edmund, 3.3.16
due process. *See* accused, rights of
Dutch revolt, 6.8.14
dynasty building, 2.8.178

eastern states
  appeals to higher courts in, 2.9.176
  control of carrying trade by, 5.12.2
  democratic character of, 2.8.26
  favored by trade regulation, 2.8.61
  and slavery controversy, 2.4.67
  reimbursement of, for war expenses, 5.12.4
  sufferings of, during Revolution, 5.12.4, 5.12n4
  See also New England
East India Company, 5.12.1
East Indies, 4.6.25
ecclesiastical courts
  examination of witnesses in, 6.1.19
  juries excluded from, 2.8.191
economy
  example of, by Congress, 4.10.8
  imposition of, on federal government, 3.3.38
  misuse of word, 3.15.1
  penalization of, 4.5.2
economy, domestic, 4.1.2, 5.1.82, 5.16.10
Edgar, James, 3.11.56
education, 1.21
  Charles Turner on, 4.18.2
  civic, 1.21
  concern for, in New England, 4.6.48
  Denatus on, 5.18.9–12
  effect of, on human behavior, 4.3.17
  importance of, in America, 4.3.1
  for judges and senators, 2.8.54
  and national strength, 5.18.12
  promotion of liberty by, 2.8.196
  religious, 4.24.3
Edward III (England), 6.8.39
Edward VI, 5.1.41
efficiency, ultimate purpose of, 3.9.20
Egypt, 4.6.68
  plagues of, 4.7.4
elections, 5.6.5, 6.10.3, 6.13.20
  congressional control over, 2.6.46–47, 2.7.73–74, 2.9.51, 3.8.3, 3.16.4, 4.2.4, 4.6.60, 4.10.10, 4.13.28; argument for, 2.8.162; Brutus [Virginia] on, 5.15.1; Cincinnatus on, 6.1.53–55; Farmer and Planter on, 5.2.2; limitation of, 4.15.4, 5.4.7; Patrick Henry on, 5.16.8; Plebeian on, 6.11.16; Republicus on, 5.13.14; Sidney on, 6.9.16, 6.9.21; use of for political advantage, 4.18.1
  constitutional provision for, 3.9.63
  control of, taken from the people, 4.13.28
  Countryman on, 6.7.4
  determination of, by elites, 5.14.31
  efforts to prevent federal interference in, 3.11.26, 4.6.75, 4.15.4
  fixed basis for, 2.9.52
  future abolition of, 3.9.63
  impartiality and security of, 2.8.148–65
  inconvenient locations of, 4.4.6
  mode of, 3.16.5, 4.6.72
  nature and consequences of, 5.10.2
  possible state neglect of, 4.4.3
  postponement of, by Congress, 2.7.100

elections (*continued*)
reasons for postponing, 3.11.25
reasons for relocating, 4.10.10
in state constitutions, 6.1.54
states' loss of control over, 2.8.161, 3.14.18
time of, 2.8.181, 3.11.25
times, places, and manner of, 4.4.2–3
elections, annual, 3.8.3, 3.16.4
abolition of, 4.3.9
in ancient Rome, 5.10.2
Cato on, 2.6.35–37
Consider Arms et al. on, 4.26.5
Cornelius on, 4.10.6
of federal representatives, 4.13.5
Friend to the Rights of the People on, 4.23.3(1)
for New Hampshire General Court, 4.23.3(3)
for old Congress, 2.8.147, 4.4.38
safeguard of democracy, 4.3.14
Thomas Hutchinson's opposition to, 4.28.4
Watchman on, 4.22.4
elections, biennial, 2.6.35, 3.16.4, 4.13.28, 4.26.5
elections, British, 4.6.43, 4.6.59, 5.16.27
elections, congressional, 2.8.158, 5.3.17, 5.16.8
elections, democratic, Federalist abhorrence of, 3.16.3
elections, district, 2.8.151
elections, federal, 3.11.13
elections, free, 2.9.30
elections, location of
congressional power to alter, 3.16.4, 4.23.3(2), 5.9.5
influence of, on outcome, 2.9.52
reason for constitutional provision on, 4.23.3(3)
William Symmes on, 4.5.7
elections, presidential
congressional power to delay, 4.16.2
James Monroe on, 5.21.25, 5.21.34
Republicus on, 5.13.14
Samuel Chase on, 5.3.17
vagueness of Constitution on, 2.6.24
elections, senatorial, 2.8.147, 3.6.16, 4.3.12
electoral college, 3.16.15
electoral districts, 2.8.25, 2.9.52
electoral system, defects of, 2.8.25
electoral votes, 2.4.83
electors
disqualification of, by states, 4.13.29
qualifications of, 2.8.149–50, 2.8.165, 4.13.26
relationship of, with elected officials, 5.16.27
rights of, fettered, 4.2.3
electors, presidential
Candidus on, 4.9.11
Cato on, 2.6.47
choice of, by state legislatures, 2.7.100, 2.8.214
proposal to increase number of, 5.9.9
Republican Federalist on, 4.13.13
unfamiliarity of, with candidates, 5.13.13
Eliagabalus, Emperor, 5.1.106
Elihu (pseud.), 1.22, 4.24.1, 4.24n1
Elisha (prophet), 2.9.54
elites, determination of elections by, 5.14.31
Elizabeth I (England), 5.1.41
Ellsworth, Oliver, 3.3n33, 3.3n35
and committee on salaries, 4.17n6
on divided sovereignty, 1.34
on impost revenues, 6.11n19
Landholder, 2.1 intro., 2.8 intro. n15
Landowner, 2.4 intro.
on superior form of government, 1.99n2
on union with South, 4.26n12
emigration
from Great Britain, 5.1.75
among states, 2.4.36
empire
establishment of, by new Constitution, 4.3.11
Patrick Henry on temptations of, 5.16.2
Shaftesbury on, 3.10.8
Empson, Richard, 3.3.16
energy, governmental, 3.9.98, 3.16.13, 4.9.18, 4.26.2
England
geography of, 2.8.103, 2.8.108

England (*continued*)
illusion of liberty in, 4.25.3
jury system in, 5.1.67, 3.3.53
mixed government of, 4.11.4
monarchy in, 5.16.2
parliamentary check in, 6.8.39
representation in, 2.8.97, 5.16.8
standing armies in, 4.3.29
union of, with Scotland, 5.16.25, 6.4.1–3
See also Great Britain
English history, [Maryland] Farmer on, 5.1.41
Englishmen
inability of, to bring suit against Scots, 5.15.1
rights of, 5.16.24, 6.14.9
Enlightenment, European, 6.14.162
enlistment, voluntary, 2.9.96
entailments, 3.6n10
enterprise, free, 4.6.62
enthusiasm, 3.3.27
entry, right of, 4.3.15, 4.3.21
enumeration, 1.98n30, 4.14.1–2, 5.21n8
ephori, 2.8.97, 2.8.106
Episcopal church, 5.8 intro., 5.8.5
equality
American civil associations founded on, 4.3.1
impossibility of, in large republics, 3.14.9
Massachusetts Constitution and, 4.26.13, 4.26n11
natural right of, 2.6.11
in northern states, 4.6.48
Republicus on, 5.13.2
in state of nature, 2.4.29
equality, federal, 2.4.26
equality, law of, 5.1.93
equality, republican, 2.8.138
equilibrium, between federal and state power, 5.14.13
equity
and Anglo-American jurisprudence, 3.5.6
Grotius on, 2.9.138
meaninglessness of, without law, 2.8.42, 3.5.6
meaning of, in proposed Constitution, 2.8.195, 2.9.137
Pennsylvania Convention Minority on, 3.11.39
and treaties, 2.9.160
equity, court of
and consolidation of states, 3.11.29
suits in, 2.7.41, 3.5.5
error, writs of, 2.9.175, 2.9.183
essences, confusion of names with, 5.14.20
estates, personal. *See* property, private
estates of the Kingdom (Great Britain), 2.4.50, 2.4.54
ethics, social harmony promoted by, 5.8.5
Etting Collection, 5.5 intro.
Europe
admiration for state constitutions in, 3.10.4
American exports to, 3.3.32
America's friends in, 3.9.14
benefits of division of, 5.1.109
contrast of, with America, 6.8.18
difficulty of reform in, 5.19.12
distance of United States from, 2.4.34
distracted state of, 2.7.26, 3.16.3
exclusive charters in, 4.6.63
extinction of liberty in, 5.1.33
government protection of religion in, 4.24.3
interruption of trade with, 4.2.2–3
miserable condition of poor in, 3.9.35
respect of, for United States, 5.16.2
European courts, example of, to Congress, 4.23.3(3)
European dynasties, 5.1.25
European governments,
formation of, 2.6.13
intrigues of, in America, 4.13.26
militaristic nature of, 2.9.87
ministerial powers in, 3.14.17
Senate exposed to influence of, 3.8.3
European nations
alliances of with United States, 4.12.10
duties of, on American products, 4.9.13
error of imitating example of, 6.14.15
possibility of war with, 2.9.90

European nations (*continued*)
standing armies in, 2.9.17, 2.9.99
United States economic pressure on, 4.9.35
United States relations with, 4.6.46
European quarrels, American involvement in, 4.6.59
evidence, legal. *See* testimony, legal
evils
choice of, facing state conventions, 2.8.70
government a choice among, 5.16.3
Examiner (pseud.), *4.4*
on Articles of Confederation, 4.4n5
on people's right to alter constitutions, 4.4n7
reply of, to Vox Populi, 4.4 intro. n1
Vox Populi's reply to, 4.4.9–21
exchange, bills of, 4.3.9
Exchequer, Court of, 6.13.24
growth of its jurisdiction, 2.9.143
jury trials and, 2.7.41
use of legal fictions by, 2.8.224
excise, 2.4.55–56, 2.8.36, 4.5.2
Countryman on, 6.7.7
novelty of, in America, 5.2.2
power of, 3.14.11, 4.6.76
Robert Morris and, 6.1.45
excise, federal, 4.6.75, 4.9.31–32
excise laws, 5.7.5, 5.14.7, 6.2.2
excise officers
creation of, by new Constitution, 4.3.31
duplication of, 3.3.33
search and seizure by, 5.2.2
violation of homes by, 5.7.9
executive
basis of good government, 5.21.24
control of, by one man, 2.8.177, 3.9.81, 4.5.2
Elbridge Gerry on, 2.1.2
Henry Clay on, 1.6n28
in large republic, 2.9.20
legislative powers of, 2.9.203
power of, shared with legislature, 3.12.14, 4.3.12, 4.28.4
representation of the people by, 5.13.2
in representative government, 5.1.71
role of, in legislative process, 5.1.81
Sidney on, 6.8.1–2
executive, federal, 2.4.80–88
under Confederation, 2.5.9
connection of, with Senate, 2.2.4, 2.2.8
limitations on, 5.1n4
and national defense, 2.8.208
role of, in legislation, 2.8.175
strengthening of, 2.8.173
veto power of, 5.21.22
in Virginia Plan, 2.4.16
executive, independent, 5.1.31
executive, plural, vol. 3 intro., 4 10n5
executive branches, two, 3.5.13
executive council, 2.8.170–72, 2.8.178, 3.6.40. *See also* presidential council
executive councils, state, 2.8.91
executive departments, heads of, 2.8.147
executive officers, oath of, to support federal Constitution, 2.9.31, 4.4.34, 4.4.36
executive power
Anti-Federalist ideas on, 1.49–50
combination of, with legislative and judicial powers, 6.1.26
division of, in new Constitution, 6.1.33
enlargement of, by Senate, 6.1.32
evils of combining with legislative, 2.5.22, 3.5.13, 5.15.1
in Great Britain, 2.8.104
limitation of, by legislative, 5.13.5
not suitable for Congress, 2.5.22
Samuel Chase on, 5.3.13
in state constitutions, 2.8.91, 6.1.31
vagueness of, in new Constitution, 2.6.24
expediency, proposed government based on, 6.13.38
expenditures, federal
account of, by Congress, 4.22.4, 4.23.3(3)
increase of, 3.6.17
publication of, 4.9.22, 5.16.8, 5.16.14
export duties, 2.4.55, 2.4.79, 2.9.92, 3.6.31

exports, U.S., carried by foreign ships, 3.3.32
ex post facto clause, 2.7 intro., 2.7.167, 2.8.199
  Centinel on, 3.9n35
  Countryman on, 6.7.13
  purpose of, exposed, 3.16.18
ex post facto laws, 6.13.5
  and common law, 2.8.200
  in federal and state constitutions, 2.8.51
  George Mason on, 2.2.14
  and paper money problem, 5.16.39
  states inhibited from passing, 4.9.22
  in Virginia, 5.16.5
extravagance
  and economic distress, 4.9.18
  ruinous effects of, 4.23.3(3)

Fabius (John Dickinson), on licentiousness of people, 1.90n20
Fabius (George Washington), proposal of, as president, 2.6.7, 2.6.9, 2.6n4
Fabricius, G. Luscinus, 4.25.3
fact, matters of
  appellate jurisdiction in, 2.9.175, 3.11.38–39
  in federal cases, 2.4.92, 2.4.94
  reservation of, solely for juries, 4.15.4
factions
  avoidance of, 2.8.147, 5.9.4
  creation of instability by, 5.10.2
  and frequent changes in government, 4.15.6
  in imperial governments, 3.10.8
  influence of, during Revolution, 2.8.117
  interference of with state representation, 2.7.100
  James Madison on, 5.16n5
  in state government, 2.5.14
  William Symmes on, 4.5.11
  See also juntos; parties
factions, aristocratic, 2.8.97
factions, majority, 1.41, 1.68
families
  aggrandizement of, 2.8.179, 4.26.7
  control of presidency by, 2.8.178, 5.2.3
  dangerous combinations of, 3.6n10
Farmer (pseud.). *See* [Maryland] Farmer; [New Hampshire] Farmer; [Pennsylvania] Farmer
Farmer and Planter (pseud.), 5.2
farmer general, 2.9.69
farmers
  depressed state of, 4.9.34
  distress of, 6.14.17
  impost no advantage to, 4.6.28
  unlikely to be elected as representatives, 2.9.42
Farmers (Swedish social order), 5.1.35
Farmer's Letters (John Dickinson), 2.7.33, 2.7.36
farmers and mechanics, representation for, 2.8.15
Farnese (Farneza), Alessandro, 5.1.47
fasts, legislation of by government, 4.24.4
Fayette County, Pennsylvania, 2.7.184
fear
  danger of, in politics, 3.3.4
  and despotism, 4.13.21
  of government, in republics, 2.9.18
federal (word)
  ambiguity of, 1.9, 1.32
  use of, to deceive people, 3.16.17n
federal city (District of Columbia, ten-mile district), 2.6.27, 2.8.214, 2.8.228
  attraction of strangers to, 4.28.10
  commerce of, 4.6.11
  congressional control of, 4.8.1
  danger to republicanism in, 2.8.222–23
  expense of, 4.9.32
  Friend to the Rights of the People on, 4.23.3(4)
  James Wilson on, 6.1n9
  [New Hampshire] Farmer on, 4.17.3
  possibility of elections being moved to, 4.6.60
  proposal to reduce size of, 5.9.7
  refuge for wellborn bankrupts,

federal city (*continued*)
3.16.2
residence of senators in, 2.9.200
revenue transmitted to, 4.28.1
sanctuary for criminals, 4.28.8
subjection of nation to, 4.12.10
taxation of, 2.8.226
trials in, 5.7.7
William Symmes on, 4.5.2
federal convention. *See* Constitutional Convention, federal
federal districts, 5.16.2
exclusion of state laws from, 2.8.223–24
use of, to expand federal power, 2.8.224
federal establishment, taxes to support, 3.3.33
Federal Farmer (pseud.), 2.8; 1.41, 1.93n6, 2.2n1
authorship of letters of, 2.8 intro.
on bills of rights, 1.70
Brutus and, 2.9n2
Countryman on, 6.6.39–47
on federal legislature, 1.58–59
on Framers, 2.7n2
on government's duty to encourage best in people, 1.19
on happiness of people, 1.31
on judiciary, 1.50
on jury trial, 3.5 intro.
on people's confidence in their government, 1.16
on presidency, 1.49
Publius on, 2.8n33
on representation, 3.4 intro.
on Senate, 1.96n29
shift of, from old to new federalism, 1.33
theoretical importance of, 1.6
federal government
ability of, to attend to local concern, 3.2.7
additional powers required for, 2.7.79
annual expenses of, 4.2.7
authority of, distinguished from that of states, 3.14.8, 5.17.1
balance of, with state governments, 1.32, 5.21.17
control of, by natural aristocracy, 2.8.129
and control of elections, 4.4.3
inability of, to raise a navy, 3.9.29
interests of, discordant with those of states, 6.13.11–13
James Monroe on, 5.21.18–35
judge of its own acts, 2.9.78
lavish spending habits of, 3.3.38
Luther Martin on, 2.4.29
necessity of, 2.8.1
organization of, 2.8.25–34
principles of, 3.12.1
Publius on, 2.9n56
purposes of, 5.3.17
reform of, 3.1n3
rivalry of, with states, 3.3.37
states constituent elements of, 2.4.39–40
federal government
states sufficient check on, 2.4.38
and state taxes, 3.11.13
taxing powers of, 2.9.63
tax policy of, 5.1.59
unequal authority of, in different states, 4.1.3
unpredictability of its future actions, 3.3.34
federal government, new
balance of, threatened by presidency, 5.14.39
bureaucracy under, 5.2.4
combination of national and federal features in, 5.16.22
complex nature of, 4.13.3
constitutional limitations on, 6.13.34
demands of public creditors on, 6.1.48
excessive promises of, 6.1.47–48
expense of, 3.8.3, 5.3.17, 6.10.9, 6.10.12
inability of people to support, 4.9.34
inadequate representation under, 4.3.19
increased powers of, 3.14.11
indefiniteness of its powers, 3.6.19
infinite power of, 2.7.160, 5.16.19
instability predicted for, 6.7.8
lack of balance in, 4.3.19
likely changes in control of, 3.3.51
not a confederation, 2.9.5
Patrick Henry on, 5.16.6

federal government, new (*cont.*)
powers of, dangerous to liberty, 2.9.48
and standing army, 3.9.45
tax increases under, 5.2.4, 6.11.23
taxing power of, 2.9.63
unanimous consent of states needed for, 6.13.38, 6.13.40
vigilance of, against change, 4.3.18
federal government, old
absence of internal checks and separation of powers in, 1.54
bankruptcy of, 5.7.4
insolvency of, 3.10.6, 3.11.3
powerlessness of, 2.4.32
powers of, 5.21.5
state support of, 5.14.44
See also Confederation
federal head, responsibility of, for common defense, 2.8.208
federalism
Anti-Federalist appeal to, 1.7
embodiment of, in Articles of Confederation, 1.9
Luther Martin's definition of, 2.4.27
threatened by national government, 2.1.4–5
federalism, dual, 5.21 intro., 5.21.17
Federalism, New, 1.33–34, 1.36–38, 1.88n55
federalist (name)
Impartial Examiner on, 5.14.25–26
inaccuracy of, 6.7.4, 3.15.2
Luther Martin on, 2.4.43
meanings of, 2.8.72
Melancton Smith on, 6.12.5
origin of, 1.9–10
Sidney on, 6.8.3
Federalist (pseud.), *4.7;* 2.8n28, 2.8n73
Federalist, The
counterpart of Centinel essays, 2.7 intro.
Impartial Examiner's reply to, 5.14n3
reply to Cato, 2.6 intro.
Robert Livingston and, 6.12n3
no. 5, 6.4
no. 9, 2.6n11
no. 10, 1.92n49, 2.9n10, 3.8n4, 3.10n3, 5.8 intro.
no. 15, 1.82n34, 5.20.3
no. 23, 2.9.79–80, 2.9.85–86
no. 24, 2.9.111–12
no. 25, 2.9.127–29
no. 30, 2.9n7
no. 31, 2.9n42
no. 38 (39), 6.6.46, 6.6n21
no. 39, 1.82n38
no. 49, 1.74
no. 55, 1.72
no. 67, 2.6n26
no. 69, 2.6n20, 5.11 intro.
Federalist authors, reasons of, for concealing their identity, 3.9.2
Federalist delegates, past misdeeds of, exposed, 2.8.73
Federalist pamphlets, Luther Martin's criticisms of, 2.4.5
Federalist junto, 3.9.47
Federalist propaganda, 2.7.138
Federalist strategy, 2.8.69
Federalists
and abolition of state governments, 2.9.194
Aristocrotis on, 3.16.17
attempts of, to stifle press, 2.7 intro., 3.9.7, 3.9.55
attitude of, toward slavery, 1.100n20
Beardian view of, 1.3–4
Cincinnatus on, 6.1.51
confidence of, in rulers, 1.50–51
contempt of, for common people, 4.12.10
degree of agreement among, 1.5–6
desire of, for national glory, 5.16n11
distrust of people's judgment, 3.3.44
emphasis of, on administration, 4.11.1
equation of limited government with weak government, 5.14.20
inconstancy of, 6.11.27
lukewarm supporters of Revolution, 2.7.116
in Maryland, vol. 5 intro., 5.4.3
at Massachusetts Convention, vol. 4 intro., 4.13.24
monopoly of newspapers by, 4.3.10
in New York, vol. 6, pt. 1, intro.

Federalists (*continued*)
openness of, 3.9n1
opposition of, to bill of rights, 3.9.43
in Pennsylvania delegation to Constitutional Convention, 3.2.2
points of agreement with Anti-Federalists, 1.5–6
possibility of ultimate agreement with Anti-Federalists, 3.3.45
reliance of, on virtue of rulers, 3.3.50–51, 4.6.71
self-interested motives of, 3.9.19
and separate confederacies, 1.86n2
and standing armies, 2.9.110
views of, on democracy, 1.90n19
views of, on representation, 1.43–45
federalists, pretended, 2.8.72, 2.8n9
federal offices, increase of, 2.4.47, 2.4.118, 2.7.52, 3.6.17, 3.11.55, 4.3.23, 6.3.12
federal officials (officers)
appointment of, 2.8.147, 5.6.5
excessive salaries of, 4.17.5
influence of, in elections, 4.3.31, 4.13.29
and litigation in state courts, 5.1.89
multiplication of, 2.8.169, 4.6.45, 4.9.37
relation of, to state officials, 6.12.31
servants of president and senate, 4.13.29
state power over, 4.6.75
violation of rights by, 3.5.9
federal officials, inferior, 5.9.10
Federal Republican (pseud.), *3.6;* 2.4n24
fee simple, 3.6n10
feigned issue, 3.5.5
feudal system
instability of, 4.6.50
[Maryland] Farmer on, 5.1.107
Field, Samuel. *See* Consider Arms et al.
Filmer, Sir Robert, 5.1.5, 5.1n4
Financier, The (Robert Morris), 2.7.168
Findley, William, *3.1*
Anti-Federalist politician, 2.7.152, 2.7.158
debate of, with Wilson and McKean, 4.6.57
Helvidius Priscus on, 4.12.6
Officer of the Late Continental Army, 3.8
Pennsylvania Convention Minority, 3.11.56
plea of, to delay consideration of Constitution, 3.1.3
refusal of, to attend Constitutional Convention, 3.2n1
fines
excessive, 2.7.55, 2.9.28, 3.11.13, 5.6.5, 5.14.10
imposition of, on delinquent states, 4.4.7–8
fireplaces, taxes on, 2.9.59
fish, export of, 4.9.13
fishing interest, 2.8.98
fishing rights, 3.11.13
Fiske, John, 1.87n15
Fitzsimons, Thomas, 3.2.5
Five Nations (Iroquois), 6.9.9
Florentine republic, 5.1.19, 5.1.81
folk-motes, 5.1.64
force
alternative to persuasion in government, 1.16–17
in formation of governments, 4.3.15, 4.12.1, 6.11.26
necessity of, for defense of liberty, 5.16.2
obedience compelled by, 2.9.48
only check on congressional power, 3.3.12
ruling principle of proposed government, 5.11.5
spirit of people broken by, 2.8.93
Ford, Paul Leicester, 2.2 intro.
on Agrippa, 4.6 intro. n2
on Cato, 2.6 intro.
on Centinel, 2.7 intro. n4
on Federal Farmer, 2.8 intro.
on identity of Brutus, 2.9 intro.
on Officer of the Late Continental Army, 3.8 intro.
on Sidney, 6.9 intro.
foreign affairs
Agrippa on, 4.6.34
censorship of publications concerning, 6.1.5

foreign affairs (*continued*)
federal government and, 2.8.10, 2.8.35
president's role in, 2.6.31
proper sphere of Congress, 4.6.54
states excluded from, 2.8.84
foreign affairs, secretary for, 2.8.181
foreign authority, repudiation of, by Massachusetts officials, 4.24.4
foreign enemies
America's relative safety from, 5.12.3
not deterred by standing army, 3.9.22, 3.9.27
unlikelihood of attack by, 2.4.34
foreigners
eligibility of, for public office, 4.13.26
exclusion of, from eastern states, 4.6.34
imagined reaction of, to new Constitution, 5.14.1
litigation involving, 2.8.224, 2.9.183, 4.6.42, 5.15.1
foreign influence
Anti-Federalist hostility to, 1.20
Washington's warning against, 6.14.100
foreign intrigues, 5.1.53
foreign nations
contempt for America in, 5.7.4
dangers of borrowing from, 2.9.94–95
Federalist desire to imitate, 4.6.45
influence of, in Congress, 2.5.22
litigation involving, 2.4.89, 2.4.91
power to borrow from, 4.22.4
respect of, 2.6.4, 5.16n11
forfeitures, actions for, 3.3.16
Fort Stanwix, New York, 6.9.9
forty, council of (Venice), 3.6.38
Founding Fathers, Anti-Federalists' place among, 1.3
Framers of the Constitution
admirers of natural religion, 3.16.15
base principles of, exposed, 3.9.75
character and ability of, 4.23.8, 6.11.33
Countryman on, 6.6.3–4
disregard of legality by, 1.7–8
distrust of people, 3.11.50
history's judgment of, 3.9.76
Impartial Examiner on, 5.14.10
intentions of, on appellate jurisdiction, 3.5n6
intention to defraud public, 2.7.171
liability of, to error, 5.2.4
mixed character of, 6.3.7
motivation of, by private interests, 3.9.83
respectability of, 2.7n2, 3.6n4, 5.10.2
responsibility of, for new government, 4.27.4
patriotism and good intentions of, 2.9.89, 3.3.14
varied interests of, 4.3.3
wisdom and experience of, 6.3.2, 6.6.30
France
absolutism in, 2.8.178
aristocracy in, 5.1.29
comparison of, with Asian powers, 5.1.111
conquest of Corsica by, 3.9.38
duties of on imports, 4.9.13
James Monroe's mission to, 6.14.94–95
jury trial in, 4.28.4
law courts in, 3.11.40
manipulation of justice in, 5.1.67
[Maryland] Farmer on, 5.1.39
Mercy Warren on, 6.14.138–45
provincial assemblies in, 2.8.103
religious discord in, 4.25.3
request for troops from, 3.16.17
rivalry of, with Great Britain, 5.12.3
standing armies in, 4.3.29
treaty of, with Great Britain (1786), 3.11.43
U.S. debts to, 4.23.3(3), 4.6.27
use of treaties by, to acquire influence, 5.3.20
franchise, 1.89n14, 4.23.3(2)
Mercy Warren on, 6.14.175
See also suffrage
Franco-American Treaty (1778), 3.16.17, 5.16.1, 5.16.2
Frankland, 2.6.16
Franklin, Benjamin, vol. 2, pt. 1, intro., 2.7.5, 2.7n2, 2.9n13, 3.8.8, 4.9.15, 4.12.1

Franklin, Benjamin (*continued*)
on appointment of bishop, 6.6.18
attempt of, to curb freedom of press, 6.6.19
attitude of, toward slavery, 6.6.7
comment of, on Constitution, 6.14.48, 6.14n6
on contrast between Europe and America, 6.8.18
delegate to Federal Convention, 3.11n1
fallibility of, 6.8.5
importance of, in Federalist strategy, 3.16.17
large states favored by, 2.4.37
[Maryland] Farmer on, 5.1n73
moderate Constitutionalist, vol. 3 intro.
on Pennsylvania government, 3.8.10, 6.6.17–18
on presidential salary, 4.12.5
Republican Federalist on, 4.13.10
Franklin, state of, 2.4.106
Franklin County, Pennsylvania, 2.7.184, 3.2.3
fraud
in Constitutional Convention, 4.28.8
in formation of government, 4.12.1
sanctioned by state laws, 2.9.182
fraudulent debtors
interests of, promoted by new Constitution, 2.8.1
Frederick III (Denmark), 5.1.36, 5.1.67
freedom
attraction of immigrants to America by, 6.14.4
encouragement of industry and science by, 4.3.24
natural right of, 2.6.11, 2.9.24
Republicus on, 5.13.2
use of Constitution to subvert, 5.9.2
free inquiry, 5.11.4, 5.18.2
desire to prevent, 2.8.3
society not weakened by, 6.14.134
Freeholder (pseud.), 5.20.3, 5.20n2
freeholders, referral of legislation to, 5.1.113
Freeman (pseud.), 2.7.158, 3.11 intro. n1
Deliberator's reply to, 3.13
reply of to Pennsylvania Convention Minority, 2.7n84, 3.11n15
on state sovereignty, 3.13n1, 3.14.14
on treason laws, 3.14n11
Freeman's Journal (New Hampshire), 3.3n17
Freeman's Journal (Philadelphia), 2.7, 3.9, 3.13–15
Freeman's Oracle, 4.17, 4.23
French Directory, 6.14.92, 6.14.95
French Revolution, 6.14.81, 6.14.90, 6.14.142–45
Friend to the Constitution (pseud.), 5.3 intro. n2
Friend of the Republic (pseud.), *4.23.4–8*
Friend to the Rights of the People (pseud.), *4.23.1–3*
frontier, defense of, 2.9.121–22, 2.9.125–26, 3.4.5
frugality, 3.10.7
Congress and, 4.23.8
in government, 4.23.3(3)
increase of, 4.3.2
national recovery aided by, 6.3.10
functions, separation of, and separation of powers, 1.60–63
funding system, 6.14.70
future life, belief in, 2.4.108, 3.16.15

Galba (pseud.), 3.9.2, 3.9.5, 3.9.51, 3.9n2
Galba, Emperor, 4.12.4
Gallatin, Albert, 3.11n2
game laws, 3.11.13
Gaul, 4.12.6
Gazette of the State of Georgia, 5.9
general government. *See* federal government
general welfare, 2.7.11, 6.13.6
all objects of government included in, 2.9.150
authority of legislature to interpret, 2.9.5, 3.6.19
promotion of, by Confederation, 5.14.44
significance of, 2.7.96
general welfare clause
Countryman on, 6.7.13
ineffectiveness of, 2.9.78
Pennsylvania Convention Minor-

general welfare clause (*cont.*)
ity on, 3.11.21
sinews of new Constitution, 4.5.20
Sydney on, 6.9.13, 6.9.30
use of, to violate religious freedom, 3.13.5
vagueness of, 2.9.57, 2.9.77
William Symmes on, 4.5.2
general will, Mercy Warren on, 6.14.8
Geneva, law of, 5.1.82
Gentleman in a Neighbouring State (pseud.), *4.2*
gentry, 5.1.72, 5.3.20
George II, 4.25.3
George III, 3.9.15, 6.14.124
insanity of, 6.14.79
rejection of American petitions by, 3.9.32
suspensive power of, 5.13.14
Georgia
contrast of, with New Hampshire, 2.9.18
fear of Indian war in, 4.28.9
and importation of slaves, 5.12.1
indivisibility of, 2.4.101–2
loss of slaves by during Revolution, 4.26.10
[Maryland] Famer on, 5.1.113
religious restrictions in, 3.12.18
representation of, 2.4.45, 4.14.1–2
size of, 2.4.34
unicameral legislature of, 2.8.89
vote of, against prohibition of slave trade, 2.4.65
vote of for unequal representation, 2.4.34
Georgian (pseud.), *5.9;* 1.94n24
Germanicus Caesar, 5.1.103
Germans
in ancient times, 5.1.64
in Pennsylvania, 6.6.18
Germany (Germanic body, Holy Roman Empire)
governmental powers in, 2.8.205
jury trial in, 4.28.4
political example of, 5.1.80
poor example of confederacy, 6.12.4
royal prerogative in, 5.16.36
Gerry, Elbridge, *2.1;* 1.4n3, 1.51, 6.14n17
cited by Agrippa, 4.6.1, 4.6.3
delegate from Massachusetts, 4.13.6
Federalist attacks on, 2.8.73, 2.8n52, 4.19.4
identification of, as Columbian Patriot, 4.28 intro.
James Warren and, 4.13 intro.
on leveling spirit, 1.89n12
Luther Martin on, 2.4.27
motives of, 4.12.9
non-signer, 2.5.31, 3.2.7, 4.12.1
Objections to Signing the National Constitution, 2.1
Richard Henry Lee and, 5.6 intro.
trustworthiness of, 4.19.3
Gibbon, Edward, 5.1.53, 6.14.147
Glencoe massacre, 5.2.4
God
acknowledgment of, in Constitution, 4.24n1
America's neglect of, 4.14.7–8
belief in, 2.4.108
governance of universe by, 2.4 intro. n9, 4.11.2
human responsibility to, 5.8.3
law of, 2.9.4
witness to union of states, 2.4.112
See also Deity
gold
export of, 3.10.5
power to coin, 2.4.76
golden age, 2.9.2
Golden Bull, 5.1.74
Goldsmith, Oliver, 6.8.7
good behavior, tenure of office during, 2.4.82, 2.8.186, 2.9.188–92
good faith, Constitution's violation of, 4.13.16
Gore, Christopher, 4.12 intro.
Gorham, Nathaniel, 2.4.19, 2.9n29, 4.6n32, 4.12.10
appointment of, as delegate, 4.13.6
on democratic government, 1.90n19
motives of, 4.12.9
government
alterations in, 2.8.58, 5.6.1
appetite of, for revenue, 6.12.37
best form of, 3.12.4
branches of, 2.9.138, 2.9.197, 2.9.203, 3.12.14

government (*continued*)
criteria for judging, 5.14.2
degeneration of, 4.5.12
dissolution of, 4.13.13
effect of, on people's character, 1.19
encroachment of, on rights of people, 6.11.2
Englishman's natural jealousy of, 5.1.60
Federalists' positive attitude toward, 1.71–72
forms of, 2.7.160
fundamentals of, 5.14.25
history of, 2.4 intro. n9
importance of good foundation in, 5.6.1
influence of, on morality, 3.9.9
instituted to restrain private injuries, 2.9.24, 4.4.16
means of securing independence of, 3.16.6–9
periodic revision of, 5.19.7, 5.19.9–12
purposes of, 2.9.41, 4.26.2, 4.28.3, 5.16.2
reflection of community by, 2.6.34
reserved by Providence for well-born, 3.7.2
right to, 5.3.15
servant of people, 3.9.32, 5.13.2
substitute for natural law, 5.13.2
and surrender of natural liberty, 2.9.24
universality of, 4.6.68
unwillingness of, to limit taxation, 4.3.23
William Penn on, 3.12.3
government, arbitrary
Republican Federalist on, 4.13.18
conditions under, 4.28.13
connection of, with civil law, 6.1.21
despotism and, 5.14.18
distinguished from free government, 2.9.14, 5.14.2
judicial department most prone to, 2.8.185
See also despotism; tyranny
government, bad, good administration no cure for, 3.12.4
government, frame of. *See* constitution
government, free
best features of, 2.8.77
and Creator's design, 5.21.3
distinguished from arbitrary government, 5.14.2
eclipse of bigotry under, 5.1.105
foundations of, 4.28.2
enjoyed by small fraction of mankind, 2.7.105
rulers and people united by, 2.9.45
stronger than tyrannical government, 3.3.53
three forms of, 2.8.10
government, limited, equated by Federalists with weak government, 5.14.20. *See also* limited government, doctrine of
government, local, 2.4.44, 2.6.20, 2.8.208, 2.8.213
government, military, 3.3.31, 4.22.3
government, principles of, variation of according to circumstances, 4.13.3
government, science of,
abstruseness of, 2.6n6, 2.7 intro., 2.7.3, 2.7.164
lack of advancement in, 6.14.114
innovations rare in, 1.2n2
partial and vague information about, 2.8.74
and taxation, 5.16.25
Government of Nature Delineated (Aristocrotis), 3.16
governorships, American, 2.8.91
Grand Council (Venice), 3.6.38
grand inquest, 4.7.1
grand jury, 2.8.200, 4.15.2, 4.15.4. *See also* jurors; jury system; jury trial
Grayson, William, 1.29, 5.16 intro.
Great Britain
accountability of ministers in, 2.6.44
agreement on fundamentals in, 3.9.90
American products excluded from, 2.7.87
American treaty with (1794), 6.14.77–78, 6.14.80, 6.14.82–83
America's heritage from, 5.16.2
annual approval of military expenditure in, 2.8.220

Great Britain (*continued*)
aristocracy in, 5.1.27
Blackstone on jury trial in, 4.17.22–23
contrasted with U.S., 2.9.44, 5.14.37
debts owed to, 4.25.2
direct taxation in, 2.9.73
duties of, on imports, 4.9.13
elections decided by plurality in, 2.8.152
exclusion of poor from Parliament in, 5.16.27
exports to, 3.10.3
friends of liberty in, 3.9.40
ill-timed policy of, 4.3.23
imports from, 4.9.18
indecisiveness of, during Revolution, 3.9.41
ineffectiveness of controls on army in, 4.23.3(4)
influence of monopolies in, 4.6.25
Mercy Warren on, 6.14.146–48
misery of poor in, 4.2.4
occupation of western territories by, 4.25.2
"one entire government" in, 2.8.208
openness of government in, 5.16.21
participation of, in slave trade, 4.27.3
party conflict in, 3.9.90
party of freedom in, 3.9.38
political turbulence in, 6.12.40
population of, 4.13.25
possible war with, 2.9.121–22, 3.16.16
postwar problems of, 6.14.79
reaction of, to Constitution, 3.9.40
rebellion against, 2.4.68, 3.3.20
representation in, 2.8.97, 4.13.25
resistance to backed by whole people, 3.9.56
restriction of trade with U.S., 4.6.46
rivalry of, with France, 5.12.3
treaty of, with France (1786), 3.11.43
U.S. ambassador to, 4.9.14
use of treaties by, to acquire influence, 5.3.20
violation of treaties by, 4.25.2
Virginia and, 5.16.12
withdrawal of allegiance from, 3.9.80
See also Bill of Rights, British; constitution, British; England
Great Compromise, 2.1 intro., 2.4 intro., 2.4.34–37
debate over, 2.4.38
John DeWitt on, 4.3.16
Luther Martin's reservations on, 2.4.36
proposal for additional consideration of, 2.4.37
greatest happiness for greatest number, 16.14.39–40
greatness, national, 3.9.26
Patrick Henry on, 1.30–31
United States' ambition to achieve, 3.9.25–26
Greek divinities, 5.1.106
Greek states, ancient
Amphictyonic Council, 2.4.30
destruction of by corruption, 6.12.19
government finances of, 2.8.205
irregularities of, 4.6.6, 4.6.49
Philip of Macedon and, 4.12.1
religion in, 3.16.14
small extent of, 2.9.12
standing armies and, 4.3.29, 6.1.23
Greenleaf, Thomas, 2.7.144, 2.7.163
Grenville, George, 6.6.33
Grenville, Baron (William Wyndham Grenville), 6.14.80
Grisons, 5.1.76
Grotius, Hugo, 2.9.137–38
Gustavus III (Sweden), 5.1.35, 5.1.95

Habeas Corpus Act
English liberties, 2.8.104, 3.3.23
power to suspend, 2.4.72
habeas corpus benefits, 2.7.55, 2.9.175, 6.13.5
anomaly of constitutional provision for, 2.9.30
constitutional right to, 2.8.80, 2.8.86
establishment of, 2.8.199, 3.11.32
Patrick Henry on, 5.16.38
protection for, 1.66, 2.9.103, 5.9.8

habeas corpus benefits (*cont.*)
secured by Common Law, 2.8.200
and state courts, 4.15.4
suspension of, 3.4.5, 4.3.9
and trial by jury, 2.8.51
habits, civil, and civil institutions, 4.7n1
Hale, Sir Matthew
on bill of rights, 5.1.9
on general verdicts, 2.8.190
on trial by jury, 4.28.4
Hall, John, 5.2n1
Hamilton, Alexander, 1.83n4, 2.9n29
on aristocracy, 6.12n17
attack of, on George Clinton, 2.6 intro. n9
on authority for national defense, 2.9.85
author of Phocion Letters, 6.6n21
on balance in government, 6.13n3
and Cato letters, 2.6 intro.
on checks and balances, 1.54
and committee on salaries, 4.17n6
on demagoguery in large republic, 1.91n38
at Federal Convention, 6.6.30
on government control of resources, 6.12n33
Mercy Warren on, 6.14.70
at New York convention, 2.6n14, 6.12 intro.
on offensive war, 1.31
on overdemocratic nature of proposed government, 1.7n46
on popular confidence in government, 6.12n13
on reducing representation, 6.12n14
on state legislatures, 6.12n30
on vices of rich and poor, 6.12n18
on virtues of effective administration, 1.41–42
and Whiskey Rebellion, 6.14.97n
Hampden, John, *4.15;* 4.28.4, 5.1.67, 5.1.73, 6.14.123
Hampshire Chronicle, 4.10
Hampshire County, Massachusetts, 4.13.29, 6.14.33
Hampshire Gazette, 4.26, 4.27, 6.1 intro. n4
Hancock, John, 3.9.79, 4.9.15
governor of Massachusetts, 6.14.34
James Warren and, 4.13 intro.
at Massachusetts convention, vol. 4 intro.
Hanna, John A., 3.11.56
Hannibal, 5.1.108
Hanno, 4.6n30
Hanover, House of, 3.3.23
Hanson, Alexander Contee, 5.1 intro., 5.1n1
on constitutional amendments, 5.4nn4–6
Maryland convention adjournment, 5.4.11
Maryland convention amendments committee, 5.4.4
reply of, to Maryland Convention Minority, 5.4 intro.
See also Aristides
happiness, individual, linked to happiness of all, 3.9.73
Harding, Samuel Bannister, vol. 3 intro.
on Brutus, 2.9 intro.
on Candidus, 4.9 intro. n1
on Charles Turner, 4.18 intro.
on Cornelius essay, 4.10 intro.
on Hampden essays, 4.15 intro.
on John DeWitt, 4.3 intro.
on Watchman, 4.22 intro.
Harrington, James, 6.14.10
Harris, John, 3.11.56
Harrison, Benjamin, 5.2n1, 5.4.11
Harvard College, 4.6 intro.
Havana monopoly, 2.7.171
Hazael (biblical king), 2.9.54
Hazard, Ebenezar, 2.7n68
Hazen, N. W., 4.5 intro. n3
Heath, William, 4.26n12
heathen. *See* pagans
Heaven, Kingdom of, 4.26.8
Heister, Joseph, 3.11.56
Helvetian League. *See* Swiss confederation
Helvetius, Claude Adrien, 4.28.2
Helvidius Priscus, *4.12*
Henry VII (England), 5.1.41
Henry VIII (England), 3.3.16, 5.1.41
Henry, Patrick, *5.16;* 1.8, 1.20, 1.27, 1.30–31, 1.35, 1.52, 2.6n21, 2.8n5
accused of having pro-British sympathies, 5.16.32
appeal of, to posterity, 5.16.6

Henry, Patrick (*continued*)
on bill of rights, 1.67
on British constitution, 1.58
career of, 5.16 intro.
on complexities of proposed government, 1.54
devotion of to Union, 5.16 intro.
equivocal terminology of, 1.86–87n4
Federalist attitude toward, vol. 5, pt. 2, intro.
on Framers, 5.16.1
on meaning of "federal," 1.9
on monarchy, 3.9n37
on separate confederacies, 2.7n75
southern Anti-Federalist leader, vol. 5, pt. 1, intro.
speeches of, at Virginia Convention, *5.16*
on states as preservers of liberty, 1.15
on tyranny of rulers, 1.40
on union, 1.24
Herbert, Edward, 6.14.146
Hesse-Cassel, prince of, 3.16.10
hierarchy, social, 3.16.3
high crimes and misdemeanors, 2.9.131, 2.9.192
highways, repair of, 3.3.3
Hillsborough, Viscount (Wills Hill), 4.28.4, 6.6.33
history
contempt for lessons of, 5.1.57
Edward Wortley Montague on, 6.8.33
lessons of, regarding abuse of power, 3.14.22, 4.5.12
[Maryland] Farmer on, 5.1.52
History of the Rise, Progress, and Termination of the American Revolution, 4.28 intro.
excerpts from, *6.14*
Hobbes, Thomas, 6.14.146
Hoge, Jonathan, 3.11.56
Holland
abolition of elections in, 6.8.2n
aristocracy in, 5.1.28
attempt to establish despotism in, 5.1.38
example of confederacy, 5.16.2
exclusive charters in, 4.6.25
executive in, 2.8.178
finances of, 2.8.205
Melancton Smith on, 6.12.4
Newport Man on, 4.25.4
political example of, 5.1.80
power of stadtholder in, 5.9.10
regencies of, 4.6.60
requisitions for defense funds in, 2.8.208
ruin of, by ambition, 5.16.11
treaties of, with other nations, 4.6.46
U.S. alliance with, 5.16.1, 5.16.2
U.S. debts to, 4.6.27, 4.23.3(3), 4.25.2
Watchman on, 4.22.2.
See also Netherlands, United Provinces of the
Holstein, House of, 5.1.25
Holt, John, 6.6.19, 2.8.190
Home Department, secretary of, 2.8.176
Homer, 5.1.21
homogeneity
federalists on, 1.45
importance of, in republics, 1.19–20, 2.9.16
honor, importance of, in monarchies, 4.13.21
Honorius, Emperor, 4.12n7
Hopkinson, Francis (Little Fiddler)
controversy of, with Benjamin Workman, 2.7 intro., 2.7.177
"New Roof" parable, 3.11 intro. n1
Hosea (prophet), 6.7.6
Hottentots, 5.1.19
House of Commons
bribery in, 5.15.1n, 5.16.2
coercion of, by army, 2.9.101
comparison of, with House of Representatives, 5.3.20, 6.1.29
debates on elections in, 4.28.4
elections for, 4.23.3(2)
and power of purse, 2.8.124
ratio of members to population, 2.9.44
size of, 4.2.5
superiority of, to king, 5.16.14
See also Parliament
House of Delegates. *See* House of Representatives
House of Lords
British high court, 2.8.186, 2.8.194

House of Lords (*continued*)
during Commonwealth, 5.1.73
comparison of, with U.S. Senate, 2.4.50, 5.13.13
Cornelius on, 4.10.21
money bills and, 4.2.6
power of, to correct judicial decisions, 2.9.187, 2.9.191
role of, in British system, 5.16.14
See also Parliament
House of Representatives
and appointment of officials, 2.8.169
Cassius on, 1.51
Cincinnatus on, 6.1.29
concealment of proceedings by, 5.16.8
and constitutional council, 2.2.6
corruptibility of, 4.2.6
defects of, 1.18, 2.2.2
democratic element of proposed Constitution, 3.4.2
democratic features of, 3.16.4
divorce of, from people, 2.9.42
election of members, 2.6.47, 3.11.13
expense of, 2.8.117
first branch of legislature, 2.4.16
George Clinton on, 6.13.21
Impartial Examiner on, 5.14.33
impeachment power of, 2.4.87, 3.16.15
ineffective check on federal power, 5.6.2
ineffective check on Senate, 2.7.49
ineffective protector of people's rights, 2.6.43
inequality of states in, 3.6.12
influence of Senate on, 4.3.14
John DeWitt on, 4.3.13, 4.3.14
Luther Martin on, 2.4.38
rivalry of, with Senate, 2.4.51, 4.13.28–29
security for states, 2.6.47
size of, 2.8.22
and treaty-making power, 2.2.10, 2.8.147, 3.3.14
undemocratic character of, 2.8.145
unrepresentative character of, 3.11.34, 3.11.35, 4.3.14, 5.3.20
houses and buildings, taxes on, 2.9.59, 2.9.92
Huguenots, 3.3.27
human nature
depravity of, 1.94n4, 4.3.19, 4.26.5, 5.14.2, 6.8n2
inconsistency of, 3.10.1, 4.28 intro.
propensity of, to tyrannize, 2.4 intro. n9
unchanging character of, 5.18.6
human race, unity of, 4.27.3
Humble, John (pseud.), *3.7*
Hume, David, 2.6.43, 3.5.10, 4.3.28, 6.14.146
Humphry Hocus (Jonathan Swift), 3.3.51
Huntington, Samuel, 5.1n16
Hutchinson, Thomas, 4.28.4

idolatry, 3.3.51
ignorance
relationship of, to confidence, 5.1.19
of southern lower classes, 4.6.48
and tyranny, 3.12.7
immigrants, taxation of, 2.4.64, 6.7.5–6
immigration, 6.10.6
in Declaration of Independence, 6.7.6
encouragement of, 4.13.26
federal control of, 3.13.5, 6.1.12
immigration, voluntary, southern states unlikely to benefit from, 5.12.3
Impartial Examiner (pseud.), *5.14;* 1.10
on growth of popular apathy, 1.75
on popular confidence, 1.84n11
theoretical importance of, 1.6
impartiality
not to be expected from public men, 2.8.125
of Philadelphia printers, 3.9.5, 3.9.23, 3.9.55
impeachment, 2.4.16, 2.8.33, 4.5.2
and appointment of officers by legislature, 2.8.176
Cassius on, 5.15.1
of convention delegates, 6.6.20
dangers of Senate involvement in, 3.11.42
in Great Britain, 5.15.1

impeachment (*continued*)
House of Representatives and, 2.8.140, 6.1.29
inadequate provision for, 2.4.87
ineffectiveness of, 5.6.2, 5.11.7
James Monroe on, 5.21.23
and judicial power of Senate, 3.4.3, 6.1.26–27
in New York State, 6.9.28
of president, 2.4.87–88, 5.21.34
of representatives, 4.10.7
of senators, 2.5.41
of Supreme Court justices, 2.9.184
impeachment, power of
and prevention of official misconduct, 2.8.170
relationship of, to sovereignty, 3.14.15
imperium in imperio, 6.13.9
import duties, 2.4.55
limited nature of, 2.9.63
national government's control of, 2.4.79, 3.6.31
source of federal revenue, 3.3.34–35
Vox Populi on, 4.4.21
imports, 6.11.6, 2.7.66
congressional power to prohibit, 6.1.12
decline of, 6.1.42
discouragement of, 4.3.5
evil effects of, 2.7.103
federal control of, 2.8.10, 2.8.35
Mercy Warren on, 6.14.20
Publius on, 2.9n64
state power to exclude, 2.8.84
impost, 2.4.55–56, 6.10.4
additional powers for Congress, 3.9.24
adequacy of, for federal revenue, 4.6.77
amendment concerning, 5.4.7
application of revenue from, 4.6.29
Cincinnatus on inadequacy of, 6.1.41–42
change of attitude toward, 4.12.10
comparison of, with other sources of revenue, 2.8.209
on domestic produce and manufactures, 4.5.14
equalization of, 3.2.7, 4.5.15, 4.5.16, 4.9.35
federal control of, 3.3.33, 4.3.9, 4.5.2
on importation of slaves, 3.13.3
increase of, for delinquent states, 5.7.6
and internal police, 2.9.92
legitimate congressional concern about, 5.9.3
limitations on, 4.6.42
main source of federal revenue, 2.7.52
in New York, 6.11.19
oppressiveness of, 5.1.13
and payment of foreign debt, 4.9.30
[Pennsylvania] Farmer on, 3.14.11
proposal of, by Confederation government, 2.8.205, 2.9.88
revenue derived from, 4.3.20, 6.11.19–20, 6.11n19
impost, 5 percent
Cincinnatus on, 6.1.45
proposal for, 3.2n1
rejection of, 3.11.2, 4.5.9
Robert Morris on, 6.8.29
Sidney on, 6.8.1, 6.8.4
impost officers, 4.3.31
imposts, state
abolition of, 6.1.43
assignment of, to general fund, 5.12.2
congressional consent required for, 2.9.5
surrender of, to federal government, 4.6.33
impressment, 2.9.96
imprisonment, 2.4.72, 3.5.9, 5.14.10
inconstancy, human, attempts to correct by constitutional means, 6.12.7
indebtedness, notes of, 2.9.162, 2.9.166
indentured servants, 2.4.16
independence
of judges, 2.9.197
and liberty, 3.9.37
loss of, by states, 5.14.4
natural right of, 2.6.11
independence, American
opponents of, among Framers, 3.11.5

independence, American (*cont.*)
role of states in winning, 3.14.20
unanimous support for, 2.5.24
Union essential to, 5.12n7
Independent Chronicle (Boston), 2.2 intro. n6, 4.9, 4.12, 4.14
Independent Chronicle (Virginia), 5.7
Independent Citizen (pseud.), 3.2n2
Independent Gazetteer (Philadelphia), 2.7, 3.3, 3.4, 3.7, 3.8, 3.9, 3.10, 3.12
pressure on, to cease publishing Anti-Federalist articles, 3.9.7
India (Indostan)
American trade with, 4.6.63, 4.6.78
aristocracy in, 4.6.68
oppression of poor in, 3.9.35
Indian affairs
federal control of, 2.8.10, 2.8.35
ordinance regulating (1786), 6.9.9
Indians, American
assimilation of, 5.16n2
government of, 4.6.68, 5.1.80
land agreements with, 6.9.6
protection against, 2.9.121–22
relations of states with, 6.9.9
trade with, 2.8.214, 2.9.126
treaties with, 5.20.4
war with, 2.9.90, 3.5.12, 6.6.36, 6.14.77–78
and western militia, 2.4.62
indictment, 4.15.4
indigo, 4.5.2
individual
apparent opposition of, to majority interests, 5.1.15
defense of, against majority, 4.6.73
rights of, 2.4 intro. n9
individuals
Constitution an agreement among, 3.11.30, 4.6.69, 4.16.12, 5.1.12
government of, 3.8.3
industriousness, encouragement of, 3.16.7
industry
characteristic of free peoples, 4.6.5
effect of Constitution on, 5.16.10
freedom and, 4.3.14, 4.6.5
increase of, 4.3.2
John Marshall on inducements to, 5.16n23
penalization of, by Constitution, 4.5.2
U.S. recovery aided by, 6.3.10
industry, American, benefits to, from decay of trade, 4.2.3
industry, spirit of, 2.9.86
ineligibility for office, 2.8.169, 2.8n100, 5.13.4
inequality, sources of, 1.57
influence, system of, 2.8.37, 2.8n26
Ingersoll, Jared, vol. 3 intro., 3.2.5
inheritance laws, 3.11.13
innovation
danger of, 4.6.58
Denatus on, 5.18.4
encouragement of, by American Revolution, 2.7.4
Hampden on, 4.15.6
Impartial Examiner on, 5.14.1
jealousy of, 2.7.164
Patrick Henry on, 5.16.23
Samuel on, 4.14.10
Sir William Temple on, 4.13.16
Inquisition, 4.27.5
inspection laws, 3.14.18
installment law, 5.12.1
insurrection
under Confederation, 2.5.4, 2.5.13
and economic distress, 6.14.23
federal responsibility for suppressing, 2.4.103, 2.9.86
and insurance of domestic tranquillity, 2.9.151
[Maryland] Farmer on, 5.1.30
Publius on, 2.9n73
suppression of, by militia, 2.4.60, 3.11.58
suppression of, by standing army, 5.1.48
See also rebellion
insurrection, general, unlikelihood of, 4.5.19
interest, strongest tie between men, 2.7n5
interest (monetary)
payment of, by delinquent states, 5.16.27
on public debt, 2.8.205, 3.10.6, 6.3.10

interest, aggregate (general)
difficulty of pursuing in representative government, 5.5.6
promotion of, by representatives, 1.45
interest, mutual, source of union, 1.24–25
interested combinations, 2.8.95, 2.8.147
internal matters
Congress and, 2.9.81
powers relating to, 2.8.35
intolerance, 3.3.27–28
intrigue, role of, in government, 2.7.107, 5.1.113
invasion
America's relative safety from, 2.9.90, 6.5.4
defense against, 2.4.60, 2.9.86
Mercy Warren on possibility of, 6.14.157
and need for standing army, 4.3.32
projects for, 6.1.24
and suspension of Habeas Corpus Act, 2.4.72
invasion, threat of, excuse for postponing elections, 2.7.100, 3.11.25
Iredell, James, 1.51, 2.2 intro., 2.2n1, 2.2n3, 2.2n7. *See also* Marcus
Ireland, 4.6.25, 4.6.53, 4.6.76, 4.25.3
ironworks, 3.3.32
isolationism, 1.21
Israel, ancient, example of, 4.23.3(1) 5.19.10, 6.7.8, 6.12.7
Italy, 4.28.4

Jackson, Andrew, 1.88n42
Jacobite rebellion, 5.1.75
Jacobitism, 4.3.25
James II, 5.1.6
janissaries, 2.9.107, 3.9.22, 3.11.49, 5.1.100
Jay, John
on decline of public spirit, 1.9n17
on Framers of Constitution, 3.6n4
negotiations of, with Britain, 6.14.77–78, 6.14.80
negotiations of, with Spain, 5.16 intro.
See also Citizen of New York
Jay Treaty (1794)
opposition to, 6.14.96, 6.14.98
ratification of, 6.14.82–83
jealousy
basis of objections to new Constitution, 4.4.10
and formation of government, 4.4.16
of people toward their representatives, 2.9.49
among states, 2.5.10
usefulness of, in republics, 5.12.1
Jefferson, Thomas, 2.2 intro., 2.2n1, 3.11n2
on disputes between branches of government, 1.75
and James Monroe, 5.21 intro.
and John Francis Mercer, 5.1 intro.
on Patrick Henry, 5.16n1
on republican spirit, 1.99n10
Jeffrey, William, 2.9 intro. n4, 2.9 intro. n8, 2.9n2, 2.9n17, 2.9n87
Jenifer, Daniel of St. Thomas, 2.4.34n
Jensen, Merrill, 1.87n15
on Brutus, Jr., 6.3 intro. n2
on idea of nationhood, 1.24, 2.8n7
and reassessment of Anti-Federalists, 1.4
Jesus Christ, 3.16.14
Jewish polity, ancient, 3.16.14. *See also* Israel, ancient
Jews
dispersion of, 5.19.10
eligibility of, for public office, 2.8.150, 4.22.4
Jiménes (Ximénes) de Cisneros, Francisco, 4.28.4, 5.1.40
John (king of England), 3.3.23, 4.9.31
Jones, J. C., 4.6n32
Jones, Willie, 2.8n5
journals
of Congress, 4.5.2
of Constitutional Convention, 4.28.8
judges
appointment of, 4.4.39
in civil law system, 2.8.192
election of, 2.9.197
exclusion of, from Congress, 4.21.1

judges (*continued*)
friends to government, 3.3.53
incapacity of, 2.9.191–92
and juries, 6.1.15
nomination of, 2.5.41
role of, in trials, 6.1.19
rotation of, in office, 2.8.147
salaries of, 2.8.186, 2.8.188, 2.9.191
support of, for Constitution, 4.21.1
suppression of facts by, 5.1.66
upper-class origins of, 2.8.54
wide discretion of, 2.8.185
judges, federal
appointment of, by Congress, 2.4.16
control of, by large states, 2.4.17
dependence of, on Congress and president, 3.11.41
favoritism of, to federal officers, 5.16.6
power of, to void state laws, 5.3.16
and punishment of tax defaulters, 3.7.2
removability of, 2.9.192
judges, Israelite, 4.6.68
judges, state
choice of, 4.22.4
and federal laws, 4.6.40
terms of office, 2.8.92
judicial officers
at Constitutional Convention, 6.5.4
oath of, to support federal Constitution, 2.9.31, 4.4.34, 4.4.36
judicial officers, federal, independence of people and legislature, 2.9.130
judicial power
aid to legislature, 2.7.96
arbitrary and despotic tendency of, 2.8.185
combination of, with legislative and executive, 6.1.26
limitation and definition of, 2.5.41
nature and extent of, 2.9.132
medium by which government makes itself felt, 2.9.130
Plebeian on, 6.11.15
Samuel Chase on, 5.3.13
judicial review, 2.9.187, 2.9.195
Congress and, 2.9.147
Brutus and Publius on, 1.50 2.9n97
by Supreme Court, 2.7.168
judiciaries, state
adequacy of, to secure justice, 2.9.180, 2.9.183
competence of, 2.4.58
federal threat to, 2.4.89, 2.7.14, 2.7.41–42, 2.8.16, 5.14.9
organization of, 2.8.92
and state financial problems, 2.9.181
superiority of, 2.8.224
and trial by jury, 2.8.41
See also courts, state
judiciary
abuses in, difficult to detect, 2.8.185
Anti-Federalist opinion on, 1.50
Aristides and, 5.1.88
under Confederation, 4.6.3
Patrick Henry on, 5.1.66
Publius on, 1.93n14
purpose of, 4.17n15
separation of, from executive and legislature, 4.21.1, 5.15.1
judiciary, English
control of, by legislature, 2.9.188, 2.9.193
extension of jurisdiction by, 2.7.14, 2.9.143
freedom of, from crown influence, 2.9.190
House of Lords and, 2.9.187
judiciary, federal, 2.7.12
Agrippa on, 4.6.17, 4.6.19, 4.6.52
appellate jurisdiction of, 2.7.42, 4.9.16
bill of rights and, 3.3.12
Brutus on, 2.9.130–44
and cases involving foreign envoys, 2.9.168, 4.6.42, 4.9.22
and cases involving states, 4.6.20
Charles Pinckney on, 1.93n12
Columbian Patriot on, 4.28.4
concealment of its powers, 3.4.4
constitutional features of, 2.8.186
and contract disputes, 2.4.55
Cornelius on, 4.10.13, 4.10.18
departure of, from Anglo-American tradition, 2.9.186, 2.9.188, 5.14.9

judiciary, federal (*continued*)
executive functions of, 2.8.185
expense of, 2.4.58, 4.10.13
Federal Farmer on, 2.8.41
Federalist Republican on, 3.6.23
Friend to the Rights of the People on, 4.23.3(7)
Georgian on, 5.9.12–14
incompatibility of, with state judiciaries, 2.8.16
improper blend of functions in, 2.8.29
independence of, 2.9.188–89
inferior tribunals of, 2.4.57
James Monroe on, 5.21.28, 5.21.35
judges of both law and fact, 6.1.14
jurisdiction of, 2.4.16, 2.4.89–94, 2.7.42, 2.8.221, 2.9.7
and jurisdiction of federal government, 2.9.140–44
and libel cases, 4.8.1
[Maryland] Farmer on, 5.1.89
Pennsylvania Convention Minority on, 3.11.38–42
and power of Congress, 2.9.142
power of, over states, 2.9.195, 3.11.28
Publius on, 2.9n110
restrictions on, 3.11.13
Richard Henry Lee on, 5.6.2–3
separation of, from executive and legislature, 4.3.12
and state debts, 2.9.164
Sydney on, 6.9.23
and tax cases, 2.4.55
threat of, to states, 2.2.5, 3.2.7, 6.13.24
and unconstitutional acts of legislature, 2.9.148
William Symmes on, 4.5.2
See also courts, federal; Supreme Court
Junius (pseud.), 2.8.73, 2.8.107, 3.9.49, 5.18.4
juntos
in British government, 4.11.4
in legislatures, 2.9.47
See also factions
juntos, aristocratic, 2.7.65
juries
assignment of, to Supreme Court, 4.17.3
corruptibility of, 2.8.192, 4.17.16
and courts, 2.8.189
criticisms of, 5.1.67
and judges, 6.1.15
[New Hampshire] Farmer on, 4.17.22
packing of, 4.14.4
people's check on judiciary, 2.8.55, 2.8.190
proposal to lessen their power, 6.1.15
juries, English, 5.1.13
jurisdictions, concurrent, 1.33–34, 2.5.41, 2.9.67, 4.6.43
amendment concerning, 5.4.6
Aristides on, 5.1.89, 5.1n59
Brutus on, 2.9.158
careful definition of, 6.12.36
Cato Uticensis on, 5.7.9
Federal Farmer on, 2.8.221
George Clinton on, 6.13.8–9
Impartial Examiner on, 5.14.4
impossibility of their coexistence, 2.9.76, 3.11.23, 5.17.1
Patrick Henry on, 5.16.32
Sydney on, 6.9.27
jurisdiction, conflict of, between federal and state courts, 3.5.3
jurisprudence
education of people in, 5.18.9, 5.18.11
foundation of, on reasonable distrust, 4.4.16
jurors
and illiteracy, 3.16.12
pay of, 4.17.24
jury system
congressional power to establish, 5.1.62
modification of, by new Constitution, 5.16.36
variations of, among states, 2.8.193, 6.1.19
weighted in favor of guilty, 4.17n11, 4.17n15
jury trial, 2.2.13, 2.7.122, 6.10.8, 6.14.9–10
Alfredus on, 4.17.16, 4.17n15
amendments on, 5.4.6
in Anti-Federalist arguments, 1.64
and appeals to Supreme Court, 2.9.173
Aristocrotis on, 3.16.12–13

jury trial (*continued*)
Blackstone on, 4.15.4
Cincinnatus on, 6.1.7, 6.1.13–15
in civil cases, 2.7.1, 2.7n20, 2.8.51, 3.2.7, 3.3.16, 3.5.5–9, 3.8.3, 4.8.2
Columbian Patriot on, 4.28.4
congressional authority to limit, 3.14.12
constitutional right to, 2.8.80, 2.8.86
Countryman on, 6.7.2
in criminal cases, 4.17.22
in Declaration of Independence, 6.7.6
denial of, 3.9.67, 4.6.1
in England, 2.8.104, 5.1.64
and federal courts, 2.8.16, 2.9.179
Federal Farmer on, 2.8.186–93
federal judiciary's threat to, 5.14.9
innocent protected by, 2.7.159
in Maryland, 5.3.8
[Maryland] Farmer on, 1.18–19 5.1.62–67
in Massachusetts constitution, 4.8.2
means of eliminating, 3.11.41
in New York constitution, 6.9.22
in northern states, 4.15.2
original purpose of, 4.7n15
Patrick Henry on, 5.16.2, 5.16.24
Pennsylvania Convention Minority on, 3.11.13, 3.11.32, 3.11.39–40
Philadelphiensis on, 3.9.21
Plebeian on, 6.11.32
political significance of, 1.18–19
popular check on judiciary, 2.8.55, 2.8.190, 4.17.23, 5.1.65
privilege of, undermined, 2.4.92–93, 2.7.41, 2.7.43–44
in property cases, 2.9.29
Rawlins Lowndes on, 5.12.2
in revenue cases, 5.14.7
Richard Henry Lee on, 5.6.2–3, 5.6.5
right to, secured by common law, 2.8.200
safeguard for rights of common man, 2.7.44
and second Constitutional Convention, 3.3.51
Son of Liberty on, 6.2.2
and strength of government, 3.3.53
suggested federal provisions for, 4.6.42, 4.6.75
supposed Federalist indifference to, 3.3.16
various state practices regarding, 2.7.43, 2.8.53, 2.8.193, 4.8n5, 6.1.19
of vicinage, 1.85n27, 2.8.43, 2.9.27, 3.5.6, 3.13.5, 4.6.21, 4.15.4, 5.6.5, 6.6.31
violation of right to, 5.3.17
jury verdicts
appeals from, 2.7.25, 2.8.194, 2.9.176
traditional finality of, 2.9.171
justice, 2.9.151, 2.9.156, 4.3.1
denial of, 2.9.178
equality of, 4.6.28, 5.14.44
and government, 4.26.2
impartiality of, 4.17.23
inaccessibility of, to poor, 2.2.5
slavery contrary to, 2.9.39
spirit of, 2.9.86
justice, administration of
ends of government, 2.9.150
and federal bankruptcy law, 2.8.221
justice, distributive, 4.2.8
justices of peace, 4.17.24, 5.16.27

Kames, Henry Home (Lord Kaims), 2.7.143, 2.7n76
Kentucky, 2.4.106
Kentucky Gazette, 5.13
Kenyon, Cecelia, 1.6, 1.55
Kenyon collection, 3.4 intro.
King, Rufus, 1.89n61, 2.9n29, 4.6n32, 4.6n37, 4.12 intro.
appointment of, as delegate, 4.13.6
at Massachusetts convention, 2.1 intro.
motives of, 4.12.9
on nature of federal union, 4.16.2
on proportional representation, 2.4.34
on slave trade, 4.26.8
king, British, 2.8.103, 2.8.109
dependence of, on Parliament, 2.6.31

king, British (*continued*)
executive, legislative, and judicial functions of, 5.14.36
hereditary rights of, 2.4.54
and judiciary, 2.9.190
legislative function of, 2.7.49
patronage power and revenues of, 4.2.3, 4.2.5
power of, over peace and war, 2.8.208, 5.16.23, 6.11.29
power of, to add members to Parliament, 6.8.40
powers of, compared to president, 3.3.31
powers of, misrepresented, 3.9.96
sovereignty of, 3.14.5
treaty-making power of, 5.12.1
veto power of, 2.8.182, 3.8.3, 5.15.1
King in Council, 3.3.14
king, elective, 3.3.31
kings
in ancient Rome, 5.14.21
divine right of, 6.6.40
kings, Israelite, 4.6.68
King's Bench, Court of, 2.7.41, 2.8.224, 2.9.157, 3.11.40, 6.13.24
king's debtor, 2.9.143
knowledge, failure of, to better human condition, 5.1.21
Kolb (Kolben), Peter, 5.1.19, 5.1n14
Konkle, Burton Alva, 2.7 intro. n4, 3.2 intro.
Koran (Alcoran), 2.9.107, 3.16.14

Lamb, John, 1.67, 2.2n1, 5.11 intro. n3
correspondence of, with Richard Henry Lee, 2.8 intro. n6
New York Anti-Federalist, vol. 6 intro.
Lancaster and York, wars of, 5.1.75
land
equal division of, 2.8.59, 3.6n10
fall in value of, 6.14.17, 6.14.19
produce of, 3.9.87
titles to, 3.11.13, 4.1.3
land, public
sale of, 2.7.82, 2.8.2, 3.3.33, 3.3.35, 3.6.14, 4.9.31
seizure of, for public debt, 2.9.166
landed interest, 2.2.11
characteristics of voters in, 4.10.11
taxation of, 4.4.21
land grants, state, 2.9.155, 2.9.183
Landholder (pseud.), 1.46, 1.85–86n9, 1.92n47, 2.1 intro., 2.4n1, 2.4n12, 2.8 intro. n15, 2.8.73, 2.8n52, 4.12.8. *See also* Ellsworth, Oliver
landholders
disinclination of, to enact land taxes, 2.6.40
exemption of, from taxation, 5.2.3
land tax, 2.8.36
and inland states, 4.15.16
power of Congress to impose, 2.9.59, 2.9.63
proposal of, in 1783, 2.9.92
Robert Morris and, 6.1.45, 6.8.29
land value, basis for taxation, 2.5.12, 3.6.43
language, ambiguity of, 4.3.7
Lansing, John, Jr., vol. 6, pt. 1, intro.
at Constitutional Convention, 2.4.1
on federal finances, 6.11n7
New York convention delegate, 6.10.1, 6.12 intro.
and representation compromise, 2.4.37
on states' rights, 2.1.5
Reasons of Dissent, *2.3*
reply of, to Alexander Hamilton, 6.12n30
Lansing, Robert, 1.52
law
Anti-Federalist appeal to, 1.7
British king subject to, 5.1.10
common people no judges of, 3.16.12
determination of, by judiciary, 2.9.159
respect for, 2.9.86
rules for construing, 2.9.136
See also civil law; common law
law, letter of, held to by state judges, 2.9.181
law, martial, 2.8.185, 3.9.58, 3.14.19, 5.4.6
law, military, 2.4.60
law, natural, 5.13.2, 5.18.9
law, questions of, in federal cases,

law, question of (*continued*)
2.4.92, 2.4.94
law, supreme, establishment of, by Constitution, 2.9.32
"law and equity," meaning of, 2.8.195, 2.9.134
law and fact, judgment of, by same court, 4.5.2
laws
adaptation of, to local customs, 4.6.48
approval of, by whole people, 5.1.81
based on popular consent, 2.8.86, 2.9.14, 4.25.3
enactment and execution of, by one agent, 3.11.44
equal application of, 4.6.35
evil effects of vagueness in, 5.10.3
frequent revision of, 2.7.63
government of, 2.8.63, 4.10.20, 5.15.1
instability of, 2.8.1
interpretation of, by president, 4.5.2
interpretation of, in practice, 4.6.72
perversion of, 2.8.121
power to enact and power to repeal, 3.3.33
respect for, 2.8.24
revision of, before passage, 3.3.19
superiority of, to treaties, 3.3.14
suspension of, 5.16.6
validity of, not affected by violations, 4.4.19
laws, code of, 4.7n1
laws, execution of, 2.8.76, 2.8.178, 2.9.17, 4.5.2
laws, federal
cases involving, 2.4.91
Countryman on, 6.7.9
operation of, through states, 2.8.205
precedence of, over state laws, 3.6.33
supremacy of, 6.6.27
laws, local, 4.6.16, 4.6.19
laws, proposed, publication of, for people to consider, 3.3.19
laws, state
modification of, by treaties, 4.14.4
nullification of, by Federal Constitution, 2.9.5, 3.16.6
promulgation of under governor's name, 5.1.10
proposed amendment on, 4.6.75
repeal or revision of, by Congress, 2.7.96, 3.13.3
laws, uniform, 4.6.17
lawsuits
encouragement of, 2.8.16
protection of states against, 4.15.4
lawyers
employment of, by federal government, 2.8.61
at Constitutional Convention, 2.7.166, 3.9.36, 6.5.4
ingenious explanations of, 5.12.1
injury of, by jury trials, 3.16.13
liking of, for vagueness and ambiguity, 4.21.1
resentment against, vol. 4 intro.
support of Constitution by, 4.7.1
leadership, Anti-Federalist views on need for, 1.75
league (foedas), 3.15.2
learning, restriction of, to upper classes, 3.16.12
leather, tax on, 3.16.17
Ledlie, Hugh, 2.8 intro. n15
Lee, Arthur, 6.1 intro. n2
Lee, Richard Henry, *5.6;* 1.26, 2.8n5
abuse of, 2.8.73, 2.8n52
American ideas of, 5.15.1
attack on, by New England, 4.12n16
cited by Helvidius Priscus, 4.12.9
on civic importance of religion, 1.22–23
defense of, by Brutus [Virginia], 5.15 intro.
and Elbridge Gerry, 2.1 intro. n7
Federal Farmer on, 2.6 intro., 2.8 intro.
on large republic, 1.17
letter of, to Edmund Randolph, 2.8 intro., *5.6*
opinions of, 5.6 intro.
possible author of Cincinnatus essays, 6.1 intro.
possible author of Democratic Federalist essay, 3.5 intro.
on threats to religion, 1.23
views of, on representation, 5.1 intro.

legal fictions
in Court of King's Bench, 2.9.157
courts inhibited from using, 5.4.6
employment of, in lawsuits, 2.9.157
use of to expand federal power, 2.8.224
legal forms, omission of, in extreme cases, 5.16.5
legality, Federalist desire to rise above, 1.14
legal papers, stamp tax on, 2.4.55
legal terminology, 2.9.132–33
legate, papal, 4.9.31
legislation
and power of taxation, 2.7.11, 2.7.96
presidential influence on, 2.5.40, 2.6.31, 3.9.65
legislation, initiation of, 2.4.16
legislation, internal, 5.21.17
legislative dominance, in Pennsylvania under Confederation, vol. 3 intro.
legislative power
combination of, with other branches of government, 2.5.22, 3.5.13, 5.15.1, 4.28.4, 6.1.26
essence of sovereignty, 3.14.4, 6.1.40
executive circumscribed by, 5.13.5
highest power in government, 2.7.96
John Locke on, 4.13.13
in a monarchy, 5.1.25, 5.14.36
Samuel Chase on, 5.3.12
in state constitutions, 6.1.31
legislators
contact of, with their constituents, 2.8.147
immunity of, to arrest, 5.9.6
pursuit of private ends by, 2.9.47
salaries of, 5.9.6
legislators, federal
alienation of, from people, 3.11.48, 4.10.9
exclusion of, from other offices, 2.8.169, 5.4.7
motives of, for perpetuating their office, 4.13.29
tendency of, to monopolize available offices, 2.8.120
See also representatives; senators
legislators, state
appointment of, to other offices, 2.8.169
as constituents of federal legislators, 4.13.29
familiarity of, with their constituents, 4.10.9
frugal lives of, 4.10.9
oath of, to support federal Constitution, 2.9.31, 3.11.8, 4.4.34, 4.4.36
legislature
abuses of, easily discovered, 2.8.185
arbitrary extension of power by, 4.13.28
association of, with executive, 2.9.203, 3.12.14
balance in, 3.16n6
future actions of, 2.2n3
requirements for freedom of, 3.11.33
separation of judiciary from, 4.21.1
size of, 4.13.25
sovereign power of, 1.61–62, 2.4.54, 3.3.11
submission of, to politic chieftain, 5.1.95
subservience of, to executive, 2.9.43
trust reposed in, 4.8n6
unconstitutional acts of, 2.9.148
legislature, bicameral, 2.4.16, 2.4.39
Brutus on, 2.9.204
contradictions inherent in, 5.13.7
Federal Farmer on, 1.58–59, 2.8.146
novelty of, in federal government, 2.4.38
Republicus on, 5.13.7
security against bad laws, 3.6.10, 5.13.7
in state governments, 2.8.89
legislature, federal
class composition of, 2.8.146
nature and extent of its powers, 2.9.55
Supreme Court's dominance over, 2.9.138
temporary grants of authority to

legislature, federal (*continued*)
president by, 2.8.172
See also Congress; House of Representatives; Senate
legislature, three-branch, 1.96n42, 4.2.4
legislature, unicameral
arguments for, 2.4.40, 2.7.9
disadvantages of, 2.5.22
in Pennsylvania and Georgia, 2.8.89
legislatures, numerous, rotation of members in, 2.8.147
legislatures, state, 2.2.12, 2.2.14
Alexander Hamilton on, 6.12n30
and alteration of government, 2.6.3
and amendment of Articles of Confederation, 2.6.9, 4.13.7
annihilation of, 4.2.3, 4.9.11
annual election of, 4.10.9
approbation of new Constitution by, 2.4.111–12
authority exceeded by, 2.7.101
authority of, rejected by Constitutional Convention, 6.6.22
cession of land to federal government by, 2.8.222
check on federal government, 2.9.128
choice of delegates to Constitutional Convention, 3.3.41
choice of presidential electors by, 3.11.24
closeness of, to people, 1.17
competition of, with federal government for revenue, 2.9.5, 2.9.62–63
and conscientious objectors, 3.8n5
constituents of federal Senate, 4.13.28
constitutional amendments proposed by, 2.5.35
control of, over elections, ended, 2.8.161
defense of, by George Clinton, 6.13.3
defiance of Congress by, 5.10.2
degradation of, by new Constitution, 5.16.17
disregard of, in calling up militia, 3.13.3
and dissolution of Confederation, 4.10.4
divisive influence of, 5.21.12
and election of U.S. senators, 2.4.49, 3.11.24, 5.13.12
exclusion of, from ratification process, 4.28.4
failure of, to consult people on Convention, 3.11.3
Federalist plans to destroy their power, 2.7.16, 3.4.4
gradual abridgment of their influence, 2.9.195
identification of, with people, 2.8.163, 4.13.28
lack of communication with one another, 3.3.3
lack of control over federal Senate, 3.14.15
mediators between House and Senate, 4.13.29
neglect of elections by, 4.4.4
opposition to their role in forming general government, 2.4.43
paper money and tender laws, 2.8.7
and pay of representatives, 2.8.42
possible excessive influence of, 6.13.35
power of, to disapprove congressional requisitions, 2.8.220
power to nullify federal laws, 2.8.209–11
presentation of federal plan to people, 4.13.10
prevented from judging federal plan, 4.13.21
proposed power of, to recall senators, 6.12.25, 6.12.29
reduction of, to boards of appointment, 2.7.100, 3.6.37, 3.11.24
regulation of elections by, 2.9.52
relation of, to Congress, 2.4.16, 4.10.7
representation in, 2.8.108, 2.8.123, 5.3.20
right of recall under Confederation, 2.9.201
rivalry of, with Congress, 4.8.1
role of, in raising troops, 2.9.114
size of, 2.9.44
sovereignty of, 6.1.40

legislatures, state (*continued*)
and state conventions, 6.6.22
summer sessions of, 4.5.2
and taxation, 3.9.80, 5.9.7, 5.14.6
unlikelihood of cooperation among, 4.3.6, 5.7.4
vulnerability of to national government, 2.4.17
Leomitian, 4.12.1
Letter to the Massachusetts Legislature, 2.1 intro.
levellers, 2.8.62
Lexington, Battle of, 3.5.10
libel
and federal jurisdiction, 3.5.3, 3.8n3
law of, 3.8.3
punishment for, 3.9.67
liberalism, and Anti-Federalists, 1.83n7
liberty
America's concern with, 5.14.23
America's sacrifices for, 2.7.102
basis of American government, 2.4.68
connection of, with independence, 3.9.37
dependence of, on will of rulers, 5.16.7, 5.16.8
danger of innovations respecting, 4.13.16
deprivation of, 4.26.10
endangered by proposed Constitution, 2.6.9
excess of, 4.10.14, 5.1.69
in federal districts, 2.8.224
Federal Farmer's definition of, 2.8.79
government as protector of, 5.13.2
jealousy concerning, 2.7.111
loss of, by rash action, 3.3.4
necessity of curbs on, 5.10.2
object of government, 2.3.8, 5.16.2
offspring of knowledge, 3.12.7
portion of, surrendered with formation of government, 2.9.24, 3.3.22, 3.14.2
precariousness of, 6.14.118–24
preservation of, by political society, 2.6.11
preservation of, by Confederation, 5.14.1, 5.14.44
sacrifice of, for strong government, 3.3.52, 3.9.26
subversion of, by proportional representation, 2.4.29
surrender of, by ratification of Constitution, 3.3.17
and the Union, 5.16.6, 6.12.2
William Penn's definition of, 3.12.6
liberty, civil, relation of, to political liberty, 4.6.30
liberty, English, 5.16.2
liberty, natural, 5.14.2
liberty, personal, power of government over, 2.9.26
liberty, political, 4.6.30
liberty factions, 3.16.9
life
government as protector of, 5.13.2
power of government over, 2.9.26–27, 3.14.11
preservation of, by political society, 2.6.11
limited government, doctrine of, 1.53–54. *See also* government, limited
Lincoln, Abraham, 1.74–76, 3.11.56
Lincoln, Benjamin, 6.14.30–33
liquor tax, Robert Morris' proposal for, 6.1.45, 6.8.29
litigation
between citizens of different states, 3.2.7, 4.3.9
between citizens of same state, 2.9.156
between two states, 4.5.2
involving states, 2.8.41
Livingston, George, amendment of, 6.12.25–35
Livingston, Robert, 1.44, 6.12 intro., 6.12n3, 6.12n5, 6.12n22, 6.12n23
Livy, 5.1.21
Lloyd, Thomas, 2.7n14
loans, negotiation of, by Congress, 3.9.48
loans, foreign, 2.9.94–95, 4.22.4, 6.1.41
local affairs, and federal jurisdiction, 2.9.81, 2.9.150

local government. *See* government, local
local interests
  disregard of, 4.6.26
  diversity of, 4.18.2
  Senate and, 6.12.32
Locke, John, 3.3n8, 6.14.10
  on alteration of legislature, 4.13.13
  cited by Republicus, 5.13.9
  definition of sovereignty, 6.1.40
  on despotism, 2.6.14
  on natural rights, 5.1.13
  on parliamentary control of military, 5.11.7
  on security of property, 2.6.16
  on slaves, 4.13.22
  on standing armies, 4.3.29
  on usurpation and tyranny, 4.13.16
  on utility of suspicion, 6.1.12
Locrians, 4.12.1
London, 2.8.222, 4.6.25
Louis XIII (France), 5.1.39
Louis XIV (France), 5.1.47
Louis XVI (France), 5.1.102, 6.14.95
Louise of Savoy, 5.1.67
Love, John, 5.4.11, 5.4.13
lower classes
  federal Constitution designed to restrain, 3.4.5
  Patrick Henry's fears for, 5.16.2
Lowndes, Rawlins, *5.12;* 1.8, vol. 5, pt. 2, intro.
  disagreement of, with his constituents, 5.12 intro., 5.12.1
Loyalists, 6.6n20
Lucca, republic of, 4.25.4
Lucius (pseud.), 3.9.5, 3.9.23
Lucullus, 5.1.107
Ludlow, Edmund, 6.14.10
Ludwig, John, 3.11.56
Lutz, Nicholas, 3.11.56
Luther, Martin, 4.24.3
luxury
  and capacity for self-government, 4.18.1
  evil effects of, 2.6.34, 3.6.45, 5.14.15
luxury products
  America's impoverishment and, 4.2.2, 4.9.18
  gold exported for, 3.10.5
  southern wealth expended on, 4.5.2
luxury tax, 4.4.21
Lycia, 4.12.1, 4.12n6, 5.1n13
Lycurgus, 3.3.2, 5.1.64

Mably (Mablé), Gabriel Bonnet de, 4.28.2, 6.2.2, 6.8.32
McCalmont, James, 3.2.3
McCulloch v. Maryland, 1.82n38
McDonald, Forrest, 1.26, 2.8 intro. n3, vol. 3 intro. n2
Macedonian empire, 3.16.16
McHenry, James, 2.4.22, 5.4.4, 5.4.11
Machiavelli, Niccolò
  on ancient Germans, 5.1.64
  on Florentines, 5.1.19
  [Maryland] Farmer on, 5.1.81
  on preservation of traditional forms, 2.7.67
  on stable foundation of republic, 4.28.4
McKean, Thomas, 3.9n15
  on bills of rights, 1.68
  burning of, in effigy, 4.13.27
  comment of, on Cumberland County petition, 3.9.32
  on despotism, 1.51, 4.11.2, 4.13.21
  and future constitutional amendment, 4.13.19
  on importance of administration, 4.11.1
  at Pennsylvania convention, 4.6.47, 4.6.57
  Poplicola's reply to, 4.11 intro.
Mackintosh, Sir James, 6.14.155, 6.14.162, 6.14n31
Madison, James, 1.6, 1.38–39, 1.55, 2.4n39
  associating genius, 3.10n3
  and balanced government, 1.59–60
  on bill of rights, 2.2n1
  and committee on salaries, 4.17n6
  on criticisms of Senate, 1.6n3
  on enumeration, 5.21n8
  on factions, 5.16n5
  on government's dependence on religion, 5.8 intro.
  on large republics, 1.46–47

Madison, James (*continued*)
on military and taxing powers, 5.16n39
on nature of proposed government, 5.16n40
on new states controversy, 2.4n37
on organization of Senate, 1.59
on Patrick Henry, vol. 5, pt. 2, intro.
reply of, to Charles Pinckney, 4.6n6
on suffrage requirements, 1.89n14
on Washington letter, 4.20n2
Maecenas, 5.10 intro., 5.10.3–4
magistrates
biases of, 5.6.3
trustees of people, 4.3.11
magistrates, republican
reliance of, on popular support, 2.9.17–18, 2.9.50
Magna Charta, 2.9.25, 3.3.23, 3.9.67, 5.5.11
ancient privileges confirmed by, 2.8.77
repeated publication and confirmation of, 2.8.196
royal prerogatives limited by, 2.8.103
Stuart interpretation of, 5.1.10
superiority of, to Parliament, 6.6.28
mail. *See* post office
Main, Jackson Turner
on Cincinnatus, 6.1n21
on Countryman, 6.7n1
on democratic beliefs of Anti-Federalists, 1.40
Mercer address, 5.5 intro. n1
on name "Federalist," 1.10
on separate confederacies, 1.86n2
Maine, 2.4.44
dispersed population of, 2.8.114
prospective statehood of, 2.4.100, 2.4.106
representation of, in Congress, 2.8.99
separation of, from Massachusetts, 2.6.16
majority
defense of individual against, 4.6.73
requirement of, for legislation, 2.2.11, 2.8.210
right of, to alter their government, 5.16.2
ruin of minority by, 5.5.6
subjection of, to minority, 2.5.22, 5.13.7
majority, democratic, threat of, to individual, 5.1.15
majority, three-fourths
for constitutional amendment, 2.5.37, 4.13.15
for legislation in Congress, 2.8.39
majority, two-thirds
for constitutional amendment, 3.3.2, 3.3.3
for legislation in Congress, 2.2.11, 2.8.39
for raising troops, 2.9.126
unlikelihood of, in Congress, 4.14.6
majority faction, 1.39, 1.68
majority rule, 2.4.110
Anti-Federalist opinion on, 1.39–41
in Congress, 2.5.40
in presidential elections, 2.8.177
principle of republicanism, 4.28.13
majority tyranny, 1.39, 5.1n11
majority vote
difficulty of securing, 2.8.155–56
as means of deciding elections, 2.8.152–54
Richard Henry Lee on, 5.6.5
mandamus counselors, 4.23.3(6)
Mandeville, Bernard, 1.73, 3.6.21
Mansfield, Earl of (William Murray)
American criticism of, 6.6.33
desire of, to extend civil law, 6.1.20
on general verdicts, 2.8.190
on suspicion, 6.1.12
in Woodfall case, 6.1.8
manufactures
effect of proposed Constitution on, 4.3.4
encouragement of, 2.4.79, 4.9.9
importation of, 3.3.32
states inhibited from promoting, 3.13.5
taxation of, 5.14.7
manufactures, American, preference given to, 4.6.36
Many, Sentiments of, *5.20*

Marbury v. Madison, 1.74
Marcus (James Iredell), 2.7n45, 2.2 intro.
Marcus Aurelius, 5.1.96
maritime affairs
  federal jurisdiction in, 3.2.7, 5.9.3
  regulation of, 2.7.66
maritime cases
  civil law and, 3.11.39
  and federal judiciary, 2.4.89–90, 2.9.160
  and trial by jury, 2.7.41, 2.8.191, 3.5.5
marque and reprisal, letters of, 2.8.214, 4.9.22, 5.21.5
Marseilles, 5.1.108
Marshall, John, vol. 5, pt. 2, intro. n3
  criticism of Patrick Henry by, 5.16n13
  on Federalists and democracy, 1.90n19
  on inducements to industry, 5.16n23
  Marbury v. Madison, 1.74
marshals, U.S., 2.8.176
Martin, James, 3.11.56
Martin, Luther, *2.4;* 2.7 intro.
  account of Federal convention by, 2.7.149, 3.9n33
  as Anti-Federalist, 2.4 intro.
  on conflict of loyalties, 1.98n29
  and convention secrecy, 4.28.8, 2.7.161
  on creation of new states, 2.4.103
  on definition of treason, 2.4.97, 2.4n35
  on dissolution of Union, 1.86n2
  on divisibility of large states, 2.4.99–107, 2.4n36, 2.4n37
  explanation of his convention role, 2.4.115–18
  on federal and state government, 1.33, 1.54
  and federal use of state militia, 2.4.60
  on importation of slaves, 2.4.70
  on interrelationship of states, 1.13
  letter and speech of, 2.4
  at Maryland Convention, vol. 5, pt. 1, intro.
  on mixed character of proposed government, 1.12
  opposition of, to Virginia Plan, 2.4n4
  refutation of Federalist arguments, 2.7.139
  on state sovereignty, 1.15
martyrdom, 5.1.104
Marvell, Andrew, 5.1.73
Maryland, 2.4 intro., 2.4.106, 3.9.75
  ambiguous role of governor in, 3.12.16
  Christian religion established in, 3.12.18
  electoral districts in, 5.3.20
  interests of, threatened by proportional representation, 2.4.45
  loss of control over its militia, 2.4.60
  navigation rights of, 2.4.73
  New Jersey resolutions and, 2.4.21
  political system of, vol. 5, pt. 1, intro., 5.3.7
  prohibition of slave trade in, 5.12.1
  revenue and representation of, 4.14.2, 5.3.17
  rules governing representatives in, 2.4.42
  separation of law from equity in, 2.8.195
  small state, 2.4.31
  split in delegation of, 2.4.22, 2.4.34
  and western territories, 6.8.18
  wise and cautious spirit of, 4.28.9
Maryland Constitution, 2.4.113, 2.9n19
Maryland convention
  amendments committee of, 5.4.4
  description of, vol. 5, pt. 1, intro.
  postponement of, 4.13.4
  procedural rules of, 5.4.1
  ratification of, 5.4.3
  Samuel Chase speeches at, 5.3
Maryland Convention Minority, address of, *5.4*
[Maryland] Farmer, *5.1;* 2.4n45
  on abuse of power, 1.30
  on bill of rights, 1.40
  on complex governments, 1.56
  on controlling aristocracy, 1.57
  on education, 1.21
  on encroachment of aristocracy,

[Maryland] Farmer (*continued*)
1.52
motives of, questioned, 5.1.87
on trial by jury, 1.19
theoretical importance of, 1.6
comparison of, with John Francis Mercer Address, 5.5 intro.
Maryland Gazette, 2.4 intro., 5.1, 5.4
Maryland House of Delegates, 2.4.1, 5.1 intro.
Maryland Journal, 5.2
Maryland Journal and Baltimore Advertiser, 5.1n2, 5.1n3
Maryland legislature, 2.4 intro., 5.3.7, 5.3.8
Maryland Senate, 2.8.89
Mary Tudor, 5.1.41
Mason, George, *2.2;* 2.4.27
abuse of, 2.8.73, 2.8n52
on country's best defense, 1.28
federal principles of, 5.17n4
non-signer, 2.5.31, 3.2.7, 4.12.1
Objections to the Constitution, 2.2
Patrick Henry on, 5.16.11
speech of, at Virginia Convention, 5.17
Massachusetts
achievements of, during Revolution, 3.9.78
Anti-Federalist newspapers not received in, 2.7.182
bill of rights in, 4.6.70, 4.6.71
capacity of, to produce revenue, 4.6.28
Christian religion established in, 3.12.18, 4.24.4
citizens of: allegiance of, to their commonwealth, 4.4.29; sacrifices of, for liberty, 4.3.19
commercial advantages of, 4.6.26
consensus of, on need for change, 4.3.2
control of taxation by, 4.4.21
debt of, 4.4.21, 4.17.7
devotion of, to freedom, 4.12.7
disadvantage of, under proposed government, 4.12.8
division of, into two districts, 2.4.100
dry tax in, 4.3.21
early rebellions in, 4.6.7
election of federal representatives by, 2.8.155
example of, to other states, 4.13.16
executive control over legislature in, 3.12.16
factional contention in, vol. 4 intro.
importance of commerce to, 4.6.24
impotence of its inferior courts, 2.9.176
increased assessment for, 4.6.40
influence of, with other states, 4.18.2
land value in, 3.6.45
large state, 2.4.17
manufactures in, 4.6.78
mistreatment of Anti-Federalists in, 4.26.16
Negroes in, 4.10.19
peace and prosperity in, 4.6.10
political conflicts in, 2.1 intro.
possible trade discrimination against, 4.6.11
powers given by, to convention delegates, 4.13.9
property lost by, during Revolution, 4.26.10
raising troops in, 2.9.127
and ratification of Constitution, 2.7 intro., 4.13.21, 6.11.10
rejection of Constitution by, 4.13.24
representation in, 4.13.23
representation of, 2.1 intro. n6, 2.4.45, 4.3.16, 4.13.28, 4.14.2
Shays' Rebellion, 2.6.16, 4.6.8
and slavery, 4.26.4
as small republic, 4.7.1
sovereignty of, 4.4.36
supreme court of, 2.8.186, 2.8.187, 2.9.176
unfair methods of Federalists in, 4.26.16
veto power in, 2.8.90, 2.8.182
voice of, in presidential elections, 4.28.4
Massachusetts, chief justice of, 4.16.2
Massachusetts Centinel, 2.1 intro., 2.2 intro., 3.3n1, 3.6n4, 3.9.4, 4.8, 4.13, 4.15

Massachusetts charter, 4.6.7
Massachusetts constitution
alteration of, 4.13.14
bill of rights in, 4.4.23, 4.6.70–71, 4.13.13, 4.13.16
establishment of equality by, 4.26.13, 4.26n11
European admiration for, 4.3.9
federal Constitution influenced by, 2.8.61
jury trial provision, 4.8.2
points of conflict with federal Constitution, 4.4.26–27, 4.4.29, 4.13.13
ratification of, 4.4.27
search and seizure provision, 4.3.22
separation of powers in, 4.16.2
violation of, by insurgents, 6.14.26
Massachusetts convention
amendments proposed by, 3.14.22, 3.16.19, vol. 4 intro., 4.18.2
Charles Turner's speeches at, 4.18
composition of, 4.7.1
decisiveness of, 4.12.7
description of, vol. 4 intro.
divided opinion in, 3.9.69, 4.26 intro.
hasty election of delegates to, 2.7.150
importance of, vol. 4 intro.
incompetence of, 4.13.20
minority opposition to new Constitution, 3.9.77
proposed adjournment of, 4.13.4, 4.13.20
and ratification of Constitution, 2.7.166, 4.26.16, 4.28.8
party spirit at, 4.13.24
Rufus King speech, 4.26.8
threats and bribery used to influence, 3.9.77
towns represented in, 4.4.28
William Symmes' speech, 4.5.6–21
Massachusetts Gazette, 3.9.2(14), 4.4, 4.6, 4.12, 4.19, 4.24
Massachusetts General Court
address of, to people, 4.9.30
appointment of Constitutional Convention delegates by, 4.13.5–6
exclusion of judges from, 4.21.1
infringement of bill of rights by, 4.17.2
and revision of state constitution, 4.13.14
and Shays' rebellion, 6.14.29, 6.14.35
speech of Thomas Hutchinson to, 4.28.5–6
submission of amendments to people by, 4.13.16
useful measures of, 4.9.38
Vox Populi on, 4.4.23–24, 4.4.31
Massachusetts House of Representatives, 4.13 intro.
Massachusetts legislature. *See* Massachusetts General Court
Massachusetts Provincial Congress, 4.13 intro.
Massachusetts Senate, 2.8.89
Massachusetts state land, 4.6.14
Matthews, John, 5.12n2
Maynard, Malachi. *See* Consider Arms et al.
mechanics (artisan class), 2.8.98, 2.9.42, 4.12.2
mercantile class, 5.1.56
mercantile interest, 4.10.11
mercenaries, 3.9.27, 4.3.28, 4.28.6, 5.1.75, 6.6.14
Mercer, James, 5.5 intro. n1
Mercer, John Fenton, 5.5 intro. n1
Mercer, John Francis, 5.5; 2.9n29, vol. 5, pt. 1, intro.
list of nationalists, 3.9n33
Maryland convention adjournment, 5.4.11
Maryland convention amendments committee, 5.4.4
Maryland convention candidate, 5.2n1
merchant marine, American, 5.12.2
merchants
Anti-Federalists and, 1.45–46
Boston, 4.9.14
characteristics of, 2.8.98
credit of, abroad, 4.6.26
depressed state of, 4.9.34
foreign, influence of, 5.1.56
representation for, 2.8.15, 2.9.42
support of, for proposed Con-

merchants (*continued*)
stitution, 2.7.126
Mexico, 5.1.47
Middle Ages, 5.1.107
middle (middling) class
inability of, to obtain redress, 2.4.94
Patrick Henry's fears for, 5.16.2
role of, in body politic, 6.12.18
victims of despotism, 6.11.27
middle states
advantages of, under consolidated government, 2.8.17
lack of interest in amendments, 4.15.2
proximity of, to seat of government, 2.8.61
Mifflin, Thomas
financial affairs of, 2.7 intro.
Pennsylvania delegate to Federal convention, 3.2.5
public creditor, 3.9n35
support of, for Robert Morris, 2.7.172
Miley, Jacob, 3.2.3
military
in England, 5.1.42
state constitutions and, 5.1.44
subjection of, to civilian authority, 2.8.86, 2.8.217, 3.11.13, 4.22.4, 6.1.25
See also armies; army, British; army, federal; army, peacetime; standing army
military appropriations, 2.8.39, 3.6.20
annual vote of, 6.1.25
in England, 5.1.43, 6.1.25
two-year limit on, 4.5.2, 4.23.3(4)
military conscription, 2.7.75
military courts, 2.8.191
military establishment
characteristics of, 2.8.168
Federalist fondness for, 2.9.110
necessity of, for states without Union, 2.5.25
military profession
Alfredus on, 4.17n13
indolent attracted to, 2.9.110
suspicion of, in free states, 4.17.17
military rule, 2.5.18, 2.5.30, 2.6.7, 2.6n4
military service, payment in lieu of, 3.3.29
military spirit, connection of, with tyranny, 6.14.160
militia, 2.7.122, 2.8.86, 3.8.3, 4.3.9, 6.10.5, 6.13.20
adequacy of, for defense, 3.5.10, 4.3.28, 4.17.4, 5.14.8
appointment of officers to, 4.3.28
Aristocrotis on, 3.16.9–10
Cincinnatus on, 6.1.25
command of, essential to sovereignty, 6.1.40
Countryman on, 6.6.34
depredations of, 5.2.3
and despotic governments, 3.9.22
disadvantages of, 2.5.11
disarming of, 2.7.134, 3.16.17
execution of laws by, 2.9.50
federal control of, 2.4.60, 2.6.35, 2.7.75, 2.9.6, 2.9.9, 3.3.29, 3.16.9, 4.3.27, 5.16.2, 6.2.2
incompatibility of, with standing army, 4.3.28
natural support of free government, 2.5.11, 2.9.29
neutralization of, 5.16.2
in New York, and federal constitutions, 6.9.24–25
organizing, arming, and disciplining of, 2.4.61
Pennsylvania Convention Minority on, 3.11.13
popular character of, 2.8.217
president as commander-in-chief of, 2.4.85–86
relation of, to states, 1.89n60
Samuel Chase on, 5.3.17
state and federal responsibilities, 2.8.19
state constitutions, 2.9n21
state control of, 3.11.13, 4.6.75, 5.4.7
state obligation to furnish, 4.9.22
states' defense against national government, 2.4.62
states' loss of control over, 3.13.5, 3.14.18, 3.14.19, 4.1.2
states' obligation to maintain, 2.8.84
time limit on out-of-state service, 2.8.217
training of, 3.13.3

militia (*continued*)
under unpopular governments, 3.9.28
unwilling instruments of tyranny, 3.11.54
use of, to execute treaties, 3.16.11
war record of, 4.3.28
weakening of, by national government, 3.9.56
militia, active, 3.16.9, 3.16.17
militia, federal, 3.11.52, 4.2n5, 5.21.17
militia, inactive, 3.16.9, 3.16.12
militia, Pennsylvania, 3.11.54
militia, select, 2.7.134, 2.8.39, 2.8.217, 6.6.34
militia, Vermont, 4.6.8
militia duty, 3.9.11, 3.9.64
militia officers
attachment of, to Congress, 4.13.29
oath of allegiance sworn by, 5.16.27
Milton, John, 6.1.12, 6.14.10
ministerial agents, 3.14.4, 3.14.15–21
ministers of gospel, 2.7.166, 4.17.5
minorities, obstruction of amendments by, 5.16.2
minority
bound by acts of majority, 2.4.110
dictation of constitution by, 4.20.3
equality of, with majority, 2.5.22
government of majority by, 2.7.129, 5.13.7
ruin of majority by, 5.5.6
minority opposition to Declaration of Independence, 3.9.56
Minority of the Pennsylvania House of Representatives, Address of, 3.2, See also Pennsylvania House Minority
Mirabeau, marquis de, 5.1.96
miracles, 4.24n1
Mississippi Bubble, 6.8.34
Mississippi River
right to navigate, 5.5.7
sale of lands on, 4.6.27
U.S. claim to, 5.16 intro.
western boundary, 2.4.101, 4.12.5
mixed government, 1.53–63, 5.1.69, 6.8.1
mixed system. *See* federalism, new
mob, characteristics of, 5.1.58
mob violence in Pennsylvania legislature, 3.2.3, 3.9.75, 3.11.8, 3.14.22
moderation, political, 2.6.15, 5.1.53
Mohammedanism, 2.9.108
Mohammedans, 2.8.150, 4.14.3
monarchical tendency, 2.4.24
monarchists, 3.9.75
monarchy, 2.2.15, 5.14.36
advocates of, 2.4 intro.
in ancient Rome, 5.14.21
antipathy to, in America, 6.14.41
characteristics of, 4.28.8
combination of, with aristocracy 3.9.62
correspondence of, with one aspect of human nature, 5.18.6
essential difference of, from democracy, 3.12.11
and evils of aristocracy, 5.1.94
generation of, by new Constitution, 5.6.2, 5.18.5
honor and, 4.13.21
incompatibility of, with federal government, 3.14.9
John Adams' partiality for, 6.14.106, 6.14.108–9
likely result of adopting Constitution, 3.3.20, 3.5.13
love of, in America, 2.8.112
majority in, favorable to individual, 5.1.15
[Maryland] Farmer on, 5.1.24, 5.1.25
possible future establishment of, 4.13.19
preferability of to proposed government, 5.16.7
prince and legislature in, 5.14.36
protector of wealthy, 5.1.95
republican forms used to conceal, 4.28.4
result of consolidated government, 2.6.14, 3.14.9
Samuel's warning against, 6.12.7
and security for popular rights, 6.8.14–15
suitability of, to "middling" territory, 2.7.94
monarchy, absolute, 4.11.4
monarchy, British, 5.1.96, 5.21.13. *See also* king, British

monarchy, despotic, 3.9.60. *See also* despotism
monarchy, elective, 2.4.82, 3.3.31
consequences of, 4.10.12
in Germany, 5.1.74
and hereditary monarchy, 5.1.25
papacy as, 4.24.3
monarchy, French, 5.21.13
monarchy, limited
advantages of, 4.6.50
proposed government stronger than, 4.28.13
Thomas McKean on, 4.11.4
United States too extensive for, 2.8.75
money
appropriation of, 2.8.39
changes in value of, 4.17.6
inability of constitutional change to supply, 5.16.12
power to coin, 2.4.76, 4.6.75, 5.3.10, 5.3.11
Publius on, 2.9n45
scarcity of, 2.8.188
relationship of, to military, 5.14.15
vital principle of body politic, 5.16n36
and war, 2.5.18
money, Continental, redemption of, 2.1 intro.
money, gold and silver. *See* specie
money, paper
changes in value of, 2.8.205
corrupting influence of, 5.1.112
Countryman on, 6.7.1
evil effects of, 4.18.1
inflated value of, 4.18.2
introduction of, during Revolution, 2.8.6
misuse of, by state governments, 2.9.180
Patrick Henry on, 5.16.9
payment of public debt in, 6.1.47
possible abuse of, 3.13.5
product of weak government, 1.42
prohibition of, 2.4.70, 2.4.75, 4.17.8
surfeit of, 2.8.206
utility of, to states, 5.12.2
William Symmes on, 4.5.2
See also credit, bills of
money, public
embezzlement of, 3.9.82, 5.14.15
president and, 2.8.179
money bills, 2.2.3, 3.6.41, 6.1.27
Monk, George, 2.7.108
monopolies
danger of, to American seaports, 4.6.65
early American prejudice against, 6.14.47
Elbridge Gerry's opposition to, 2.1 intro. n6
prohibition of, 2.7.55, 2.8.229, 4.6.35, 4.6.42, 4.6.75
right of Congress to grant, 4.6.53
Son of Liberty on, 6.2.2
Monroe, James, *5.21*
and balanced government theory, 1.59
on boundary between federal and state responsibility, 5.21n9
on consolidation, 1.11
on delineation of state and federal powers, 1.34
on dual sovereignties, 1.81n32
mission of, to France, 6.14.94–95
nationalism of, 5.21 intro.
in ratification debate, 5.21 intro.
reliance of, on voluntarism, 1.25
Some Observations on the Constitution, 5.21
Montagu, Edward Wortley
on ancient republics, 6.8.22
on lessons of history, 6.8.33
on mixed governments, 6.8.1
on plain speaking, 6.8.21
Montesquieu, baron de (Charles de Secondat), 2.4.44, 2.7.33
Aristides on, 5.1n13
on avoidance of excess, 5.1.68
balance of monarchical, aristocratic, and democratic features, 6.8.17
Cato's knowledge of, 2.6 intro. n7
on combining powers of legislation and enforcement, 5.15n2
on constitutional aristocracy, 2.8.97
on delegation of power, 5.16.14
on distinctions raised by vanity, 6.8.31
on duration of office, 2.6.25
on effect of impoverishment,

Montesquieu (*continued*)
6.8.35
on elections, 2.6.36, 2.8.148, 3.6.17, 5.4.10
on federal republics, 6.12.5
on free agents, 2.9.39
on government and popular customs, 3.6.8
on imaginary wants of government, 3.6.19
on large republics, 2.9.11
on legislation and taxation, 2.7.11
on loss of natural equality, 5.1.93
misquoted by Old Whig, 3.3n8
on monarchy, 3.11.17, 5.10.4, 5.10n10, 6.8.18
on natural descent to evil, 2.6.48
on natural rights doctrine, 5.1.13
Noah Webster's criticism of, 3.6n10
on parliamentary control of military, 5.11.7
on participation of people in government, 2.8.97
[Pennsylvania] Farmer's argument modeled on, 3.14 intro.
on political liberty, 2.6.15
on popular suffrage, 3.11.26
on republican virtues, 1.73, 6.8.19
on republics, monarchies, and despotism, 4.13.21
Richard Henry Lee on, 5.6.1
on separation of powers, 3.6.23, 3.11.44, 3.12.13, 5.15.1
on small republics, 2.6.13, 2.6n11, 6.8.1n
on sovereign power of legislature, 3.3.11, 3.3n8
on sovereignty, 2.7.73, 3.11.26
on threats to English liberty, 2.6.43, 4.17.22
on union of legislative and executive powers, 6.1.32
on usefulness of suspicion, 6.1.12
Montezuma (pseud.), *3.4*
Montgomery, Richard, 4.3.14
morality, 4.18.2
education of people in, 5.18.9
influence of government on, 3.9.9
Morison, Samuel Eliot, 2.1 intro.
Morris, Gouverneur, 2.9n29
delegate to Constitutional Convention, 3.2.5
mission of, to France, 6.14.93, 6.14.95
on need for speedy ratification, 6.1n32
opposition of, to rotation, 6.12n25
and Robert Morris, 2.7.136
Morris, Robert (Financier)
activities of, during Revolution, 2.7.168
appointed delegate to Federal convention, 3.2.5
charged with fraud, 2.7.171
dedication to, by Aristocrotis, 3.16.1
financial affairs of, 2.7 intro.
imposts injurious to, 3.16.17
monopolizing spirit of, 2.7.127
Pelatiah Webster on, 6.6.48
and poll tax, 5.3.17
public creditor, 3.9n35
revenue proposal of, 6.1.45, 6.8.29
and Thomas Mifflin, 2.7.172
"Morris's notes," 6.7.1
Moses, 4.6.68, 5.6.1
murder, 2.9.86, 4.4.19
mutiny, 3.9.30
mutiny laws, 5.1.43, 5.4.6, 5.11.6

names
confusion of, with essences, 5.14.20
mistaken trust in, 6.3.4, 6.3.8; Cato Uticensis on, 5.7.2; Centinel on, 2.7.3, 2.7.32–33; Consider Arms et al. on, 4.26.15; John DeWitt on, 4.3.3; Mercy Warren on, 6.14.111; Officer of the Late Continental Army on, 3.8.2; [Pennsylvania] Farmer on, 3.14.23; Sidney on, 6.8.5; Yeomanry of Massachusetts on, 4.19.2
nation, Anti-Federalist use of word, 1.4n4
national, Federalist reluctance to use word, 2.4.43
national character, 4.1.n1
national government, 5.1.17
arbiter among states, 2.5.19
conflict of, with state governments, 2.4.58
contrast of, with federal govern-

national government (*continued*)
ment, 2.4.39, 2.4.83, 5.1.50
control of, over militia, 2.4.62
control of, over slave trade, 2.4.67
division of, into three branches, 2.4.16
expense of, 2.3.7
fragility of, 2.4.44
impracticality and dangers of, 2.2.3, 2.2.7
intention of Framers, 3.14.20
[Maryland] Farmer on, 5.1.52
and new Constitution, 2.8.133
opposition to, 2.4.44
Patrick Henry on, 5.16.2
replacement of Confederation by, 5.3.2
senators as agents of, 2.4.42
states excluded from, 2.5.21
and suspension of Habeas Corpus Act, 2.4.72
unsuited to extensive territory, 5.3.4
See also federal government
nationalism, 5.21 intro.
nationality, habits of, 4.7n1
nationhood, 2.8n7; Anti-Federalist attitude toward, 1.24–25
nation-state system, [Maryland] Farmer on, 5.1.108, 5.1.109
nations, law of, 2.5.9, 2.9.168–69, 6.1.5
Native of Virginia (pseud.), 5.21n5
naturalization, 1.19–20, 2.8.214, 4.6.34, 4.6.42, 6.13.20
Blackstone on, 4.13.26
federal control over, 2.8.10, 2.8.35
as means of extending federal power, 2.8.224
in New York state, 6.9.30
nature, law of (natural law), 2.9.24, 5.13.2, 5.18.9
nature, state of, 2.4.29, 3.1.1., 3.1.3, 3.1n3, 3.8n1, 4.6.68
absence of government, 2.4.39
American people in, 6.9.4
historical evidence for, 4.6.68
individuals in, 2.9.24, 3.14.6
insecurity of human rights in, 5.14.2
right to remain in, 4.26.11
source of civil liberty, 5.13.2
unlikelihood of reversion to, 4.3.6
navies, state, 3.9.29, 5.14.11
navigation acts, 2.2 intro., 2.2.10, 2.4.67, 4.9.14, 4.9.22, 5.4.7
navy, British, 5.16.25
navy, federal
congressional power to maintain, 4.23.3(4)
expense of, 3.9.22, 4.23.3(4)
interest of northern states in, 5.12.4
and local governments, 2.8.218
[Maryland] Farmer on, 5.1.46
necessity of, 3.9.45, 6.1.24
power of president to fill vacancies in, 5.10.2
president as commander of, 2.4.85–86
and protection of American commerce, 3.9.44
necessary and proper clause, 1.28, 1.66, 2.7.122, 2.7n92, 2.8.49, 2.9.5, 2.9.8–9, 2.9.57, 5.1.113
Cincinnatus on, 6.1.24
Countryman on, 6.7.13
and federal judicial power, 4.6.52
Friend to the Rights of the People on, 4.23.3(4)
interests of rulers protected by, 3.16.16n
key to spirit of proposed government, 2.9.153
and loose interpretation of Constitution, 2.9.141
Pennsylvania Convention Minority on, 3.11.21
source of undefined and limitless power, 3.3.12
Sydney on, 6.9.13, 6.9.23
taxing power and, 3.14.18
tyrannical grant, 3.6.32
vagueness of, 2.9.57, 2.9.60
necessities, taxation of, 2.9.71
negative, of Senate on president, 4.3.12. *See also* veto power
negative, double, 3.4.2
negative, partial, 2.8.182
negative, presidential, unlikelihood of its being exercised, 3.9.65
negative, royal, 5.15.1
Negroes
forcible importation of, 4.23.3(5)
Framers' avoidance of word,

Negroes (*continued*)
4.2.3, 4.2.8
in Massachusetts, 4.10.19
Nehemiah, 6.8.36
Nelson, Thomas, 2.8n5
nepotism, 2.8.120, 2.8.178, 2.9.42
Nero, example of despotism, 2.7.36, 3.9.33, 3.10.1, 4.11.2, 4.13.10, 4.23.3(1), 5.1.103, 5.15.1
Netherlands, United Provinces of the, 2.4.30, 5.10.2
checks on central government in, 2.8.210
comparison of, with United States, 2.6.4
internal taxation in, 2.8.36
predominance of Holland in, 3.6.14
See also Holland
neutrality
preservation of, 6.14.177
Thomas Paine on, 3.9.44
Washington's proclamation of, 6.14.92
Nevins, Allan, 5.16 intro.
"new arrangement" (post office), 2.7.182, 2.7n68
New England
discrimination against, 4.14.2
freemen of, 3.9.77
original soundness of governments in, 5.1.113
proposed government unsuited to, 4.21.1
tax apportionment injurious to, 4.10.19
New England (pseud.), 2.8 intro., 4.12n16
New England courts, 2.8.195
New England Damper (pseud.), 4.12.8
New England delegates, solidarity of, in Old Congress, 5.7.8
New Federalism. *See* Federalism, New
New Hampshire, 2.4.100, 2.9.18
attack on legislature of, 4.6.8
executive control of legislature in, 3.12.16
land titles in, 4.6.29
ratification by, vol. 5, pt. 2, intro. n5
representation of, 4.13.28, 4.14.2
New Hampshire convention
adjournment of, 3.14.22, 3.16.19
Federalist strategy at, vol. 4 intro. n4
Friend of the Republic address, 4.23.4–8
Friend to the Rights of the People Address, 4.23.3(9)
New Hampshire Court of Common Pleas, 4.17 intro.
[New Hampshire] Farmer, *4.17*
charges of, called groundless, 4.17.19
on juries and Supreme Court, 3.5n6
support of, for Beard thesis, 4.10n4
New Hampshire General Court, 4.23.3(3)
New Haven, Connecticut, 2.7.181, 4.2.10
New Jersey
religious restrictions in, 3.12.18
representation of, 4.14.2
seduction of, by hope of gain, 4.28.10
small state, 2.4.31
New Jersey convention, 4.12.8
New Jersey resolutions, 2.4 intro.
factions opposed to, 2.4.27
rejection of, 2.4.28
and Virginia plan, 2.4.21
Newport Man (pseud.), *4.25*
Newport Mercury, 4.25
newspapers
alleged suppression of, 2.7.163, 2.7n68
anonymous articles in, 3.9.2–3
and delivery of mail, 2.7n68
duties on, 2.9.59
Federalist articles published in, 5.2.1
Federalist attempts to monopolize, 4.3.10
good and bad points of, 2.8.203
government licensing of, 3.3.15
hindrance to free circulation of, 2.7.133, 2.7.144, 2.7.163
made vehicles of deception, 3.14.23
monopolized by friends of government, 3.16.12
nonpartisan, 3.9.23

newspapers (*continued*)
people's dependence on, for information, 4.13.10
reports of, on Constitutional Convention, 2.4.36
supposed dangers of, 3.3.3
newspapers, Massachusetts, 3.9.77
newspapers, Philadelphia, 3.16.19
New York, 5.1.113
capacity of, to produce revenue, 4.6.28
colonial politics in, 6.9.18
dangers to, from its neighbors, 6.12.3
debt of, 4.6.10
dispute of, with Connecticut, 4.12.10
division of, over ratification, 6.13.42
governor's role in, 6.9.11, 6.9.24
John Francis Mercer's appeal to, 5.5.12
and New Jersey resolutions, 2.4.21
partial negative in, 2.8.182
possibility of its exclusion from Union, 6.13.37–39
possible coercion of, 4.6.12
postponement of state convention in, 4.13.4
relations of, with Five Nations, 6.9.9
representation of, 2.9.42, 4.14.2
second convention urged for, 6.6.49
separation of law and equity, 2.8.195
state and local officials in, 6.9.26
supreme court of, 2.8.90, 2.8.186, 2.8.187, 6.9.11
tax contribution of, 3.9.86, 4.14.1
Vermont statehood and, 4.23.3(8)
veto power in, 2.8.89
voting in, 2.8.89, 6.9.17
New York assembly, 1.9, 2.3 intro., 2.3.8, 6.6.6, 6.9.11, 6.9.16
New York constitution, 6.6.30, 6.9.6–30, 6.11.33
New York convention, 5.5 intro., vol. 6, pt. 1, intro., 6.12, 6.13
New York Journal, 2.3 intro., 2.6, 2.9, 5.11 intro., 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.9, 6.10
New York senate, 2.8.89, 6.9.11
Nicholas, George, 5.17 intro.
Nicholas, Wilson, 1.27, 2.5 intro.
Nicholson, Thomas, 2.2 intro.
Nimrod, 4.6.68
nobility, hereditary
check on representative government, 5.5.11
in Great Britain, 2.7.7
Patrick Henry on, 5.16.14
nobility, Swedish, 5.1.35
nobility, titles of
compatibility of, with republicanism, 6.14.153–55
prohibition of, 1.66, 2.8.86, 2.8.198, 2.9.30, 4.2.10, 4.6.66, 5.10.4, 6.7.8
nomination, presidential power of, 2.4.48, 2.4.86, 2.6.25
None of the Well-Born Conspirators (pseud.), *3.15*
Normans, English liberties and, 2.8.103, 2.8.191, 4.28.4
North, Lord (Frederick North), 3.15.1, 5.12.2, 6.6.33
North America, Bank of, 1.82n35
North Carolina
indivisibility of, 2.4.101–2
rejection of federal Constitution by, 6.14.50
religious restrictions in, 3.12.18
representation of, 2.4.45, 4.14.2
separatist tendencies in, 2.4.44
slave trade and, 2.4.65, 5.12.1
Virginia and, 5.16.12
voter qualifications in, 2.8.89
North Carolina constitution, 2.9n20
northern states
advantage of, in Congress, 5.6.3
aristocratic juntos in, 2.7.65
carriers for southern products, 4.9.14
coercion of, by southern majority, 4.2.11
discrimination against, 4.5.2
inhabitants of, 4.6.48
interests of, 2.2.11
and liberty, 2.6.18, 2.6n13
and slave trade, 4.27.5, 5.12.1, 6.6.13
Nova Scotia, 2.8.224, 4.6.46, 4.17.15, 6.7.12
Noy, William, 2.7.112

oaths
conflicts between state and federal, 4.4.37–38, 4.4n10, 6.7.9, 6.9.25
false, 4.3.21
papal absolution from, 4.24.5
to support federal Constitution, 2.7.168, 2.9.31, 4.4.34, 4.14.6
to support Massachusetts constitution, 4.4.29, 4.4.36
sworn by presidential councillors, 5.6.5
warrants supported by, 4.3.22
Observor (pseud.), *6.4*
office
bias arising from expectation of, 2.8.120
congressmen influenced by expectation of, 2.8.100
temptations of, 2.8.119
officeholders, tenacity of, in protecting their rights, 2.9.142
Officer of the Late Continental Army (pseud.), *3.8*. *See also* Findley, William
officers, army, personal loyalty of to president, 5.9.11
officers, federal. *See* federal officials
office seekers
attacks of, on their opponents, 5.1.71
hopes of, from new government, 2.7.116, 2.8.3, 3.3.40, 3.9.88, 6.12.5
Ohio River, 2.4.102, 4.6.27
Oldfield, Mrs. C. Chase, 5.3 intro.
Old Patriots of 1775, 4.7.1, 4.12.4
Old Testament, 4.6.72
Old Whig (pseud.), *3.3;* 3.3n9, 3.16.3, 5.3.18
on critical state of the country, 1.26
Federalist hatred of, 3.9.6
vindication of Anti-Federalist position by, 3.9.16
oligarchy, 3.16.16, 4.28.4, 5.1.52, 5.6.2
"omnipotent" clause, 4.13.28. *See also* necessary and proper clause
One of the Common People (pseud.), *4.8*
One of the Four Thousand (pseud.), 2.7n2
One of the Middle Interest, 4.8 intro., 4.8.1
One of the People, 3.6n4
Oothoudt, Henry, 6.10.1
opinion, public, tyranny of, 6.14.169
oppression, local, federal Constitution's failure to prevent, 5.11.2
oracles, 4.12.6, 4.24n1
Orange, Prince and Princess of. *See* William III of England
orders, preservation of, and separation of powers, 1.59
original jurisdiction of federal courts, 4.23.3(7)
Orth, Adam, 3.11.56
Osgood, Peter, 4.5.1
Oswald, Eleazar, 2.7.163, 2.7n97
Otho (emperor), 4.12.4
Otis, James, 4.28 intro., 6.14.7
outlaws, 5.16.5
Oxford, Earl of (Robert Harley), 3.5.10

Paca, William
Aristides–[Maryland] Farmer debate, 5.1n58
at Maryland convention, 5 intro., 5.4.3–4, 5.4.11
pacifists. *See* conscientious objectors
Padilla, Juan Lopez de, 4.28.12
pagans, eligibility of, for public office, 2.8.150, 4.14.3, 4.22.4
Paine, Thomas, 2.7.177, 3.9.44
panic, Federalist attempts to spread, 6.11.5
papists. *See* Roman Catholics
pardoning power, 2.8.229, 2.9.20, 4.4.39
danger of, 2.2.9, 2.4.85, 2.5.41, 2.6.31
means of covering for treason, 2.7.23, 2.7.51, 3.11.45
pardons, granted before conviction, 5.3.17
Paris, Treaty of (1783), 5.12.2, 5.12n7
Parlement of Paris, 2.7.69
Parliament
abuse of power by, 4.6.60
and Anglo-French treaty of 1786,

Parliament (*continued*)
3.11.43
approval of civil list by, 5.9.7
approval of treaties by, 3.3.14, 5.12.1
and Bill of Rights, 5.1.7
check of, on despotic power, 6.8.39
comparison of, with Congress, 3.3.12, 4.6.53
corruption of, by king, 4.2.3, 4.2.5
court interest in, 5.9.9
and dispute over standing armies, 2.9.123
dissention between Lords and Commons, 2.4.51
dissolution of, by Cromwell, 5.1.73, 5.10.2
foreigners excluded from, 4.13.26
frequent elections for, 2.7.112
growth of its power, 2.8.104
and habeas corpus benefits, 2.8.200
Hume on errors of, 4.3.28
increase in members' term of office, 2.7.74
interpretation of Constitution by, 2.9.193
and John Hampden case, 5.1.67
and judiciary, 2.9.187
Massachusetts' dispute with, 4.28.6
and power to raise armies, 2.8.220
representation in, 4.6.17, 4.15.6
as representative of American colonies, 4.3.16, 5.12.2
and royal negative, 3.12.17
size of, 2.8.136, 4.13.25
sovereignty of, 3.14.5
taxation of colonies by, 2.7.36, 2.7.40
See also House of Commons; House of Lords
Parliament, Long, 2.7.74, 4.23.3(1)
Parliament, Scottish, 6.4.1
parliaments, triennial and septennial, 5.13.4
Parsons, Theophilus, 4.13n27, 4.18n1
parties, 4.15.6, 5.1n35, 5.1n40, 6.9.18.
See also factions
parties, extreme, 2.8n2
party divisions, 6.14.112–13
party spirit at Massachusetts convention, 4.13.24
party strife in Pennsylvania, 3.2n1
Pascal, Blaise, 5.1.68
passions, restraint of, by government, 5.13.2, 5.18.8
Paterson, Alexander, 2.7.132
Paterson, William, 1.13, 1.82n40, 2.4.21
patricians, 2.8.106
Patriotic Citizen (pseud.), 1.90n19
patriotism, 2.9.47, 3.6n10, 4.18.1, 6.8.7
patronage, 2.9.42
Paul (Apostle), 2.9.52, 6.8.32, 6.11.1
peace
breaches of, 2.9.151
growing durability of, 5.1.109
insecurity of, under Confederation, 2.5.16
internal, 2.9.150
and war, federal power over, 2.8.10, 2.8.35, 4.5.2
Peale, Charles Wilson, 3.8.5
peculation, 2.7.171, 4.13.28
peers, trial by, 4.15.2
Pelham, Massachusetts, 6.14.30–32
penalties, actions for, 3.3.16
penalties, criminal, 5.16.36
Pendleton, Edmund, 5.16n8
Penn, William, estate of, 6.8.38
Penn, William (pseud.), *3.12*
on liberty of conscience, 1.85n48
Pennsylvania
Anti-Federalists in, 2.7 intro., 2.7.179, vol. 3 intro.
commercial disadvantages of, 4.6.26
compliance of, with requisitions, 3.9.84
delegation of, to Constitutional Convention, 2.8.7, vol. 3 intro., 3.1.2
desire for amendments in, 4.6.12
disadvantages of, under proposed system, 2.7.170, 3.9.85
electorate of, 3.11.10
enrichment of, at expense of other states, 4.6.53
Federalist maneuvers in, 6.3.11
governmental innovations in, 5.1.113

Pennsylvania (*continued*)
immigration policy of, 4.6.34
interference with press in, 2.7 intro.
large state, 2.4.17, 2.4.31
opposition to new Constitution in, 3.9.69, vol. 4 intro., 4.13.27
pacifist groups in, 3.9.11
party animosities in, 3.2n1
and payment of national debt, 4.6.10
political changes in, 3.3.51
proprietary government of, vol. 3 intro., 6.6.17
raising troops in, 2.9.127
ratification of Constitution in, vol. 3 intro., 3.16.17n, 4.28.9, 5.16.8
religious example of, 5.8.5
religious restrictions in, 3.12.18
representation of, 2.4.45, 3.11.49, 4.14.2
Robert Morris' influence in, 6.6.48
separatist tendencies in, 2.4.44
unicameral legislature of, 2.8.89
Pennsylvania, University of, 3.9 intro.
Pennsylvania Assembly, 2.2 intro.
and Articles of Confederation, 3.1.3
complaint of, to Congress, 2.7.183n
control of, over legislation, 3.12.16
and Constitutional Convention, 3.2.2
identification of, with people, 3.11.48
inroads of, on other branches of government, 3.3.11
members of, coerced by mob, 3.2.3, 3.9.75, 3.11.8
minority efforts to influence, 3.11.4
report of convention delegates to, 3.1.3
Republican (Federalist) control of, 3.2n1
and state convention, 3.11.9
violation of trust by, 3.14.22
Pennsylvania constitution (1776), 1.91n34
amendment procedure for, 2.7.70n
Benjamin Franklin and, 3.8.10
campaign against, 2.7.160
conspiracy to destroy, 2.7.129, 3.11.3
excellence of, 2.7.9, 2.7.128–29
and freedom of press, 3.3.15, 3.9.50
legislators' oath to support, 3.11.8
protection for rights of conscience, 3.11.53
on representatives, 1.44
standing armies prohibited by, 6.1.37
Pennsylvania convention, 3.8.1, 4.12.8
arbitrary proceedings of, 3.9.31
contemptuous treatment of delegates at, 3.9.33
hasty election of, 2.7.70, 3.9.74, 3.14.22
illegality of, 3.11.9
intimidation of electors for, 3.11.11
postponement of elections because of, 3.2.3
proposal to summon, 3.11.8
purpose of, 3.9n15
vote count, 3.11.10
Pennsylvania Convention Minority, *3.11;* 2.7 intro. n3, 2.7.182, 3.9.39, 3.9.60
Freeman's address to, 3.14.1
on increase of federal powers, 3.14.11
objections of, excluded from minutes, 3.11.12, 3.14.22
proposal of, on liberty of conscience, 1.64
refusal of, to sign ratification, 3.11.14
[Pennsylvania] Farmer, *3.14;* 3.11 intro. n1
contribution of, to discussion of federalism, 3.14n5
and Deliberator, 3.13 intro.
on "new federalism," 1.36
Pennsylvania Gazette, 3.11 intro. n1
Pennsylvania Herald, 2.7.178, 3.5, 3.6 intro., 3.9.32, 4.11n1
fate of, uncertain, 2.7.156
publication of convention debates by, 3.9.55

Pennsylvania Herald (*cont.*)
subscriber pressure against, 2.7.151
Pennsylvania Historical Society, 5.5 intro.
Pennsylvania House Minority, *3.2;* 4.6.1, 3.6.11
Pennsylvania Mechanic (pseud.), 3.9.5, 3.9.51, 3.9.52
controversy over pseudonymous writings, 3.9.2, 3.9n1
Pennsylvania Packet, 2.7.161, 2.7n14, 3.2 intro., 3.11, 3.13.1, 4.11n1
pensioners, 4.13.21, 4.19.1
pensions, 3.16.1
people
abolition of their franchise, 4.26.5
appeal to advised against, 5.21.22
authority of, 3.1n3
as basis of proposed government, 1.16
confidence of, in government, 1.51–52, 2.9.18, 2.9.48, 3.9.2
confinement of, within their proper sphere, 3.16.3
conflict of their interests with those of rulers, 2.9.108
competence of, to know what is best for them, 3.3.44
distance of Senate from, 6.1.27
Federalist insults to, 4.6.58
Framers' claim to speak for, 5.16.1
government as servant of, 5.13.2
guardians of their own rights, 2.1.7
inability of, to obtain redress, 2.4.94
inability of, to support new government, 4.9.34
incorruptibility of, 5.1.80
indifference of, to public affairs, 1.53, 2.8.147, 6.8.30
indignation of, predicted, 4.13.24
loss by, of powers not expressly reserved, 2.8.50
made powerless by new Constitution, 5.16.2
only effective check on government, 2.7.7
only source of right to govern, 2.6.8, 2.7.69, 2.9.2, 2.9.193, 5.3.15, 5.14.28, 6.9.6
Preamble's use of word, 6.1.40
resignation of right of suffrage by, 5.13.13
responsibility of government to, 1.14, 1.27
right of, to change their government, 2.8.208, 5.4.7, 6.14.43
right of, to be consulted, 3.3.41
right of, to propose amendments, 5.3.3
right of, to reverse decisions of their representatives, 4.28.3
sovereignty of, 2.6n6
supervisors of nation's conduct, 2.6.3
supreme power of, 2.8.76
trust of, in their accustomed leaders, 5.5.1
undelegated powers reserved to, 2.8.196, 3.6.48
voluntary support of government by, 1.16
people, common
alienation of Congress from, 5.14.31
America's independence won by, 5.2.4
degradation of, 5.1.67
desire of, to rise above their station, 3.16.5
disarming of, 3.16.12
exclusion of, from government, 3.3.41
no representation for, 3.11.35
opposition to their participation in government, 3.3.3
political judgment of, 4.16.1
"perfect union," 5.14.44
and abolition of inferior governments, 2.9.151
perjury, 4.4.40
perquisites, 3.16.1
Persians, 3.16.16, 5.1.47, 5.1.97
persuasion, 1.16, 2.8.93
Peru, 5.1.47
Peter the Great, 2.9.87
Petersham, Massachusetts, 6.14.31–32
petition, right of, 2.7.55, 3.9.32, 4.14.3, 5.4.7
Petition of Right (England), 2.7.112, 3.3.23, 5.1.8, 5.5.11, 6.9.4

petitions, Federalist, 3.11.7
Philadelphia, 3.9.4, 3.9.51, 2.7.127
  advantage of as seat of government, 4.6.65
  delegates of, at Federal Convention, 3.2.2
  Federalists in, 2.7.184, 3.11.11
  impartiality of its printers, 3.9.5, 3.9.23, 3.9.65
  inferiority of, to Boston, 4.6n19
  and Pennsylvania Assembly, 3.11.4
  removal of Congress from, 2.8.222
  representation of, 2.8.99
  situation of, contrasted with Massachusetts, 4.3.3
Philadelphia Convention. *See* Constitutional Convention, federal
Philadelphiensis (pseud.), *3.9;* 2.7.177
Philanthrop (pseud.), 4.27.3–4
Philanthropos (pseud.), 2.5n5
Phileleutheros (pseud.), *4.27*
Philip of Macedon, 2.6.48, 4.12.1, 4.12.5
Philips, Josiah, 5.16.5, 5.16n13
Philo of Alexandria, 4.17 intro. n1
philosophy, 4.24n1
Phocion letters, 6.6.46, 6.6.n20
Pickering, Timothy, 2.8 intro., 2.8n6
Pierce, William, 2.4 intro.
Pinckney, Charles, 1.42–43, 5.10n5
  criticisms of new Constitution by, 3.8.9, 3.8n9
  debate in South Carolina legislature, 5.12n3
  on federal judiciary, 1.93n12
  on primacy of Union, 1.82n40
  on slave trade and slavery, 5.12.1, 5.12n6
  on state sovereignty, 5.12n7
  speech of, at Constitutional Convention, 4.6n6
Pindar, 5.1.21
piracy, and jurisdiction of federal courts, 2.8.185, 2.9.86, 4.6.42, 4.9.22
Pisistratus, 5.1.23
  and standing armies, 3.6.21, 4.3.29
Pitt, William (Earl of Chatham), 6.8.18
placemen, 4.13.21, 4.19.1
Plain Dealer (pseud.), 2.5 intro., 2.5n6
Plain Truth (pseud.), 3.8 intro., 3.8n1, 3.8nn3–5, 3.8n7
plantations, unincorporated, 4.13.14
Plater, George, 5.4.1
Plato, 5.1.21, 5.3.10
Plebeian, *6.11;* 5.1n4
plebeians, 3.9.36, 3.16.4, 5.12.13
Pliny the Elder, 5.1.103
plurality, elections decided by, 2.8.152–54, 2.8.177
Plutarch, 5.1.21
Poland
  condition of people in, 3.14.9
  constitution of, 3.6.25
  elective monarchy in, 3.3.31
  partition of, 5.1.99
  provincial assemblies in, 3.6.37
  turbulent government of, 5.10.2
police, internal, 2.8.7, 2.8.213, 4.6.18, 4.6.54
  Countryman on, 6.6.34
  and federal bankruptcy law, 2.8.221
  and judicial power, 2.9.130
  old Congress not concerned with, 5.14.34
  state responsibility for, 2.8.22, 2.8.205, 2.9.64
policy, motives of, 5.14.24–25
political economy, 5.1.82
political process, disillusionment with, 5.1.71
politics
  charm of, 4.3.12
  and common people, 3.16.8
  deceptions of, 6.14.119
  in southern states, vol. 5, pt. 2, intro.
politics, science of, 3.12.6
  complication of, by human passions, 3.3.20
  and European experience, 2.6.13
  no novelties in, 5.1.21
poll tax, 3.13.5
  despotic governments and, 2.6.40, 2.6.42, 3.11.46
  Maryland Bill of Rights on, 5.3.8
  [Maryland] Farmer on, 5.1.59
  [Pennsylvania] Farmer on, 3.14.11

poll tax (*continued*)
power of Congress to impose, 2.9.59, 2.9.63
proposal of, by Robert Morris, 6.1.45
proposed amendment prohibiting, 5.4.7
Publius on, 2.6n29
Son of Liberty on, 6.2.2
substitution of, for imposts, 2.7.52, 3.16.17
Polybius, 5.1.21, 6.14.121
Pompey, 5.1.107
pontifex maximus, 4.12.6
Pope, Alexander, 2.8.1, 2.8n3, 5.1.36, 6.6.39
Poplicola (pseud.), *4.11;* 3.3n1, 3.3n2
popular consent
basis of laws, 2.9.14
for ratification of Constitution, 2.4.111–14
Popular Discontents (Sir William Temple), 5.1n20
popular government
guarantee of, by new Constitution, 2.2n1
Machiavelli on, 5.1.81
and small territories, 5.17.1
popular interests, divorce of, from popular affections, 3.6.21
population
basis for state financial contributions, 2.5.12
changes in, 2.9.92, 4.14.1
of large and small states, 2.4.36
population, ratio of, to representatives. *See* representatives
port duties, 2.4.73
ports
equal treatment for all, 4.6.42
federal regulation of, 2.4.73–74
free access to, 5.12.2
posse comitatus, 2.8.39, 2.9.50, 4.3.21
posterity
Cato [South Carolina]'s concern for, 5.10.3
decisions of Framers binding upon, 4.5.13
effect of proposed Constitution on, 3.2.2
obligation to, 3.8.11
Patrick Henry's appeal to, 5.16.6
political inheritance of, 2.6.3
protection for interests of, 2.6.34
postmaster general, 2.7.144
interference of, with liberties of states, 2.7.183
interference of, with press, 2.7.144
post office, 2.8.169
control of, by dominant party, 3.16.17
and delivery of newspapers, 2.7n68
efforts of, to subvert Anti-Federalist newspapers, 2.7.165
examination of mail by, 3.16.7
federal control of, 2.8.10, 2.8.35, 5.3.10
interference of, with newspaper circulation, 2.7 intro., 2.7.144, 2.7.163
"new arrangement," 2.7.182, 2.7n68
printers' dependence upon, 2.7.163
as source of federal revenue, 3.3.35
postroads, 3.14.18
poverty
Constitution's deliverance of Framers from, 3.16.1
effect of, on public bodies, 4.5.20
and southern lower classes, 4.6.48
and standing armies, 5.1.45
Powel, Joseph, 3.11.56
power
abuse of, 2.2n7, 2.9.128, 3.3.14, 5.1.96
corrupting influence of, 4.3.12
danger of too much or too little, 2.8.209
derivation of, from people, 2.6.8, 5.14.28
division of, among rulers, 3.12.13
division of, between state and federal governments, 2.9.80, 6.13n3
division of, in confederated republic, 2.8.208
human appetite for, 5.14.4, 6.8n2
limitation of, 2.9.23–25, 5.14.18
perpetuation of, in one man or family, 2.8.178

power (*continued*)
rejection of, as bond of union, 1.24–25
relation of, to representation, 2.8.20–21, 2.8.36
relation of, to wealth, 5.1.26
reluctance of people to part with, 3.3.3
surrender of, 3.3.10, 5.14.2
temptations of, 2.4 intro. n9, 2.7.108, 3.3.10
tendency of, to increase, 2.9.9
usurpations of, 2.9.115, 5.13.13
power, arbitrary, 3.3.51. *See also* government, arbitrary
power, balance of, 3.8n3
power, excessive, 3.3.51, 4.6.30
power, governmental
difficulty of rescinding, 4.3.2, 6.1.18
reluctance of rulers to abridge, 2.9.3
power, hereditary, 2.8.178, 2.9.190
power, legislative, 2.9.159, 4.8.1
power, supreme, indivisibility of, 3.8.3, 5.14.4
powers, congressional, 2.2.11, 4.18.1
powers, constitutional, 5.21.17
powers, delegated, 2.5.20
adequacy of for effective government, 2.8.178
ambiguity of, 4.2.2
amendment restricting Congress to, 5.4.6
Consider Arms et al. on, 4.26.6
Constitutional Convention and, 2.7.67
Countryman on, 6.7.8
Federalist and Anti-Federalist positions on, 1.28–32
James Wilson on, 6.1.4
precise definition of, 2.8.197, 3.3.7
and rights to recall officials, 2.8.147.
See also rights, reserved
powers, emergency, 5.1.81
powers, enumerated, 1.65
bill of rights and, 2.8.196
Congress not confined to, 3.3.12
powers, federal
Federal Farmer on, 2.8.35–43
Farmer and Planter on, 5.2.3
necessity of increasing, 4.13.4
true purpose of, 3.4.4
powers, implied, 2.9.141, 3.3.7, 6.13.25
argument against, 3.3.8
argument that Congress may exercise, 3.3.9–13
Cincinnatus on, 6.1.12
Countryman on, 6.7.8, 6.7.13
danger of, 1.66
John DeWitt on, 4.3.8
[Maryland] Farmer on, 5.1.62
and violation of basic rights, 2.9.30
powers, presidential, 3.9.92, 5.14.39
powers, reservation of those not delegated
Brutus on, 2.9.26
Cincinnatus on, 6.1.12
Federal Farmer on, 2.8.50
George Clinton on, 6.13.38
Impartial Examiner on, 5.14.5
John DeWitt on, 4.3.7
Old Whig on, 3.3.7–8, 3.3.22
powers, separation of. *See* separation of powers
powers, unlimited
Philadelphiensis on, 3.9.66
Publius on, 2.8 intro.
Praetorian Guard, 5.1.100
preamble to Federal Constitution, 1.12, 2.9.141, 2.9.150–51
and consolidation, 3.11.30
dishonesty of, 6.9.2
Freeman on, 3.11n15
George Clinton on, 6.13.25
indefiniteness of, 2.9.57
Republican Federalist on, 4.13.21
precedent, 2.9.195, 5.18.14
prejudice, 3.12.7
prerogative, 2.9.190
definition of, 5.16.24
incompatibility of with republican government, 5.14.37
presidency, 6.10.7
Cato [South Carolina] on, 5.10.2
Cornelius on, 4.10.12
Denatus on, 5.18.13
effective check on populace, 3.4.4
for life, 2.8.181, 4.14.3
George Mason on, 2.2.6–9
importance of free access to,

presidency (*continued*)
5.10.2
James Monroe on, 5.21.25
military character of, 3.9.11, 4.4.39
monarchical powers of, 2.4.27, 3.3.31
Old Whig on, 3.3.31
Philadelphiensis on, 3.9.96–98
Republicus on, 5.13.13
Richard Henry Lee on, 5.6.2
presidency, septennial, 2.8.178
president
alliance of, with dominant senators, 3.11.45
appointment of officials by, 2.8.45, 2.8.170, 4.23.3(6)
army's loyalty to, 5.9.11
combination of powers held by, 5.14.39
as commander-in-chief, 2.4.85, 2.6.31
comparison of, with a king: Cato on, 2.6.31; Cato [South Carolina] on, 5.10.2, 5.10.4; Cornelius on, 4.10.21; Countryman on, 6.6.28; *Federalist* no. 69 on, 2.6n20; Impartial Examiner on, 5.14.40; Luther Martin on, 2.4.54; Officer of the Late Continental Army on, 3.8.3; Philadelphiensis on, 3.9.92; Tamony on, 5.11.6
control of, over Congress, 2.7.20, 2.8.170
Countryman on, 6.7.1
death or removal of, 2.8.181, 3.13.3
election of, 2.4.83, 2.6.30, 2.8.177, 3.9.63, 4.6.75, 4.13.13, 4.28.4
exclusion of his relatives from office, 5.18.13
impeachment of, 2.4.87–88
independence of the people, 5.13.13
influence of, on House of Representatives, 2.8.100, 3.4.2
influence of Congress on, 3.16.15
and large states, 2.4.17
manipulation of apportionment by, 4.14.2
militia officers commissioned by, 4.13.29
necessity of advice for, 2.8.172
nomination of officials by, 2.4.48, 2.4.86
possible violation of law by, 5.16.7
power of, to adjourn Congress, 5.10.2, 5.12.4
power of, to call Congress into session, 2.6.45, 5.12.4
power of, to make peace, 4.5.2
proposal to limit his wartime command, 5.9.10
reception of ambassadors by, 2.6.31
salary of, 4.10.12, 4.12.5, 5.9.9
and raising of troops, 2.9.114
reelection of, 2.4.81, 2.5.41, 2.6n17, 2.8.178–80, 5.3.17, 5.10.2
relation of, to law, 5.14.38
religious beliefs of, 4.6.78
right of, to interfere in election of representatives, 5.12.2
role of, in legislation, 2.5.40, 3.11.34, 5.14.35, 6.9.13
and Senate: Cato on, 2.6.26, 2.6.45; Centinel on, 2.7.49; Federal Farmer on, 2.8.29, 2.8.171; Impartial Examiner on, 5.14.40; John DeWitt on, 4.3.13; Luther Martin on, 2.4.42; Officer of the Late Continental Army on, 3.8.3; William Symmes on, 4.5.2
subjection of, to reprisals after leaving office, 5.1.71
suspensive power of, 5.13.14
term of office of, 2.4.81, 2.6.25, 5.2.3, 4.23.3(1)
treaty-making power of, 2.8.48
use of title to appease republican prejudice, 3.4.4
presidential council, 2.6.26, 3.11.3
amendment providing for, 5.4.7
George Mason on, 2.2.6
Pennsylvania Convention Minority on, 3.11.45
proposal for, 2.7.51
Richard Henry Lee on, 5.6.5.
See also executive council
presidential favorites, danger to liberty from, 2.2.6, 2.6.26

press
defenselessness of, under proposed Constitution, 2.7.25, 2.7.37, 3.6.36, 3.9.21, 5.3.19
Federalist attempts to shackle, 2.7 intro., 3.9.2, 4.3.25
press, freedom of, 2.2.13, 2.7.122, 3.8.3, 5.6.5, 6.10.8
amendment to protect, 5.4.6, 5.9.15
Anti-Federalist concern for, 1.8n5
and bill of rights, 4.17.3
Candidus on, 4.9.11
Cincinnatus on, 6.1.5–12
Columbian Patriot on, 4.28.4
communication between states essential for, 2.7.183
Federal Farmer on, 2.8.86, 2.8.196, 2.8.203
Federalist suspicions of, 3.4.5
and federal judicial power, 3.5.3
in Great Britain, 2.8.104, 3.8n3
Impartial Examiner on, 5.14.10
John DeWitt on, 4.3.10
John Humble on, 3.7.2
likelihood of its violation, 2.8.56, 5.16.37
necessity of safeguarding, 2.7.55, 3.2.7
Old Whig on, 3.3.3, 3.3.15
One of the Common People on, 4.8.1
One of the Middle Interest on, 4.8n4
Patrick Henry on peril to, 5.16.2
in Pennsylvania Constitution, 2.7.1
Pennsylvania Convention Minority on, 3.11.13
Philadelphiensis on, 3.9.2, 3.9.16, 3.9.49–55
place of, in Anti-Federalist writings, 1.97n5
Plebeian on, 6.11.32
and prior restraint, 4.17n3
and right of anonymity, 5.1.3
security of, in America, 3.8n3
Son of Liberty on, 6.2.2
source of trouble to government, 3.16.12
Price, Richard, 2.4.44, 3.10.4, 5.11.4, 5.13.14
price levels, 2.6.40, 4.6.10
pride, 4.6.50, 4.11.2
printers
aid of, to Anti-Federalist cause, 2.7.160
dependence of, on post office, 2.7.163
and federal Constitution, 2.7.163
intimidation of, 4.7.1
possible government control over, 3.3.15
pressure on, to reveal names of Anti-Federalist authors, 3.9.3
prosecution of, for libel, 4.8.1
taxation of, 2.8.56, 2.8.203
printers, Bostonian, and Federalists, 3.9.4
prior restraint, 4.17n3
privacy
protection of, 5.4.6
violation of, by excise officers, 5.2.2
privateering, 4.18.1, 5.21.5
privilege clause, 3.4.3
privileges and immunities clause, 6.9.30
privy council, proposal for, 3.9.97. *See also* presidential council
privy council, British
Brutus [Virginia] on, 5.15.1
Cincinnatus on, 6.1.36
exclusion of foreigners from, 4.13.26
Senate compared to, 4.5.2
probate, judges of, 4.21.1
produce, inspection of, 3.13.3
products, American, preference given to, 4.3.5, 4.6.36
professional men, 2.8.15, 2.8.98
progress, human, [Maryland] Farmer on, 5.1.21
promissory notes, 4.5.2
property
acquisition of, by Framers, 4.3.15
basis of power, 3.6n10
basis of representation, 4.13.23, 6.9.20
basis of taxation, 4.3.21, 4.6.40
confiscation of, 3.9.35, 3.9.67, 5.2.4
danger of innovations respecting, 4.13.16
equal division of, 2.7.9, 5.1.58

property (*continued*)
fears for security of, 5.1.56
federal Constitution as protector of, 4.13.15, 5.5.9
government as protector of, 5.13.2
insecurity of, 3.6.27; in England, 5.1.75; under state governments, 2.9.180
jury system as protector of, 5.1.67
laws regulating tenure of, 2.8.188
political society as preserver of, 2.6.11
power of government over, 2.9.26, 3.11.20
protection for, 2.8.86, 6.14.9
security of, in Virginia, 5.16.5
seizure of, for state debts, 2.9.166
Senate as protector of, 2.8.146
source of contention, 2.8.98
taxation of, 2.9.59, 3.9.21
unequal division of, 4.6.48, 5.1.93
property, private, searches of, 2.4.55
property, real loss of, during Revolution, 4.26.10
property assessment, 2.4.55
property cases
federal jurisdiction in, 4.6.17
involving citizens of different states, 4.6.19
jury trial in, 2.9.29
property owners, in militia, 2.8.217
property qualification, 6.9.20
for Congress, 4.13.28
control of membership in legislature by, 4.13.29
for delegates to Maryland convention, vol. 5 intro.
Proposal for Reviving Christian Conviction, 5.8
proprietary government (Pennsylvania), vol. 3 intro., 6.6.17
prorogation, 2.4.51
prosperity
promotion of, 2.5.4
restoration of, 5.19.1
Protestantism
establishment of, in Massachusetts, 4.24.4
qualification for public office, 4.23.3(9)
Protestants, limitation of toleration to, 1.22
prothonotary, 3.1.4
Prussia, 5.1.99, 5.16.1, 6.1.25
pseudonymity, advantages of, in political controversy, 3.9.54
pseudonymous writings
Aristides on, 5.1n2
frequency of, in eighteenth century, 2.8 intro. n6
[Maryland] Farmer on, 5.1.2–3
Philadelphiensis on, 3.9.5
suggested banning of, 3.9.2
public defaulters
influence of, 2.7.168
protection of, by ex post facto clause, 3.16.18–19
public good
as motive for creation of government, 3.3.20
pretended zeal for, 2.9.47
sacrifice of, in large republics, 2.9.11
public interest, indivisibility of, 5.13.7
public securities, 4.7.1, 4.15.4, 4.17.8
Publius, 1.12, 2.6n17, 2.7.142, 2.9n16, 3.3n3
alleged contradictions of, 2.9n87
Brutus on, 2.9.79–80
champion of Federalist cause, 2.9.111–12
on concurrent taxing power, 2.9n47
on consolidation, 2.8n9
on Constitution as fundamental law, 2.9n101
on contradictions of Anti-Federalism, 1.71
Countryman on, 6.7.12
Countryman from Dutchess County on, 6.6.50
defense of national powers by, 4.5 intro.
on delegation of power, 1.29
on desperate state of country, 1.25
on disputes between branches of government, 1.74–75
on distinction between American governments and ancient ones, 1.43
on executive power, 2.6n26

Publius (*continued*)
on faction, 3.14n2
Federal Farmer on, 2.8.170
on federal government's independence of states, 2.9n87
on genius of American people, 1.72–73
on human nature, 4.3n12
and Impartial Examiner, 5.14n7
on importance of money in government, 2.9n45
on imports, 2.9n64
on imposts, 2.7n30
on increased representation, 3.11n17
on judicial power to void laws, 2.9n110
on judiciary, 1.93n14
on large republics, 3.8n4, 5.21n2
on majority tyranny, 1.39
on military power of British monarch, 5.11n2
on national government, 1.10, 2.9n46
on national resources, 4.5n5
on offensive war, 2.9n59
on people's right to alter their government, 3.11n4
on poll tax, 2.6n29
on popular resistance, 1.69
on powers of confederate government, 2.9n56
on presidency, 3.3n29, 3.3n30
on remote states, 2.8n14
reply to, by Observor, 6.4
on representation by class, 2.8n60
on separation of powers, 2.9n112
on standing armies, 2.9.111–12, 2.9.127–29, 4.3n21; and insurrections, 2.9n73; and state constitutions, 2.9n76
on system of influence, 2.8n26
on treaties, 5.20.3.
See also Hamilton, Alexander
Pufendorf, Samuel von, 6.1.40
Pulteney (Pultney), William, earl of Bath, 2.9.99–101
punishment
control of passions by, 4.24.2
fear of, 5.8.2
incentive to action, 5.21.24, 5.21n13
punishment, corporal, 3.11.52
punishments, cruel and unusual
Brutus on, 2.9.28
Centinel on, 2.7.55
George Mason on, 2.2.12
Impartial Examiner on, 5.14.10
Patrick Henry on, 5.16.18, 5.16.36–37
Pennsylvania Convention Minority on, 3.11.13
Philadelphiensis on, 3.9.67
purse, power of
Centinel on, 2.7.96
Consider Arms et al. on, 4.26.7
John DeWitt on, 4.3.15
Pennsylvania Convention Minority on, 3.11.20
William Symmes on, 4.5.19
purse and sword, wisdom of separating, 2.8.124, 2.8.208
pursuance, meaning of, 6.6.27
pursuance clause
Brutus on, 2.9.5, 2.9.31
Centinel on, 2.7.97, 2.7n52
Cincinnatus on, 6.1.16
Citizen on, 6.6.13
Countryman on, 6.6.25–29
Federal Farmer on, 2.8.46
Impartial Examiner on, 5.14.4
[New Hampshire] Farmer on, 4.17.2
Old Whig on, 3.3.13
Pennsylvania Convention Minority on, 3.11.22
Sydney on, 6.9.12–13, 6.9.21
Vox Populi on, 4.4.34
Pym, John, 4.28.4, 5.1.73

Quakers, 2.7.6, 6.7.6
quartering of troops
amendment governing, 5.4.6
consent for, 2.8.86
constitutional provision against, 2.8.202
state bills of rights on, 5.1.44, 5.3.8, 5.3.17
Quebec, Battle of (1775), 4.3n12
Quincy, Josiah, 6.14.7
quo minus writ, 2.9.143
quotas, tax, 3.3.37, 3.9.85

race, and slavery, 4.26.8
Ramillies, Battle of, 5.16.11
Randolph, Edmund, 2.5; 1.5, 1.35,

Randolph, Edmund (*continued*)
2.1 intro., 5.16n22
amendment plan of, 2.5.35
on bills of rights, 1.68
career of, 2.5 intro.
and Federalist viewpoint, 2.5 intro.
on Josiah Philips case, 5.6n13
letter of Richard Henry Lee to, 5.6
on need for secure and stable government, 5.16n11
opposition of, to unitary executive, 1.93n8
on plural executive, 4.10n5
and ratification, 2.5.43
refusal of, to sign Constitution, 2.5 intro., 2.5.31, 2.5.36, 3.2.7, 4.12.1
and Section Nine, 5.16n55
on specific restrictions in Constitution, 2.9n22
on Virginia, 5.16.4
on Virginia Declaration of Rights, 2.8n118
on Virginia resolutions, 1.38, 2.4.12
ratification, 2.4.112, 2.5.36, 3.3.2
Albany Committee on, 6.10.10–14
of Articles of Confederation, 2.5.20
Edmund Randolph and, 2.5.43
Federalist impatience for, 3.9.74
importance of due consideration before, 3.1.4–5
influence of local issues on, 6.11.19
by majority of states, 4.28.4
in Maryland, 5.5.3
Mercy Warren on, 6.14.45, 6.14.50–51
minority consent for, 4.4.14, 4.4.20
mode of, inconsistent with republican principles, 4.4.20
nine states sufficient for, 4.2.11
people of Massachusetts not bound by, 4.13.21
postponement of, 4.12.1
ratification debate
attempt to limit scope of, 5.11.3
contribution of, to nations, 1.72
duty of all to participate in, 4.3.2
Federalist desire to shorten, 6.1.39
tenor of, 4.3.26
ratification procedure, 1.12–13, 1.82n39, 4.13.13
Ravenel, Mrs. St. Julien, 5.12 intro. n3
raw materials, export of, 2.4.79, 3.3.32
Raynal, Guillaume Thomas François, 5.11.7
Read, George, 2.4n11
real estate, free transfer of, 3.6n10
reason
[Maryland] Farmer on, 5.1.68
natural law based on, 5.13.2
Newport Man's definition of, 4.25.3
support of liberty by, 2.7.70
rebellion
bill of rights and, 4.6.71
defense of state governments by, 2.9.69
recourse against federal abuse of power, 2.9.128, 4.26.6
resistance to tyranny construed as, 2.4.62
and suspension of habeas corpus benefits, 2.4.72, 2.9.30
See also insurrection
recall
of members of Congress, 2.8.147, 4.6.45
not provided for, in new Constitution, 2.8.133
of representatives under Confederation, 4.4.38
of senators by state legislatures, 2.9.201, 6.12.25, 6.12.27, 6.12.29, 6.12n30, 6.13.11
Watchman on, 4.22.4
reelection
Friend to the Rights of the People on, 4.23.3(1)
James Monroe on, 5.21.24
legislators barred from, 2.4.48
presidential, 2.4.81, 2.5.41, 5.10.2; arguments against, 2.8.178–80; argument for, 2.6n17
provision for, by Congress, 4.18.1
of senators and representatives, 4.3.9

reform
criteria determining extent of, 5.14.41–43
desirability of, 2.8.1
promise of, by Congress, 4.26.15
timing of, 1.74–75
Reformation, 4.24.3
regulation, internal. *See* police, internal
religion
Anti-Federalists on importance of, 1.22–23
Aristocrotis on, 3.16.14–15
attractions of, in troubled times, 5.1.104
civil society and, 4.16.1
danger of innovations respecting, 4.13.16
education of people in, 5.18.9, 5.18.10
indifference toward, 5.8.4
in New England, 4.6.48
in New York, 6.9.29
perversion of, 5.16.24
political uses of, 4.24n1
public provision for, 4.24.1–6
in republics and monarchies, 6.14.135–40
silence of federal Constitution on, 3.9.13
slavery contrary to, 2.9.39
religion, establishment of, 3.3.29, 4.24.3, 5.8.5
Countryman on, 6.7.13
in Europe, 4.24.3
Samuel on, 4.14.7
religion, natural, 3.16.15
religious conflicts, 2.7.109, 4.25.3
religious freedom, 5.6.5, 6.10.6
amendment to protect, 5.4.7
civil liberty and, 5.1.107
federal government's interference with, 3.9.11
necessity for protection of, 2.7.55, 2.8.53, 2.8.86
Watchman on, 4.22.4
religious instruction, beneficial effect of, on children, 5.8.5
religious persecution, 2.7.109, 3.3.27
religious principles, dependence of republican government on, 5.8.2
religious tests, 1.64, 3.16.14
Cincinnatus on, 6.1.19
for Congress, 4.14.3
Friend to the Rights of the People on, 4.23.3(9)
Luther Martin on, 2.4.108
in Massachusetts, 4.24.4
religious uniformity, and general welfare clause, 3.13.5
reparation, for victims of Shays' rebellion, 4.6.8
representation
Anti-Federalist and Federalist views on, 1.43–45
apportionment of, 2.4.45
division of, in federated republics, 2.8.208
equality of, 2.4 intro., 5.13.3
filtering effect of, 1.41
increase of, with population growth, 2.4.36
in large republics, 2.9.14
limitation of, for economic reasons, 6.12.13, 6.12.24
in lower house, 5.5.7
modernity of, 1.91n31
principles of, 1.17, 3.11.33
proportion of, to numbers, 2.4.14, 4.13.23
Republican Federalist on, 4.13.22–23
Republicus on, 5.13.3
Robert Livingston on, 6.12n22
taxation as basis for, 2.4.28, 2.4.30
representation, adequate, 3.16n6
Brutus on, 2.9.45
Federal Farmer on, 2.8.97
Republican Federalist on, 4.13.25
Impartial Examiner on, 5.14.28–29
representation, compromise on. *See* Great Compromise
representation, federal
arguments for more numerous, 2.8.97–118, 2.8.133–37
comparison of, with that under British rule, 5.12.2
inadequacy of: Agrippa on, 4.6.1, 4.6.4; Candidus on, 4.9.11; Elbridge Gerry on, 2.1.2; George Clinton on, 6.13.31; Officer of the Late Continental Army on, 3.8.3; Pennsylvania Convention

representation, federal (*cont.*)
Minority on, 3.11.35; Samuel Chase on, 5.3.20
increase of, 2.8.126, 2.8.158, 3.11n17, 5.6.5
inequality of, 2.9.38
Melancton Smith on, 6.12.8–20
reduction of, 3.13.5, 4.13.25, 5.1.82, 6.12n14
representation, numerous, 1.17–18, 2.9.42–48, 4.2.4, 6.12n13
representation, partial, 4.4.7
representation, popular, 2.98.106
representation, proportional, of states
debate over, 2.4.28–35
in general assembly, 2.9.37
proposed for both houses of Congress, 2.4.16
recommended for Senate, 2.6.35
representation, virtual, 1.91n41, 4.13.23, 5.16.29, 6.8.1–2
representation of states
Federal Republican on, 3.6.11–14
in Virginia plan, 2.4.17
representative bodies, basis of, 2.4.29
representative bodies, small, 2.8.105
representative branch
popular confidence in, 2.8.95
safeguards for its democratic character, 2.8.101
representative government
aristocratic nature of, 5.1.29
changeability of, 5.1.71
degeneration of, 5.1.22
devotion of, to minority interests, 5.1.113
failure of, in Europe, 5.5.11
feudal system weakened by, 5.1.107
inability of, to act in general interest, 5.5.6
James Monroe on, 5.21.14
lifetime executive needed for, 5.1.74
representative principle
Anti-Federalist acceptance of, 1.17–18
limitation of, 1.84n21, 6.13.35
representatives
familiarity of, with their constituents, 1.17; Brutus on, 2.9.14; Impartial Examiner on, 5.14.28–29; Melancton Smith on, 6.12.15; Samuel Chase on, 5.3.20
immediate contact of, with people, 3.12.12
influence of, in small legislature, 5.14.30
and jurors, 2.8.55
reflection of population by, 2.9.42
residence of, among their constituents, 2.8.25
representatives, federal
ability of, to defy their constituents, 4.6.4
ability of, to squander public money, 5.16.8
accountability of, to people: Cornelius on, 4.10.7; Federal Republican on, 3.6.26; Georgian on, 5.9.6; Luther Martin on, 2.4.42
age requirement for, 4.13.26
appointment of, by states, 4.4.4, 4.13.23
apportionment of, 4.2n2; Cato on, 2.6.39; Farmer and Planter on, 5.2.3; Samuel on, 4.14.1–2
authority of, 4.3.8
common lot of, with their constituents, 2.8.119
compromises made by, 5.5.5
conduct of, unknown to electors, 4.6.59
control of, over their own wages, 4.14.1
corruption of, 4.25.3
economic and social status of, 6.7.4
election of: Aristocrotis on, 3.6.16; Federal Farmer on, 2.8.160; frequency of, 2.6.35, 2.6.37, 6.6.34; Patrick Henry on, 5.16.8; Rawlins Lowndes on, 5.12.2; Samuel Chase on, 5.3.17
eligibility of, for other government posts, 2.4.46–48, 4.13.5
estrangement of, from their constituents, 3.4.3, 4.3.14
federal payment of, 5.12.2
immunity of, from arrest, 3.4.3
influence of Senate on, 2.8.170

representatives, federal (*cont.*)
knowledge required of, 5.16.8
number of; Cato on, 2.6.35, 2.6.38; Centinel on, 2.7.23; Cincinnatus on, 6.1.29; Countryman on, 6.7.4; Federal Farmer on, 2.8.15, 2.8.116; Gentleman in a Neighbouring State on, 4.2.3; Philadelphiensis on, 3.9.95; Plebeian on, 6.11.15; Republican Federalist on, 4.13.25; Samuel on, 4.14.2; Samuel Chase on, 5.3.20
payment of, by states, 4.10.8–9
popular confidence in, 1.72
qualifications of, 2.8.150
ratio of, to population: Agrippa on, 4.6.4; Cincinnatus on, 6.1.29; Columbian Patriot on, 4.28.4; Federal Farmer on, 2.8.25, 2.8.99, 2.8.105, 2.8.114, 2.8.116, 2.8.158; Republican Federalist on, 4.13.25; George Mason on, 5.17.1; Georgian on, 5.9.4; in Great Britain, 4.13.25; Impartial Examiner on, 5.14.29; insufficiency of, 3.6.11; Melancton Smith on, 6.12.8–10, 6.12.12; Patrick Henry on, 5.16.2; Pennsylvania Convention Minority on, 3.11.34–35, 3.11.37; Republicus on, 5.13.3; Samuel Chase on, 5.3.20
recall of, 2.8.147, 2.9.129, 2.9.196
reelection of, 4.13.5
rules governing, 2.4.16
salaries of, 2.8.142, 4.23.3(3)
Samuel Chase on, 5.3.17
Sidney on, 6.8.32
term of office of: Agrippa on, 4.6.60; Centinel on, 2.7.22, 2.7.74; Congress empowered to change, 3.16.4; Friend to the Rights of the People on, 4.23.3(1)
See also legislators, federal
representatives, Pennsylvania
choice of, as delegates to Constitutional Convention, 3.1.5
representatives, state
choice of, 2.8.160
excessive numbers of, 2.8.116
reprieves. *See* pardoning power
republic, consolidated, 2.6.12. *See also* consolidated government
Republican Federalist (pseud.), *4.13;* 4.12 intro. n1, 4.22 intro.
republican form of government
compatibility of, with despotism, 5.14.4
guarantee of, to Poland, 5.1.99
guarantee of, to states: Albany Committee on, 6.10.10; Countryman on, 6.7.10; Federal Republican on, 3.6.25; George Clinton on, 6.13.26; Luther Martin on, 2.4.16; Sydney on, 6.9.14–15, 6.9.23; William Symmes on, 4.5.2
republican government
arguments against, 4.6.49–50
dissolution of, 3.3.39
form of, substituted for reality, 2.7.68
George Clinton on, 6.13.2
and large territories, 2.4.103
Mercy Warren on dangers to, 6.14.42
opponents of, 4.3.10, 4.13.19
Patrick Henry on, 5.16.19
and popular virtue, 2.7.9, 4.13.21
Sidney on, 6.8.16–18
stability and energy of, 4.6.49
transformation of, into aristocracy, 4.19.4
republicanism
enthusiasm for, 4.26.7
slavery and, 2.4.70
republicanism, classical, 2.1 intro. n2, 4.6.49–50
republicanism, Revolutionary, 1.83n7
republican leaders, unwillingness of, to risk unpopularity, 5.8.2
republican principles
Federalist contempt for, 6.12.20
and government of Federal City, 2.8.22
republicans (name)
application of, to Anti-Federalists, 2.8.72
deceitful use of, 6.7.4
Pennsylvania Federalists, vol. 3 intro.
republicans, old, 5.1.58

republics
abuses in, 5.19.9
limitation of warmaking power in, 5.16.23
republics, ancient
importance of religion in, 6.14.135
popular sovereignty in, 3.14.2
republics, democratic
Federalist aversion to, 2.8.115
popular sovereignty in, 2.6.8
republics, European, 5.19.1
republics, federal, 2.9.4, 3.3.20, 3.11.16
Agrippa on, 4.6.49
Columbian Patriot on, 4.28.4
consolidated government distinguished from, 2.8.132, 2.8.205
definition of, 3.14.6
Federal Farmer on, 2.8.75, 2.8.205
increase of member states in, 3.14.7
Melancton Smith on, 6.12.4–5
[Pennsylvania] Farmer on, 3.14.6–8
raising of men and money in, 2.8.205
remedy for weakness of small republic, 3.14.10
suggestion of name, 1.54–55
See also confederation
republics, inimical, possible emergence of, in America, 2.7.142
republics, large, 4.6.16
advantages of, 3.10n3
confidence of people in, 1.42
defense of, by Plain Truth, 3.8n4
demagoguery in, 1.91n38
difficulty of governing, 5.7.6
evils of, 1.16–17, 2.6.16
impracticality of, 3.3.20
James Monroe on, 5.21.13
Montesquieu on, 2.9.11
[Pennsylvania] Farmer on, 3.14.9
representation and, 1.43–44
republics, small, 1.15, 1.23, 1.89n3
advantages of, 1.16–21
Cato on, 2.6.13
confederation of, 2.7.17, 5.3.4
Federalist critique of, 1.38, 1.41–47
Massachusetts as, 4.7.1
vulnerability of, to external force, 3.14.10
Republicus (pseud.), *5.13*
Requisition of 1781, 3.11.2
Requisition of 1783, 3.11.2
requisitions, congressional
alternative to direct taxation, 2.8.209, 5.16.25–27
arrears due from, 2.7.171
federal power to enforce, 4.5.10, 5.9.3
of five percent impost, 6.1.45
James Monroe on, 5.21.17
Luther Martin on, 2.4.56
methods of enforcing payment of, 2.5.18
Patrick Henry on, 5.16.15
Pennsylvania's compliance with, 3.9.84
proposed use of, under new Constitution, 5.7.6
for raising troops, 2.8.220, 2.9.114
during Revolutionary War, 2.7.79
state compliance with, 3.11.3, 4.9.25, 5.1.54, 5.14.6
requisition system, 1.35
effectiveness of, 2.8.205, 3.3.38
George Mason on, 5.17.1
Melancton Smith on, 6.12.40
Sidney on, 6.8.1, 6.8.4
See also taxation; taxes
residency requirement for Congress, 4.22.4
resources, national
Publius on, 4.5n5
unlimited government control over, 6.12n33
responsibilities, congressional, 5.3.10
responsibility, principle of, 2.9n112
responsible government, 1.16–18, 5.1.34, 5.1.75
proposed Constitution and, 2.7 intro., 5.5.11, 5.16.8
retirement, constitutional, 2.8.179
retrospective laws, 2.7.167. *See also* ex post facto laws
Retz, Cardinal de, 6.14.169
revenge, 3.3.4
revenue
allocation of, 2.3.6
collection of, under Confederation, 2.5.11, 2.8.205

revenue (*continued*)
court cases involving, 5.1.67, 5.4.6, 5.7.7
Court of Exchequer and, 2.9.143
farming of, 2.9.69
federal monopoly of: Brutus on, 2.9.84; Columbian Patriot on, 4.28.4; Melancton Smith on, 6.12.36; Old Whig on, 3.3.33–38; Pennsylvania Convention Minority on, 3.11.21
forcible collection of, 3.7.2, 3.9.27, 4.3.21
lack of, under Confederation, 4.10.16, 5.14.48
See also taxation; taxes
revenue, federal, state guarantee for, 4.5.14
revenue, state
effect of federal Constitution on, 2.9.89
federal interference with, 5.14.6
revenue laws, 2.4.49, 4.13.25
breach of, 3.11.41
definition of, 2.4.51–52
enforcement of, 3.4.5
penalties for infractions of, 2.9.69
oppressiveness of, 2.6.17
senatorial amendment of, 4.2.6
revenue officers, 2.8.169, 2.9.69, 3.11.55, 3.14.7, 4.3.21, 4.17.24
Revision, Council of (New York), 3.12.16
Revolution of 1688, 2.8.105, 5.1.41
revolutionary founders, America's ingratitude toward, 6.14.159
revolutionary leaders, motives of, impugned, 3.9.19
Revolutionary War
America's wealth exhausted by, 4.2.2
conduct of, 2.5.10
damage to economy by, 2.8.2
debts caused by, 3.14.11
economic distress during, 2.7.79
financing of, 2.7 intro., 2.8.205
government spending during, 3.3.38
heroes of, 4.3.14
Massachusetts debt from, 4.4.21
strength of Confederation during, 5.16.2
unity inspired by, 5.7.2
See also American Revolution
Revolutionary War Congress, 2.9.89
revolution principles, 3.3.43, 3.9.68, 6.14.6–7, 6.14.69
revolutions, 4.28.2, 5.19.9
rewards
encouragement of virtue by, 4.24.2
incentive to action, 5.21.24, 5.21n13
Reynard, fable of, 5.1.109
Reynolds, John, 3.11.56
Rhode Island
boycott of Constitutional Convention by, 4.5.2, 4.6n32
democratic government of, 4.22.5
elections in, 2.8.81, 2.8.87
Melancton Smith on, 6.12.40
paper money in, 2.9.181, 5.1.113
rejection of Constitution by, 6.14.50
religion in, 4.24.6, 4.24n3
representation of, 2.8.99, 4.14.2, 5.13.12
Rhode Island Assembly, 3.12.16, 4.6.60, 4.6.61, 4.6.72, 4.6n32
Rhode Island Man (pseud.), 4.25.2
rice, 4.5.2
Richelieu, Cardinal, 5.1.39
Ridgely, Charles, 5.4.11, 5.4.13
right, definition of, 5.14.2
rights
government as protector of, 3.12.3
gradual loss of, by most nations, 5.19.15
insecurity of, in state of nature, 5.14.2
mutuality of, among states, 3.6.51
need for clear definition of, 3.5.4
protection of, under Confederation, 5.14.1
relationship of, to obligations, 3.6.47
surrender of, implied by silence, 2.8.199
treaties and, 2.9.160
rights, constitutional
enumeration of, 2.8.196, 4.23n2
superiority of, to ordinary laws, 2.8.80
rights, declaration of. *See* bill of rights

rights, English. *See* Englishmen, rights of
rights, fundamental, and unalienable rights, 2.8.80, 2.8n55
rights, hereditary, 2.4.50
rights, human, divine origin of, 2.4.68
rights, legal, 2.8.80
rights, natural, 2.4.68
  all government a limitation on, 6.12.28
  gradual discovery of, 3.12.7
  sacrifice of, in civil compact, 3.3.22, 4.3.7, 5.1.52, 5.14.2
  slavery and, 4.26.8
  stipulation of, 5.14.10
rights, reserved, 1.65
  Aristides on, 5.1n3
  Brutus on, 2.9.24
  Cincinnatus on, 6.1.4
  explicit statement of, 4.6.70
  Federal Farmer on, 2.8.197
  Impartial Examiner on, 5.14.2
  James Wilson on, 4.6.51, 4.17.2
  John Francis Mercer on, 5.5.8
  [Maryland] Farmer on, 5.1.14
  Patrick Henry on, 5.16.36
rights, unalienable, 2.8.49, 2.8.80, 3.3.23
riot act, 5.16.2
roads, 3.2.3
  federal jurisdiction over, 3.13.3
  state contracts for, 3.14.18
robbery, 2.9.86
  government made tool of, 4.26.8
Robbins, Caroline, 1.39
Rogers, George C., 5.11 intro. n3
Rollin, Charles, 6.8.16
Roman Catholics (Papists)
  eligibility of, for public office, 4.23.3(9)
  exclusion of, advised, 4.24.5
Roman emperors, failure of, to maintain unity, 2.7.94, 3.11.17
Roman Empire
  disintegration of, 3.11.17
  example of, for America, 2.6.34
  survival of republican institutions in, 6.13.26
Roman Republic
  aristocratic government of, 2.8.105
  citizen army of, 5.14.8
  contrast of, with Carthage, 4.6.49
  internal disharmony in, 5.12.13
  irregularities of, 4.6.6, 4.6.49
  representation in, 2.8.97, 2.8.107
  and standing armies, 6.1.23
  subjection of, to tyranny, 2.7.67, 3.10.1, 4.17.22
  submission of, to military rule, 4.20.4
  territorial extent of, 2.9.12, 3.3.20, 5.1.53
  variety of its constituent parts, 5.1.108
Romans, ancient
  early history of, 6.8.12
  Mercy Warren on, 6.14.108n, 6.14.123, 6.14.135–36
  religion and, 3.16.14, 5.1.106
  Samnites and, 4.12.10
Romans, King of the, 5.1.74
Roses, Wars of the, 5.1.75
rotation (of officials), 3.8.3, 6.14.8
  Charles Turner on, 4.18.1
  Columbian Patriot on, 4.28.4
  under Confederation, 2.8.147
  Gouverneur Morris' opposition to, 6.12n25
  Melancton Smith on, 6.12.27–28
  neglect of, in proposed Constitution, 2.8.133
  in Pennsylvania, 3.11.48
  popular influence and, 3.4.2
  in presidency, 5.11.8
  in republic of Lucca, 4.25.4
  Republicus on, 5.13.4
  Robert Livingston on, 1.44
  in Senate, 2.7.23, 2.9.201
  William Symmes on, 4.5.7
Rousseau, Jean-Jacques, 4.25 intro., 4.25.3
royal government (Pennsylvania), 6.6.17–18
Rudolph of Hapsburg, 5.1.74
rulers
  Federalist confidence in, 1.50–51
  virtuousness of, not to be relied upon, 1.73
rulers, future, to remedy defects in Constitution, 3.3.51
rulers, interests of, and interests of people, 2.9.108
rum, tax on, 5.2.2
rural interests, representation of, at

rural interests (*continued*)
Constitutional Convention, 3.1.5, 3.32.2
Rush, Benjamin, 6.1.2, 6.6.40, 6.11n21
on bills of rights, 1.68, 3.16.12
on British reaction to proposed Constitution, 3.9.40
Federalist pamphleteer, 2.7.158, 2.7n81
metaphysical disquisitions of, 4.12.5
at Pennsylvania Convention, 3.9n19
on separate confederacies, 1.86n2
Russell, Benjamin, 3.9.4, 3.9.23
Russia, 2.9.87, 5.1.99
Rutland, Robert, 2.2 intro., 4.28 intro., 5.11 intro. n1
Rutland, Statute of, 2.9.143
Rutledge, Edward, 5.12n4, 5.12n11
Rutledge, John, 1.30

sabbath, laws for observance of, 4.24.4
Sagadohock, 2.4.100, 2.4.106
Saint-Evremond, 6.14.146
salaries, congressional
Friend to the Rights of the People on, 4.23.3
power of Congress over, 2.5.41, 4.10.8–9
salaries, government, 4.3.23, 4.17.6, 6.10.6
salary men, 2.8.61
Sallust, 6.8.12
salt tax, 5.2.2
Samnites, 4.12.10
Samuel (prophet), 3.9.24, 6.7.8, 6.8.14, 6.12.7
Samuel (pseud.), *4.14*
sanctions
Confederation's inability to enforce, 5.16n11
use of, against states, 4.26.11
San Marino, republic of, 1.45, 4.25.3, 4.25.4, 5.1.78
Saul, King, 6.7.8
Saxons, 4.28.4, 5.1.64
scholastic philosophy, fine distinctions of, 3.6.50, 3.12.11
schools, curriculum recommended for, 5.1.82
science, 4.3.24, 5.3.19
Scipios (Roman family), 5.1.107–8
Scotland, 4.6.25
aristocracy in, 5.1.27
degradation of, 4.6.76
disadvantages of, 6.4.2
impoverishment of, 4.6.25, 4.6.53
law courts in, 3.11.40
representation of, in Parliament, 5.16.25
union of, with England, 5.12.2, 5.16.25, 6.4.1–3
Scots
dislike of, in England, 6.4.2
emigration of, to America, 5.7.8
Scots-Irish, in Pennsylvania, 6.6.18
seaports, characteristics of voters in, 4.10.11
seamen, American, unemployment among, 3.3.32
search and seizure
by excise officers, 5.2.2
Massachusetts constitution and, 4.3.22
Son of Liberty on, 6.2.2
Virginia constitution and, 5.16.37
search and seizure, unreasonable, 5.6.5
freedom from, 2.7.1
protection against, 2.7.55, 2.8.86, 2.8.200, 3.3.30
search warrants
limitations on, 2.8.53, 2.9.28
oaths required for, 5.4.6
See also warrants
seat of government, 4.3.28
secession, 4.13.17, 5.16.8
secrecy
in civil law proceedings, 2.8.192
in congressional proceedings, 4.5.2, 3.13.5, 4.23.3(3), 6.9.2
in executive department, 2.5.22
at Constitutional Convention, 2.4.7, 2.4.13, 2.6.8, 2.7.30, 3.6.9
in negotiating treaties, 2.8.147
Patrick Henry on, 5.16.20
Republican Federalist on, 4.13.26
secrecy, oaths of, 6.8.28
Secret Proceedings, 2.4 intro.
Sedgwick, Theodore, 4.13n25
sedition, 4.14.3, 5.16.2
Seldon, John, 5.1.73

selectmen, 4.13.14
self-defense, 3.11.13, 4.17.4, 4.28.2
self-government, Americans' aptitude for, 5.1.52
self-incrimination, protection against, 2.8.86, 2.9.27, 3.11.13
self-interest
  dependence of proposed Constitution on, 1.72
  Federalist reliance on, 1.41
  insufficiency of, 1.74
  promotion of common good by, 4.6.26
selfishness, 3.10n3, 5.18.8
self-love
  operation of, in government, 2.9.45, 5.16.14, 5.16.17
  motive of Framers, 3.16.18
self-preservation, law of, 3.1n3, 3.16.8, 4.18.1
self-sacrifice, 5.21.12
Senate, Danish, 5.1.36
Senate, federal, 2.4.16, 3.3.53, 5.1.94
  Anti-Federalist animus toward, 1.49
  appointment of, by executive, 5.1.74
  apportionment of representatives in, 2.9.40, 2.9.199, 2.9n26
  arguments against, 5.13.7
  aristocratic nature of, 2.7.48
  characteristics of, 2.8.28
  Cincinnatus on, 6.1.26–36
  Columbian Patriot on, 4.28.4
  common people excluded from, 2.8.54
  composition of, 2.7.22
  compromise on, in Constitutional Convention, 2.9.199
  constitution of, 2.9.198–201
  corruption of, by executive, 5.3.20
  criticisms of, 1.92–93n3
  Countryman on, 6.7.1
  Countryman from Dutchess County on, 6.6.45
  dangers of its connection with president, 6.1.27
  executive functions of, 2.8.145, 2.9.202
  federal nature of, 2.8.28, 2.8n22
  filling vacancies in, 2.5.41, 2.6.37
  George Mason on, 2.2.3–4, 2.2.7–8
  guard against rash measures, 2.4.53
  and House of Representatives: Federal Farmer on, 2.8.100, 2.8.170; John DeWitt on, 4.3.14; Luther Martin on, 2.4.38, 2.4.51; Montezuma on, 3.4.2; Republican Federalist on, 4.13.28
  Impartial Examiner on, 5.14.33
  in impeachment proceedings, 2.4.88, 2.6.45
  James Monroe on, 5.21.32–33
  John Adams on, 5.12.4
  John DeWitt on, 4.3.12
  John Francis Mercer on, 5.5.7
  judicial function of, 2.9.202
  legislative, judicial, and executive powers of, 3.11.42, 6.1.26, 6.11.16
  legislative functions of, 2.9.202, 6.1.32
  local interests counteracted by, 6.12.32
  management of foreign affairs by, 2.8.146
  nonaristocratic character of, 2.8.145
  nonrepresentative character of, 5.13.12
  organization of, 1.59, 3.14.14
  privy council for president, 2.4.42, 2.4.88
  proposed selection of Supreme Court justices by, 2.4.16
  and raising troops, 2.9.114
  relationship of, to president: Cato on, 2.6.26; Federal Farmer on, 2.8.170–71; James Monroe on, 5.21.34; John DeWitt on, 4.3.13; Luther Martin on, 2.4.42; Officer of the Late Continental Army on, 3.8.3; Pennsylvania Convention Minority on, 3.11.45; William Symmes on, 4.5.2
  removal of executive powers from, 3.6.41, 3.11.13
  representation in, 2.4.34
  representation of people in, 4.5.7
  representation of states in, 2.7.23,

Senate, federal (*continued*)
2.9.199, 6.13.21
Republicus on, 5.13.12
Richard Henry Lee on, 5.6.2
small size of, 2.8.22
support for state governments by, 2.4.42, 2.8.146
in treaty-making process, 2.8.147, 2.5.41
unlimited power of, 2.7.49
usurpation of power by, 5.13.13
William Symmes on, 4.5.2
Senate, president of, 4.13.13
Senate, Roman
conflicts of, with Plebeians, 5.12.13
and imperial regime, 2.7.36
and Julius Caesar, 4.28.2, 5.1.101
large assembly, 2.8.136
perpetuation of dictatorship by, 5.10.2
taxation by, 2.8.106
Senate, Swedish, 5.1.35
senate, triennial, 6.6.34
Senate, Venetian, 4.6.60
senates
proper composition of, 5.1.31
standing armies and, 5.1.33
senates, state, 4.3.14
senators, federal
appointment of, 2.8.144
division of, into three classes, 3.6.15, 3.6.42
divorce of, from people, 2.9.200
election of: Federal Farmer on, 2.8.164, 2.8.214; Gentleman in a Neighbouring State on, 4.2.6; Luther Martin on, 2.4.16, 2.4.41, 2.4.49; by people, 5.14.34; Rawlins Lowndes on, 5.12.2; Republicus on, 5.13.12; states and, 2.4.16, 2.8.214, 3.14.14
eligibility of, for other government posts, 2.4.46–48
exclusion of, from state offices, 2.4.46
immunity of from arrest, 3.4.3
impeachment of, 2.5.41
independence of popular control, 4.3.12
independence of states, 2.4.42
individual votes of, 2.8.143, 6.6.45
judges of impeachments, 3.16.15
payment of, by states, 4.10.8–9
proposed amendment regarding, 6.12.25–35
recall of, 2.9.201, 6.12.25, 6.12.27–28
reelection of, 2.1 intro. n6, 2.9.201, 6.12.25, 6.12.27
salaries of, 3.14.15, 4.23.3(3)
small number of, 3.9.95, 3.11.34–35, 5.3.17
and state legislatures, 1.89n61, 2.4.16, 2.8.164, 2.8.214, 2.9.201
term of office: Brutus on, 2.9.200; Cato on, 2.6.37; Centinel on, 2.7.74; Cincinnatus on, 6.1.27; congressional power to change, 3.16.4; Federal Farmer on, 2.8.147; Friend to the Rights of the People on, 4.23.3(1); Montezuma on, 3.4.3; Samuel Chase on, 5.3.17
See also legislators, federal
senators, state, 2.8.116
senatus consultum, 2.7.36
Seneca, 4.13.3
sensible ass, fable of, 3.9.28
Sentiments of Many, *5.20*
separation of powers, 2.8.86, 2.9n112, 3.11.13, 6.6.34, 6.14.9
Agrippa on, 4.6.73
Anti-Federalist attitudes toward, 1.54–55
Brutus [Virginia] on, 5.15.1
distinguished from balancing of orders, 2.7n4
and Federalist theory of balanced government, 1.59–63, 2.7.7, 2.7.10
exceptions to, 2.8.175
inviolability of, 2.9.147
James Monroe on, 5.21.19
neglect of, in plan for Senate, 2.9.203, 3.11.42
Richard Henry Lee on, 5.6.1
and separation of functions, 1.62–63
and state constitutions, 3.12.16
theory of, established in America, 3.12.17
violation of, in new Constitution, 2.6.35, 2.7.50, 6.1.26–32, 6.13.32

Sergent, Jonathan Dickinson, 1.82n35
Settlement, Act of, 3.3.23
Seventh Amendment, 3.5n6
several states, federal Constitution's use of the words, 3.13.2
Shaftesbury, Earl of (Anthony Ashley Cooper), 3.6.7, 3.10.8, 5.7.9
Shawnee Indians, 5.1.47
Shays, Daniel, 6.14.28
Shays' rebellion, vol. 4 intro.
  and abuses in judiciary, 2.9.176
  Brutus on, 2.9.127
  and desire for strong government, 2.7.182
  James Winthrop and, 4.6. intro.
  Mercy Warren on, 6.14.24–37
  reprieve of insurgents in, 6.14.36
  suppression of, 2.6.16, 4.9.38
  Vox Populi on, 4.4.30
sheriffs, 2.8.169
  appointment of, 2.8.176
  in England, 4.17.24
  replacement of, by army officers, 2.8.39
  supervision of, by state legislatures, 5.16.6
  in Vermont and Massachusetts, 4.6.8
sheriffs, federal, 5.16.6
Sherman, Roger, 1.38, 2.9n23, 3.3n33, 3.3n35
shipbuilding industry
  neglect of, by Congress, 3.9.48
  Richard Henry Lee on, 5.6.4
  stagnation of, 3.3.32, 4.6.11
shipping, U.S.
  British and French seizure of, 6.14.100
  power of states to regulate, 2.4.73–74
ships of war
  expense of building, 3.9.22
  large states' construction of, 3.9.29
  states' need for, 5.14.11
shipwrecks, 4.25.3
Short, William, 6.1 intro. n2
Sibyl, 4.12.6
Siberian wheat, 4.25.5
Sidney, Algernon, 5.1.13, 6.14.10
  on annual election of magistrates, 2.6.36–37
  devotion of, to liberty, 6.8.20
  opposition to Charles I, 5.1.73
  on parliamentary control of military, 5.11.7
  Republicus on, 5.13.9
  on standing armies, 4.3.29
  on usefulness of suspicion, 6.1.12
Sidney (pseud.), *6.8;* 2.6 intro., 2.9 intro.
signers of federal Constitution
  lack of conviction among, 3.11.5
  motivations of, 3.8.9
silver, 2.4.76, 3.10.5
simple government, 1.56, 1.58
sinecures, 3.16.1, 3.16.14n
Sixteen Seceding Members, 2.2 intro., 2.7 intro. n7
  Anti-Federalist boycott of Pennsylvania Assembly, 3.2 intro.
  Federal Republican on, 3.6.7
  Philadelphiensis on, 3.9.60
  See also Pennsylvania House Minority
skepticism, 6.14.148–49
slander, 4.3.25
Slave (pseud.), 6.2.1, 6.2n1
slave owners, concessions to, 6.12.8
slave revolts, 6.6.36
slavery, 2.7.75, 4.2n6
  abolition of, 2.4.69, 4.26.12
  in ancient Greece and Rome, 4.6.6
  Benjamin Franklin and, 6.6.8
  congressional statement against, 4.26.15
  Consider Arms et al. on, 4.26.8
  constitutional provisions relating to, 3.6.22
  effect of, on southern mores, 4.6.48
  encouragement of, by proposed Constitution, 2.4.45, 4.26.8
  Federalist and Anti-Federalist attitudes toward, 1.9n20
  Federalist opposition to, 3.9.14
  forbidden by Christianity, 3.16.14
  imposition of, by Virginia Plan, 2.4.29, 2.4.34
  increase of, after 1808, 4.26.12
  injustice of, 2.9.39
  Luther Martin on, 2.4.68

slavery (*continued*)
necessity of, to South Carolina, 5.12.1
profits generated by, 4.5.2
Republicus on, 5.13.14
slavery, political, 5.13.10
slaves, 6.10.4
allowance of representatives for, 2.1 intro. n6, 2.6.39, 2.9.39, 4.13.22
danger of, to southern states, 5.12n6
emancipation of, 4.2.3, 4.26.4, 4.26.14, 5.12n6
free birth of, 4.19.3
John Locke on, 4.13.22
people of America compared to, 3.7.1–2
reluctance to mention, 2.4.64
taxation based on, 2.7.76, 4.10.19
treatment of, 4.26.8
right of slaveowners to recover, 5.12n6
See also three-fifths clause
slaves, importation of
Consider Arms et al. on, 4.26.8–15
states powerless to prevent, 3.13.5
slave ships, 2.26.8
slave states, 4.13.22
slave trade, 3.8.3
abolition of, 2.4n24
American engagement in, 4.2.9
British participation in, 4.27.3
Centinel on, 2.7.76
compromise on, 2.2 intro., 2.4.67, 6.6.13
congressional consent for prohibition of, 3.13.3
constitutional regulation of, 2.2.14
Constitution's threat to, 5.12.1
controversy over, 2.4.64–71
Countryman on, 6.7.6
Countryman from Dutchess County on, 6.6.4, 6.6.34
encouragement of, by proposed Constitution, 2.6.35
eventual prohibition of, 2.8.229
Friend to the Rights of the People on, 4.23.3(5)
Luther Martin on, 2.4.45
means of increasing southern representation, 2.9.39
Rawlins Lowndes on, 5.12.1
Republicus on, 5.13.14
Sentiments of Many on, 5.20.6
U.S. protection of, 4.26.14–15
"small party," 4.9.38
Smilie, John
cited by Helvidius Priscus, 4.12.6
debate with Wilson and McKean, 4.6.57
on popular support for state governments, 1.90–91n25
Pennsylvania Anti-Federalist leader, vol. 3 intro., 3.1 intro.
Pennsylvania Convention Minority, 3.11.56
Smith, John R., vol. 5, pt. 2, intro. n1
Smith, Melancton, *6.12;* 2.9 intro. n8
author of Plebeian address, 6.11 intro.
on balance between union and liberty, 1.24
on closeness of representatives to people, 1.17
on interaction between people and government, 1.19
at New York convention, vol. 6, pt. 1, intro.
on representation, 3.4 intro.
on suppositions about human nature, 1.52
on yeomanry, 1.18
Smith, William, 6.6n11
smuggling, 2.9.63, 3.9.29, 5.9.8
soap, tax on, 3.16.17, 5.2.2
social contract, 2.9.24. *See also* compacts, political and social
Social Contract (Rousseau), 4.25.3
social groups, conflicting interests of, 2.8.97
society
benefits of, 4.3.24
dissolution of, 4.10.5
educative function of, 1.47
ends of, 2.7.1
formation of, 5.14.2
origin of, 4.6.68
reasons for entering into, 6.13.17
Socrates, 5.1.21
soldiers
bias of, against conscientious ob-

soldiers (*continued*)
jectors, 3.9.11
employment of, in national army, 2.8.61
terms of enlistment, 5.4.6
vices of, 5.14.8
Solomon, King, 3.3.17, 5.1.102
Solon, 4.3.10, 5.1.23, 6.8.36
Somers, Baron (John Somers), 5.1.7, 5.1.10
Some Observations on the Constitution, 5.21
James Monroe's suppression of, 5.21 intro.
Somerset County, Maryland, 5.4.3
Son of Liberty (pseud.), 6.2
sophistry, 3.4.5, 3.8.2, 3.8.5, 4.12.10, 5.1.91
Sophocles, 5.1.21
soul, immortality of, 3.16.15, 5.1.92
South Carolina
biennial elections in, 2.8.88
Episcopal church in, 3.12.18
importation of slaves by, 5.12.1
loss of slaves by, during Revolution, 4.26.10
necessity of slavery to, 5.12.1
revenue and representation of, 4.14.2
role of governor in, 3.12.16
separation of law from equity in, 2.8.195
unattractive climate of, 5.12.3
vote of, against prohibition of slave trade, 2.4.65
South Carolina, University of, 5.12 intro. n3
South Carolina constitution, 5.1.44
South Carolina convention, vol. 5 intro., 5.12 intro. n1, 5.12 intro. n3
South Carolina legislature, 4.6.61, 5.12
South Carolina Senate, 2.8.89
South Carolinian Library, 5.12 intro. n3
southern confederacy, 2.5.27–29, vol. 5, pt. 2, intro.
southern states, 4.2n6
and allowance for slaves in representation, 2.8.61
control of, aristocracy, 2.8.26
coercion of northern minority by, 4.2.11
comparison of, with north, 2.6.18, 2.6n13
compensation of, at expense of Africans, 4.26.10
demand by, for protection of slave trade, 4.26.10
disadvantage of, in Congress, 5.6.3
disunity of, in Congress, 5.7.8
improbability of migration to, 5.12.3
inhabitants of, 4.6.48
interests of, threatened, 2.2.11
Patrick Henry on, 5.16.6
and prevention of direct taxation, 4.13.23
Rawlins Lowndes on, 5.12.1
rejection of Constitution by, 3.9.42
representation of, 4.2.4
revenue of, 2.7.76
slavery an advantage to, 2.4.45
and slavery controversy, 2.4.67
tax apportionment for, 4.10.19
trade of, 4.6.37
undue weight of, in federal government, 2.9.39
South Sea Bubble, 6.8.34
sovereign authority, 2.9.13, 3.14.15
sovereignties, conflicting, 5.14.4
sovereignities, coordinate, 2.7.99, 3.11.23
sovereignties, dual
Anti-Federalist view of, 1.12
inconsistency of, 5.10.2, 5.14.4
James Monroe on, 1.81n32
sovereignty, 1.54
attribute of legislature, 1.61, 2.4.54
definition of, 3.14.2–3
of federal government, 3.14.19
necessary ingredients of, 6.1.40
[Pennsylvania] Farmer on, 3.14.2–5
taxation and, 3.14.5
usurpation of, by Constitutional Convention, 2.7.67
sovereignty, democratic, 3.11.26
sovereignty, divided, 1.33, 1.34, 1.37, 4.6.21
sovereignty, popular, 2.6.8, 2.7.9

Spain
absolutism in, 2.8.178
aristocracy in, 5.1.29
Jay negotiations with, 5.16 intro., 5.16.21
[Maryland] Farmer on, 5.1.40
possible war with, 2.9.121–22
provincial assemblies in, 2.8.103
royal prerogative in, 5.16.36
standing armies in, 4.3.29
treaty connections with, 4.27.5
Spanish America, 4.6.16, 4.6.48
Sparta, 5.1.47, 5.1.64
example of, 2.6.13
laws of Lycurgus, 3.3.2
loss of liberty in, 4.17.22
representation in, 2.8.97
virtues of, 4.28.8
Spaulding, E. Wilder, 2.6 intro., 6.3 intro., 6.7 intro. n1
specialists, danger of leaving government to, 4.3.24
specie
circulation of, 4.18.2
exchange of paper currency for, 5.16.39
export of, 2.7.66, 2.7.103, 6.14.20
payment of public debt in, 4.9.30, 6.1.43
See also cash
speculation, evils of, 6.14.19, 6.14.71
speculators
interest of, in Indian lands, 6.6.36
payment of, in hard money, 6.1.47
speech, freedom of, 2.7.1, 3.11.13
Spinola, Ambrogio di, 5.1.47
spirits, taxes on, 2.9.59
Springfield, Massachusetts, 6.14.28, 6.14.30
stability, political, 1.7–8
stadtholder (Netherlands), 4.25.4
attempt of, to establish despotism, 5.1.38
defiance of States-General by, 5.9.10
ruinous influence of, 5.16.11
Sidney on, 6.8.2
Stamp Act (1765), 2.7.121, 6.6.19
stamp duties, 2.4.55, 3.16.17
Federal Farmer on, 2.8.36
means of controlling press, 3.8.3, 3.13.5
Son of Liberty on, 6.2.2
states forbidden to levy, 3.3.32
stamp officers, 4.3.31
standing army, 2.2.13, 5.6.5, 6.10.5
Agrippa on, 4.6.21
Alfredus on, 4.17n13
amendment forbidding, 5.4.7
Anti-Federalist fear of, 1.84n12
attempts to establish in America, 6.14.96
authorization for, 2.7.122
Benjamin Franklin on, 6.6.18
Brutus on, 2.9.17, 2.9.29, 2.9.104–14, 2.9.126
Cato on, 2.6.4, 2.6.17
Centinel on, 2.7.47, 2.7.55
Cincinnatus on, 6.1.23–25
and collection of taxes, 3.7.2
Columbian Patriot on, 4.28.4
conversion of militia into, 4.2.8
composition of, 3.9.27
Countryman on, 6.6.28
Customer on, 4.6.1
Democratic Federalist on, 3.5.2, 3.5.10
Denatus on, 5.18.12
engine of arbitrary power, 2.4.59, 2.4.62, 2.7.11
in England, 5.1.41
Federal Farmer on, 2.8.39, 2.8.168
Federalist Republican on, 3.6.21
and frontier defense, 4.3.14
Impartial Examiner on, 5.14.8
James Wilson on, 2.9n73, 6.1.37, 6.1n10
John DeWitt on, 4.3.9, 4.3.14, 4.3.28–29
[Maryland] Farmer on, 5.1.33, 5.1.45–49
means of seizing power, 3.11.51
means of violating people's rights, 3.3.29
and national defense, 2.9.121–23
national militia substitute for, 5.21.17
[New Hampshire] Farmer on, 4.17.4
Old Whig on, 3.3.29, 3.3.53
Patrick Henry on, 5.16.2
Pennsylvania constitution on, 6.1.37
Pennsylvania Convention Minority on, 3.11.13, 3.11.51
Philadelphiensis on, 3.9.22,

standing army (*continued*)
3.9.27, 3.9.41, 3.9.45
poverty as security against, 5.1.45
Richard Price on, 5.11.4
separation of from people, 5.1.33
size and purpose of, 4.3.27
Son of Liberty on, 6.2.2
in state constitutions, 2.9.112, 2.9n21, 2.9n76, 6.1.37
strength of Congress established by, 4.13.25
supposed benefit of, 5.16.2
taxes to support, 3.3.33
use of, to keep people in awe, 3.9.27
use of, to suppress sedition, 4.14.3
uselessness of, in repelling foreign foe, 3.9.22
William Pulteney on, 2.9.99
See also army, peacetime
Star Chamber, 2.1 intro. n6, 6.1.7
state, affairs of, legislators' lack of interest in, 3.3.3
state, interference of, in religious matters, 4.24.1
state attorney, 2.8.169, 4.21.1
State Gazette of South Carolina, 5.10
state governments
annihilation of: Brutus on, 2.9.194, 2.9.199; Centinel on, 2.7.94; George Clinton on, 6.13.24; George Mason on, 5.17.1; Impartial Examiner on, 5.14.10; James Wilson on, 4.13n4; Luther Martin on, 2.4.39, 2.4.44, 2.4.62; Old Whig on, 3.3.20; Samuel on, 4.14.4; Samuel Chase on, 5.3.16; Watchman on, 4.22.4
conflict of, with federal government: Cato Uticensis on, 5.7.9; Centinel on, 2.7.99; George Clinton on, 6.13.11–13; Luther Martin on, 2.4.58, 2.4.96–97; Officer of the Late Continental Army on, 3.8.3; Old Whig on, 3.3.37; Patrick Henry on, 5.16.27
Congress and, 2.7.99
consolidated nature of, 2.8.205
contradictions of, 3.12.18
control of militia by, 2.8.170, 2.8.174, 4.9.22
debts of, 2.7 intro., 2.8.39, 2.8.209, 2.9.63, 4.1.3
defective administration of, 2.8.206
defense of people by, 2.8.138
definition of their authority, 2.5.41, 3.11.22, 5.17.1
dependence of, on new federal government, 6.9.5
description of, 2.8.87
efficiency of, 4.6.18
erosion of popular support for, 1.90–91n25
expense of, 2.8.209
and federal taxing power, 2.8.205
Fisher Ames on, 1.11
Framers' desire to protect, 1.2n29
and litigation in federal courts, 2.8.224
means and ends of, 1.29–32
Melancton Smith on, 6.12.35, 6.12.40
ministerial power of, 3.14.16
oath to support, 2.8.229
people's assent to abolition of, 5.3.16
and "perfect union," 2.9.151
popular control of, 2.8.129
precedence of, over local government, 2.8.56
protectors of individual rights, 2.4.38, 2.4.44
reduction of, to role of petitioners, 2.8.128
relation of to people, 2.4.114, 2.8.21
restrictions on, 6.7.14
role of, in new system, 2.8.128
rotation of officials in, 2.8.147
subversion of, by proposed Constitution, 2.9.139
supposed inability of, to manage their own affairs, 5.16.9
and suspension of Habeas Corpus Act, 2.4.72
taxing power of, 2.4.55, 2.9.63
violation of their sovereignty, 2.3.5, 2.7.38
yeomanry and, 2.8.39
State of Facts (Elbridge Gerry), 2.1n1

State house speech (James Wilson), 1.65, 2.2 intro.
state legislatures. *See* legislatures, state
state officials
  oath of, to support federal Constitution, 2.4.16, 4.6.19
  oaths of allegiance sworn by, 6.7.9
  opposition of, to proposed Constitution, 2.4.118, 2.4n44, 2.7.57, 2.7n33, 6.13.12
  relation of, to federal officials, 6.12.31
state presidents, 4.17.3
states
  ability of, to exist without federal government, 3.14.8, 3.14n5
  admission of new, 2.4.16, 2.4.34, 2.4.99–107, 4.23.3(8), 5.20.6
  agreements between, 3.13.3, 4.5.2
  alliances among, 2.4.45
  authority of, to maintain troops, 2.8.200
  autonomy of, in internal affairs, 3.14.7
  basic similarity of, 6.1.38
  capacity of, to dissent, 3.14n8
  as checks on federal government, 1.69
  under Confederation, 2.7.37, 2.7.98, 3.3.8, 3.6.12, 5.21.5–6
  confinement of, to their own affairs, 4.5.3
  congressional jealousy of, 5.3.16
  constituent elements of Union, 2.4.39
  Constitution's use of word, 3.13.2
  in controversies involving citizens of other states, 2.9.160, 4.6.52
  division of, into districts, 2.9.52, 4.13.29, 5.9.4
  effects of disunity on, 2.5.25
  equality of: Federal Farmer on, 2.8.143; Luther Martin on, 2.4.13, 2.4.29–31, 2.4.41; Republicus on, 5.13.12
  exclusion of, from national system, 2.5.21, 5.16.1, 5.21.18
  extinction of their independence, 3.6.29
  faith and credit of, 2.9.161
  Federal Farmer's concern with, 2.8 intro.
  financial responsibilities of, 2.9.81
  financial support of federal government by, 2.4.30, 2.8.162
  foreign agents in, 4.13.26
  formation and training of militia by, 2.8.217
  gradual erosion of their power, 6.12.38–39
  heterogeneity of, 6.1.38
  incompetence of, to levy imposts, 3.14.11
  judgments against, for debt, 2.9.163
  libels against, 4.8.1
  litigation of, with their own citizens, 2.7.42, 2.7.n22
  natural inequality of, 4.6.28–29, 5.15.1
  and naval construction, 3.9.29
  obligations of, to each other, 2.4.110, 2.4.112, 2.4.114
  opposing interests of, 4.3.14
  opposing views on, 1.13
  original separate status of, 5.21.4
  power retained by, 2.9.9, 3.6.48
  as preservers of liberty, 1.15
  proper responsibilities of, 2.8.130
  protection of, from federal interference, 4.6.45
  protection of, from lawsuits, 4.15.4
  quarrels among: Brutus on, 2.9.160; Centinel on, 2.7.142; Cornelius on, 4.10.12; Edmund Randolph on, 2.5.30; Luther Martin on, 2.4.89; Samuel Chase on, 5.3.11; William Symmes on, 4.5.2
  reduction of their power, 5.10.2, 5.16.6
  representation of: Brutus on, 2.9.199; Federal Farmer on, 2.8.147; George Clinton on, 6.13.21; Georgian on, 5.9.4; [Pennsylvania] Farmer on, 3.14.8, 3.14.15; Philadelphiensis on, 3.9.24
  resistance of, to federal government, 2.8.131, 2.8.211
  revenue of, 2.8.220, 3.3.33, 4.5.16
  right of, to alter their form of government, 4.5.2

states (*continued*)
right of, to regulate Indian affairs, 6.9.9
role of, in confederacies, 6.13.23
senates of, 4.3.14
suits against, 2.8.43, 2.9.161
unanimous agreement of, 4.4.13
varied laws and customs of, 2.9.16, 4.3.6
votes of, in Congress, 3.6.12, 5.9.4
state sovereignty, 1.9
Brutus on, 2.9.63
Cato on, 5.10.2
Centinel on, 2.7.37, 2.7.98
Charles Pinckney on, 5.12n7
Cincinnatus on, 6.1.40
Columbian Patriot on, 4.28.5
under Confederation, 5.21.6, 5.21.8, 5.21.12
Democratic Federalist on, 3.4.5
Federal Farmer on, 2.8.147
George Clinton on, 6.13.16, 6.13.31
in Holland, 5.16.2
Impartial Examiner on, 5.14.4
incompatibility of, with federal union, 3.8n1
Luther Martin on, 2.4.38
Officer of the Late Continental Army on, 3.8.3
Old Whig on, 3.3.8
Pennsylvania Convention Minority on, 3.11.13
Rawlins Lowndes on, 5.12.2
state spirit, James Monroe on evils of, 5.21.18, 5.21.34
states, agricultural, 5.6.4
states, commercial, 2.4.67
revenue produced by, 2.4.45, 4.6.78
states, delinquent, 2.5.7, 2.7.169
dangers of compelling payment by, 2.8.205
excessive generosity toward, 3.9.85
support for proposed Constitution among, 3.14.22
states, inland, 4.5.16
states, large
ability of, to outvote small states, 2.4.45
ambition of, 2.4.34
arguments favoring their dominance, 2.4.28
attempt of, to dominate small states, 2.4.15
delegates of, at Constitutional Convention, 2.4.25
division of, 2.4.103–7, 2.6.16, 2.6n11
effort to disguise their dominance, 2.4.45
expanding populations of, 2.4.36
influence of, on president, 2.4.42
influence of, in selecting vice president, 2.4.84
legal advantages not necessary for, 3.6.13
in presidential elections, 2.4.83
representation of, 2.5.22, 2.9.40
and Virginia Plan, 2.4.17
states, recalcitrant, penalization of, 4.9.22
states, remote, 2.8n14, 4.6.11
states, rights of, 1.11–12, 1.35, 2.4 intro. n9
Brutus on, 2.4.14, 2.4.24, 2.4.33
inclusion of, in bill of rights, 4.6.24
John Francis Mercer on, 5.5.8
One of the Common People on, 4.8.2
states, small, 2.4 intro.
Brutus on, 2.4.17, 2.4.29
Columbian Patriot on, 4.28.11
support of, for proposed Constitution, 3.6.14, 3.9.86–87, 3.14.22
unchanging population of, 2.4.36
states, union of, as social contract, 2.4.29
States-General (Netherlands), 5.1.38, 5.9.10
State Soldier (pseud.), 5.6 intro.
Steele, Richard, 6.8.7–10
Steiner, Bernard, 5.2 intro. n1
Steuben, Baron von, 4.2.8, 4.2n4, 3.9.48, 3.9n23
Stockbridge, Massachusetts, 2.7.132
stock jobbing, 4.3.21
Stone, William, 6.13 intro.
Strafford, Earl of (Thomas Wentworth), 5.1.75
strength, bodily, cause of pre-

strength, bodily (*continued*)
eminence in savage state, 2.7.107
strength, national, importance of appearance of, 6.1.37
Strong, Caleb, 4.6n32, 4.13.6
Stuart (Steward), House of, 6.14.124
banishment of, 5.16.24
Maryland Farmer on, 5.1.10
succession, hereditary, 3.3.31, 3.16.4
Suetonius, 5.1.101
suffetes (Carthage), 2.8.178
Suffolk County, Massachusetts, 2.8.99, 4.13.29
suffrage
constitutional guarantees of, 4.26.5
failure of people to exercise, 6.8.30–31
qualifications for, 4.13.26, 6.19.17, 6.19.20
Republicus on, 5.13.6
of states in national legislature, 2.4.16, 2.4.28, 2.5.40
See also franchise
suffrage, equal, 5.16.2
suffrage, popular, 3.11.26
suffrage, right of
congressional interference with, 3.13.5, 4.18.1
Elbridge Gerry on, 2.1.2
Montesquieu on, 5.4.10
resignation of, by people, 5.13.13
Sulla (Sylla), L. Cornelius, 5.1.71, 5.1.107, 5.9.2
Sullivan, James, 4.15 intro. *See also* Cassius
Sumpter, Thomas, vol. 5, pt. 2, intro.
sumptuary laws, 5.1.82, 6.14.29
superior courts, 2.8.187, 4.17.5
superstition, 3.3.27
supplies, requisition of, 2.5.6
supremacy clause, 1.28, 2.7.97, 2.9.5, 3.16.16n
Agrippa on, 4.6.19
Albany Antifederal Committee on, 6.10.4
Cincinnatus on, 6.1.16
Countryman on, 6.7.9
Countryman from Dutchess County on, 6.6.25
and federal judicial power, 4.6.52
and federal power over states, 3.13.3
Federal Republican on, 3.6.32
Impartial Examiner on, 5.14.4
means of annihilating states, 4.8.1
Pennsylvania Convention Minority on, 3.11.22
Samuel on, 4.14.4
Sydney on, 6.9.12
Vox Populi on, 4.4.34
Supreme Court, federal, 2.4.89, 4.3.9, 6.10.8
accountability of, for misconduct, 2.9.197
amendment to limit costs of suits in, 5.9.13
appellate jurisdiction of: Brutus on, 2.9.168–77; Cato Uticensis on, 5.7.7; Columbian Patriot on, 4.28.4; in criminal cases, 2.9.170; Federal Farmer on, 2.8.43, 2.8.45, 2.8.194; Friend to the Rights of the People on, 4.23.3(7); Luther Martin on, 2.4.58, 2.4.90; Old Whig on, 3.3.51
assignment of juries to, 4.17.3
authority of, 2.9.138
Brutus on, 1.50, 2.9.7, 2.9.177, 2.9.183, 2.9.193
Candidus on, 4.9.16, 4.9.22
and cases involving foreign ambassadors, 2.8.186
Countryman on, 6.7.1
expense and inconvenience of appeals to, 2.4.94, 2.8.16
and federal officials, 3.5.9
freedom of, from popular control, 2.9.196
Impartial Examiner on, 5.14.9
interpreter of Constitution, 2.7 intro., 2.7.168, 2.9.193
James Monroe on, 5.21.35
jurisdiction of, in matters of law and fact, 2.8.189, 5.6.2, 6.1.7
location of, 2.9.176, 2.9.177
original jurisdiction of, 2.7.25, 2.8.186, 2.9.168
Plebeian on, 6.11.32
possible composition of, 2.8.187
regulation of, by Congress, 3.3.16
superiority of, to every other

Supreme Court (*continued*)
power in government, 2.8.184
and trial of facts, 3.5.8
in Virginia Plan, 2.4.16
William Symmes on, 4.5.2
Supreme Court justices, 2.8.176
supreme courts, state, 3.5.8, 4.15.4
suspensive power, 5.13.14
suspicion
of human nature, 2.7.112
political virtue of, 5.16.2
of representatives by people, 2.9.49
Swart, Dirck, 6.10.1
swearing, laws against, 1.85–86n49
Sweden
absolutism in, 2.8.178
constitution of, 5.1.35
intrigues of foreign powers in, 3.8.3
jury trial in, 2.7.44, 3.11.40
revolution in, 3.8n4
union of executive and senate in, 5.1.31
Swift, Jonathan, 3.3.32, 3.3.51
Swiss, 5.16.8
Anti-Federalist praise of, 1.20
invasions repelled by, 5.1.47
patriotism of, 5.1.78
Swiss bailiff, story of, 3.12.19n
Swiss cantons
confederation sufficient for, 2.7.81
division of property in, 5.1.76
independence of, 4.25.3
troops furnished to other nations by, 3.16.10
varying forms of government in, 3.3.20
Swiss confederation, 2.4.30, 3.3.20, 5.1.52
alliance of dissimilar governments, 5.16.8
aristocratic cantons of, 5.1.28
enjoyment of peace by, 4.25.4
French attempts to influence, 5.1.53
[Maryland] Farmer on, 5.1.76–79
and standing armies, 3.5.11, 6.1.23
See also Helvetian League
sword, power of, possession of, by Congress, 3.11.20, 4.26.7, 5.16.18. *See also* purse and sword, power of
Sydney, Algernon. *See* Sidney, Algernon
Sydney (pseud.), *6.9;* 1.18
Symmes, William, *4.5;* 3.9n34, 4.12.10
on presidency, 1.49

tacit implication, doctrine of, 4.3.8
Tacitus, 5.1.64, 5.1.102–3, 5.15.1
talent
Anti-Federalist suspicion of, 1.17, 1.84n19
source of political power, 2.7.107
talents, literary, 4.28.7
Tamony (pseud.), *5.11*
Taney, Roger, 2.4 intro.
Tarquin, 5.14.21
tax, dry, 4.1.3
definition of, 4.3n16
John DeWitt on, 4.3.21
support of state governments by, 4.5.2
use of, for federal government, 4.28.4
Vox Populi on, 4.4.21
tax assessment, 4.3.21, 4.6.40
taxation, 2.4.56, 2.4.78
Aristocrotis on, 3.16.6, 3.16.17
during colonial period, 2.7.79, 5.12.2
congressional power over, 2.4.55, 2.7.52
equal distribution of, 2.7.169, 2.9.91
of food, drink, and clothing, 2.4.55
and legislation, 2.7.11, 2.7.96
Massachusetts landowners and, 4.4.21
people deprived of control over, 4.22.4
popular consent for, 2.8.86, 4.23.3(2)
power of, 1.35; Brutus on, 2.9.58–59; Centinel on, 2.7.40; Federal Farmer on, 2.8.36, 2.8.76, 2.8.121, 2.8.203, 2.8.209; William Symmes on, 4.5.14
ruinous effects of, 4.28.1
self-exemption from, 4.14.4

taxation (*continued*)
sovereignty and, 3.14.5, 3.14.18
in Virginia, 5.16.5
as yardstick for representation, 2.4.28, 2.4.30, 2.4.45
See also excise; land tax; poll tax; revenue
taxation, direct, 2.4.56, 5.4.7
amendment restricting, 5.17.2
apportionment of, 2.8.44, 3.6.43–44
called soul of government, 5.16.16
Consider Arms et al. on, 4.26.4
by federal government, 3.3.34, 4.6.75, 4.13.23
in Great Britain, 2.9.73
Impartial Examiner on, 5.14.6
[Maryland] Farmer on, 5.1.59
oppressive nature of, 2.9.63, 2.9.74
Patrick Henry on, 5.16.6
Pennsylvania Convention Minority on, 3.11.46
for raising troops, 2.8.220
during Revolutionary War, 2.7.79
in Scotland, 5.16.25
by states, 2.8.205, 2.8.209, 2.9.5, 3.6.31
taxation, double, 2.8.39, 2.8n29, 5.3.16
taxation, external, 2.9.63, 3.3.36
taxation, federal, 4.14.1, 6.13.20
burden of, on New England, 4.10.19
burden of, on South, 5.12.1, 5.12.4
Cato Uticensis on, 5.7.5
Cincinnatus on, 6.1.41–43
Federalist Republican on, 3.6.31
George Mason on, 5.17.1
Impartial Examiner on, 5.14.6
of individuals, 2.5.18
James Monroe on, 5.21.17, 5.21.37
Pennsylvania Convention Minority on, 3.11.47
power of, 3.14.11, 4.9.11, 5.2.2, 6.10.3; ambiguity of, 2.8.44; Countryman on, 6.7.7; George Clinton on, 6.13.7; limitation on, 4.15.4, 5.9.7, 6.12.35–38; Plebeian on, 6.11.15; and powers of states, 2.9.62
rule of, 4.13.23
Samuel Chase on, 5.3.13–14, 5.3.16
Sydney on, 6.9.10
unlimited right of: Agrippa on, 4.6.1; Brutus on, 2.9.88; Centinel on, 2.7.122; Old Whig on, 3.3.29; Pennsylvania Convention Minority on, 3.11.20; William Symmes on, 4.5.9
taxation, internal
Aristocrotis on, 3.16.17
Brutus on, 2.9.63
Centinel on, 2.7.52
Federal Farmer on, 2.8.36, 2.8.209
Federal Republican on, 3.6.17
John DeWitt on, 4.3.9, 4.3.20
Old Whig on, 3.3.36
Pennsylvania House Minority on, 3.2.7
taxation, oppressive, 2.8.121, 6.2.2
taxation, state
congressional power over, 3.3.33
Countryman on, 6.7.7
Pennsylvania Convention Minority on, 3.11.13, 3.11.21
power of, 4.6.53, 6.13.7
suspension of, by federal government, 2.8.39, 3.6.18
tax burden, probable effect of new federal government on, 3.2.7
taxes
ability of citizens to pay, 3.9.35, 4.3.14
apportionment of: Cato on, 2.6.39; Consider Arms et al. on, 4.26.4; Farmer and Planter on, 5.2.3, 5.2.17; Federal Farmer on, 2.8.44; Federal Republican on, 3.6.43–45; Gentleman in a Neighbouring State on, 4.2.3; Philadelphiensis on, 3.9.85; Samuel on, 4.14.1; William Symmes on, 4.5.2
collection of: by army, 3.7.2, 3.16.18, 4.3.9; Federal Farmer on, 2.8.205; Luther Martin on, 2.4.94; Patrick Henry on, 5.16.25–27; William Symmes on, 4.5.17
increase of, under proposed system, 5.16.27, 6.11.23
and industry, 2.6.40

taxes (*continued*)
payment of, in specie, 5.12.1
penalties for nonpayment of, 3.9.87
taxing powers, concurrent. *See* taxation, double
tea tax, 2.7.121
Tell, William, 4.28.12
Temple, Sir William, 4.13.16, 5.1.30, 5.1n20
Ten Commandments, *See* Decalogue
tender laws, 2.9.180
congressional consent needed for, 4.9.22
destruction of mutual confidence by, 4.18.2
in Massachusetts, 4.6.10, 4.6.26, 6.14.29
possible need for, 4.5.2
product of weak government, 1.42
Ten Eyck, Anthony, 6.10.1
ten mile district, 4.23.3(2). *See also* federal city
Tenny, Samuel, 4.17 intro. n1
testimony, legal, 2.8.53, 2.9.177
test oaths, vol. 3 intro.
thanksgivings, legislation of, by government, 4.24.4
theocracy, 4.26.8, 6.6.40
Theocritus, 5.1.21
Thirty Tyrants of Athens, 3.3.51
Thompson, Israel, 6.10.1
three-fifths clause, 4.26 intro., 4.26.4, 6.12.8. *See also* slaves
Thucydides, 5.1.21
Tiberius, Emperor, 3.10.1, 5.15.1
Tillinghast, Charles, 2.8 intro.
Timothy, 6.8.32
titles (to property), 3.11.13
titles of nobility. *See* nobility, titles of
tobacco, 3.10.3, 4.5.2, 4.9.13
Todd, William, 3.11.56
toleration, religious, 1.22, 4.24n3
tonnage and poundage, 2.9.59
Tories, 3.9.36, 5.1.56, 5.16n2
torture, 2.8.105, 5.16.37
town meetings, 4.2.3, 5.1.113
towns, political advantages of, 4.10.11
trade
and agriculture, 1.45–46
decline of, 2.5.28, 2.6.40, 4.2.3
freedom of, 4.6.26
hindrances to, 2.5.15
regulation of: Agrippa on, 4.6.11, 4.6.24, 4.6.40, 4.6.53, 4.6.75; Albany Antifederal Committee on, 6.10.13; Brutus on, 2.9.9; Brutus, Jr., on, 6.3.10; Candidus on, 4.9.15; Centinel on, 2.7.66, 2.7.85; under Confederation, 2.6.15, 4.9.33, 4.10.16, 5.14.48; eastern states favored by, 2.8.61; and Constitutional Convention, 4.9.9; Friend of the Republic on, 4.23.5; Georgian on, 5.9.3; interstate, 2.8.35, 3.13.3, 4.6.24, 4.6.25, 5.3.10; motive for supporting new Constitution, 4.17.8; Old Whig on, 3.3.33, 3.3.36; [Pennsylvania] Farmer on, 3.14.11; Pennsylvania House Minority on, 3.2.7; Philadelphiensis on, 3.9.24; power of legislature over, 2.8.147; Rawlins Lowndes on, 5.12.1; restoration of prosperity by, 2.7.85; Robert Yates and John Lansing on, 2.3.6; Samuel Chase on, 5.3.10; Sidney on, 6.8.25; slave traffic and, 2.4.69, 4.2.9; William Symmes on, 4.5.9
rivalry over, 2.5.14–15
state governments and, 2.8.2
taxation of, 2.8.209, 5.3.17
unlimited federal power over, 4.6.62
See also commerce
trade, balance of, 4.6.26, 6.11.22
trade, foreign, 3.3.32, 3.3.36, 4.1.2
effect of proposed Constitution on, 4.3.4
evils of attachment to, 3.10.5
Samuel Chase on, 5.3.10
trade, maritime, 4.6.24, 4.6.26
trade connections, confederation and, 4.27.5
trading companies, exclusive, 4.6.63. *See also* monopolies
tranquillity, domestic, state governments and, 4.6.18
Treadwell, Thomas, 2.9 intro.

treason, 3.5.3
  Federal Farmer on, 2.8.186
  judicial officers removable for, 2.9.131, 2.9.192
  Patrick Henry accused of, 5.16.2
  president's power to pardon, 2.2.9, 2.4.85, 2.5.41
  resistance to tyranny construed as, 2.4.62
treason laws, federal, 3.14.19
treason laws, state, 3.14n11
treasury, federal, 2.8.176, 4.14.1, 4.23.3(3)
treasury, state, 2.9.166
treaties, 2.3.6, 4.4.39, 5.3.17
  Aristocrotis on, 3.16.10
  cases arising under, 2.9.160
  Cassius and Freeholder on, 5.20n2, 5.20n3
  and censorship of press, 6.1.5
  under Confederation, 2.5.9, 2.8.57, 2.8.229
  Countryman on, 6.7.9
  debate on, in South Carolina legislature, 5.12n1
  effect of new plan of government on, 5.16.1
  in Great Britain, 5.12.3
  interference of, with existing laws, 3.11.43
  limitation of Senate's control over, 2.5.41
  nullification of state laws by, 2.9.5
  possibility of their violating rights, 6.6.27
  Rawlins Lowndes on, 5.12.1, 5.12.3
  secret articles in, 4.5.2
  Senate's role in, 2.9.200, 3.11.42
  Sentiments of Many on, 5.20.3–5
  between states, 3.1.2, 4.9.22
  status of, in English law, 5.15.1
  subordination of, to nation's laws, 5.12.3
  Supreme Court and, 4.9.22
  as supreme law, 2.7.15, 5.15.1
treaties, commercial, 2.8.147
  American inability to enforce observance of, 3.11.3, 5.7.4
  under Confederation, 5.21.5
  Plebeian on, 6.11.30
Treatise of Civil Government (Locke), 4.13.13
treaty-making power, 2.1.2, 2.2.4, 2.2.10
  exclusion of House from, 2.6.44
  exclusion of states from, 4.5.2
  John Francis Mercer on, 5.5.7
  no constitutional limit on, 2.8.48
  of old Congress, 5.14.49
  Old Whig on, 3.3.14
  of president and Senate, 2.9.33
  restriction of, 3.11.1, 3.11.3, 5.4.7
trees, fable of, 3.3.51
trial by jury. *See* jury trial
trials, location of
  amendment on, 5.4.6
  Brutus on, 2.9.27
  Federal Farmer on, 2.8.186
  and Maryland bill of rights, 5.3.8
  possible effect of, on accused, 3.11.41, 4.6.21
  Richard Henry Lee on, 5.6.3
tribune (Roman), 2.7.36, 2.7.67, 2.8.97, 2.8.106
trinitarian controversies, 5.1.106
troops
  billeting of, by Congress, 3.13.4
  loan of, to foreign allies, 3.16.10
troops, regular, 2.8.220. *See also* standing army
Tudor, House of, 5.1.41
Turgot, Anne Robert Jacques, 1.57
Turkey, 4.22.4, 5.1.108
  contrast of, with America, 3.9.37, 5.16.8
  despotism of, 2.4.25, 2.7.72, 3.9.37
Turner, Charles, *4.18;* 1.23
Tuscany, 4.25.4
tyrannical government
  Brutus on, 2.9.45
  prosperity of rich under, 5.2.3
  relative weakness of, 3.3.53
tyrannical laws, in Virginia, 5.16.4
tyranny
  in ancient Rome, 4.23.3(4)
  encouragement of, by slavery, 2.4.70
  Federal Farmer on, 2.8.108
  Federalist and Anti-Federalist views of, 1.39–40
  government forced by strong on weak, 4.20.4
  ignorance and, 3.12.7
  John DeWitt on, 4.3.1

tyranny (*continued*)
John Locke on, 4.13.16
and military spirit, 6.14.160
Noah Webster on, 3.6n10
prevalence of, in human society, 5.21.13
result of executive-legislative combination, 2.5.22
transition to, from anarchy, 5.7.4
tyranny, aristocratic, 4.28.2, 5.14.15
tyranny, executive, 5.1.15
tyranny, judicial, 5.1.66
tyranny, legislative, 5.1.15, 5.1.71
tyranny, military, 4.11.4
tyranny, monarchical, 5.14.15
tyrants
and doctrine of tacit implication, 4.3.8
men of the people, 2.7.101
names of, used by Federalist authors, 2.8.112
promotion of, by wars and tumults, 2.8.178
and suppression of free inquiry, 2.8.3

ultima ratio, 4.20.3, 4.20n2, 4.26.6, 6.6.54
unanimity, rule of, for constitutional change, 2.4.10, 5.5.12
unemployment, 3.9.48
Union, 1.24–37, 2.3.4
Anti-Federalists and, 5.16n18
basis of American independence, 5.12n7
Charles Pinckney on, 1.82n40
consolidation of, 2.5.23, 2.5.31
defense of, 2.9.81
dissolution of, 2.5.16, 2.7 intro., 2.7.139–43
division of its strength, 2.5.27
extension of its powers, 2.8.75
large states a threat to, 2.4.105
origin of, 5.21.4
perpetuity of, 3.1.2
purposes of, 2.5 intro.
Richard Henry Lee's devotion to, 5.6 intro.
sacrifice of liberties for, 6.12.2
separation of dissenting states from, 4.13.17
Union, Anglo-Scottish
Countryman on, 6.7.12
Observer on, 6.4.1–3
Patrick Henry on, 5.16.25
terms of, 5.12.2
union, federal
Aristocrotis' abhorrence of, 3.16.17n
Poplicola on, 4.11.1
state sovereignty excluded by, 3.8n1
union, political, 5.14.2
United States
asylum of liberty, 2.7.78, 2.9.2
Constitution's use of term, 3.13.2
contrast of, with Great Britain, 2.9.44, 5.14.37
domestic debt of, 2.9.164
economic independence of, 4.6.50
education in, 6.14.116
effect of party strife on, 3.9.90
extended territory of: Brutus on, 2.9.11, 2.9.15, 2.9.20; Cato on, 2.6.12; Columbian Patriot on, 4.28.4; Federal Farmer on, 2.8.108; George Mason on, 5.17.1; Robert Yates and John Lansing on, 2.3.7
financial instability of, 4.18.2
flourishing condition of, 4.6.40
frequency of political change in, 5.19.12
future greatness of, 3.16.16
future growth of, 4.2.4, 4.13.25
heterogeneity of, 2.6.12, 2.9.16
natural advantages of, 2.5.15, 6.14.3
north-south division of, 5.9.4
one government insufficient for, 2.8.14
Plebeian on condition of, 6.11.5–7
population of, 2.9.15, 3.9.27, 4.13.25
postwar problems of, 6.14.16
pro-British and pro-French factions in, 6.14.84, 6.14.91
protection of slave trade by, 4.26.14–15
recovery of, 6.12.40
resources of, equal to its debts, 4.6.27
strong government necessary for, 2.5.19
trade balance of, 6.11.22
tranquillity of, 6.3.9

universities, 2.8.98
usage, rights established by, 2.8.200
usurpations, 2.8.59, 4.13.16
usury, 4.3.2
Utopian ideas, 2.7.160, 3.3.20

Valerius (pseud.), 5.6 intro. n9
Valerius Maximus, 3.8.5
Valley Forge, 5.12n2
Vane, Sir Harry, 5.1.73
vassalage, 3.3.54, 3.16.14
Vatican, 5.1.68
Vattel, Emmerich von, 5.12.4, 5.12n13, 6.8.9, 6.13.16
venality, 3.6.27
Vendôme, duc de (Louis Joseph), 5.1.96
vengeance, right of, 3.8n1
Venice
  aristocracy in, 2.7.67, 3.5.13, 4.25.3
  aristocratic government in, 3.6.38, 4.6.60
  constitution of, 4.6.66
  lack of freedom in, 3.14.9
  large assembly in, 2.8.136
  Mercy Warren on, 6.14.123
  religion and government in, 3.16.14
verdicts, general, 2.8.190, 5.1.66
Vergil, 5.1n39
Veritas Politica (pseud.), 3.6 intro.
Vermont, 2.4.44
  migration to, 4.17.4
  prospective statehood of, 2.4.106, 4.1.3, 4.17.4, 4.23.3(8)
  separation of, from New York, 2.6.16, 6.12.3
  suppression of conspiracy in, 4.6.8
veto power, 2.4.16, 2.8.182
  arguments against, 2.4.53–54
  confused attitudes about, 3.12.17
  Impartial Examiner on, 5.14.38
  misuse of, 2.4.17
  of president, 1.61, 3.12.15, 6.10.7
  See also negative
vice presidency, 2.2.8, 2.6.29, 5.1.74, 5.6.5
vice president
  death or removal of, 2.8.181, 3.13.3
  manipulation of apportionment by, 4.14.2
  as president of Senate, 2.1 intro. n6, 2.4.84, 6.1.27
  qualifications of, not specified, 2.8.45
  selection of, 2.4.84
  term of office, 4.14.3, 4.23.3(1)
vi et armis trespasses, 2.9.157
vigilance, popular
  inconstancy of, 2.8.70
  relaxation of, 5.14.15
Vindiciae Galliciae, 6.14.155
violence
  alteration of Constitution by, 3.3.2
  coercion of Pennsylvania Assembly by, 3.2.3, 3.9.75, 3.11.8, 3.14.22, 6.3.11
  protection from, 3.9.20
  seizure of power by, 3.3.31
violence, private, state governments and, 2.9.86
Vipperman, Carl, 5.12 intro. n3
Virginia, 3.1.2
  administration of, 5.16.4
  in Anti-Federalist strategy, vol. 5, pt. 2, intro.
  calmness and tranquillity of, 5.16.1
  Columbian Patriot on, 4.18.8
  under Confederation, 5.16.12
  decision of, on proposed Constitution, 4.13.20
  delegation of, to Constitutional Convention, 2.8.7
  devotion of, to liberty, 5.16.12
  imaginary dangers threatening, 5.16.4
  indivisibility of, 2.4.101–2
  influence of, 2.4.45
  John Francis Mercer's appeal to, 5.5.12
  land value in, 3.6.45
  liberty of conscience in, 3.12.18
  loss of control over its own government, 5.16.5
  place of, in balance of states, 5.9.4
  possible expulsion of, from Union, 5.16.6
  possible independence of, vol. 5, pt. 2, intro. n1
  potential of, for wealth, 4.5.2
  proponent of unequal suffrage,

Virginia (*continued*)
2.4.33
ratification debate in, 3.16.17, vol. 5, pt. 2, intro.
ratification vote in, vol. 5, pt. 2, intro.
representation of, 2.4.17, 2.4.45, 5.13.12, 5.16.8, 5.16.29
results of nonratification for, 3.9.42, 5.16.8
revenue of, 4.14.2
separation of law from equity in, 2.8.195
separatist tendencies in, 2.4.44
shipment of exports by, 5.6.4
Virginia constitution, 5.12.1
Virginia convention, 2.1 intro., 2.5 intro.
delay of, 4.6.12, 4.13.4
George Mason's speech at, 5.17
George Washington at, 6.6.52
instructions to, 4.17.10
John Francis Mercer and, 5.5 intro.
Patrick Henry's speeches at, 5.16
Virginia courts, 5.7.5
Virginia Declaration of Rights, 1.23, 1.70, 2.2 intro., 2.8n118
Virginia Gazette, 5.6 intro.
Virginia Independent Chronicle, 5.6 intro., 5.8, 5.11, 5.14, 5.15, 5.18–20
Virginia Journal, 2.2 intro.
Virginia judiciary, 5.16.31
Virginia laws, 5.16.12–14
Virginia legislature, 2.5 intro., 2.8.89, 5.7.4
encouragement of free discussion by, 5.11.3
neglect of religious concerns by, 5.8.4
open proceedings of, 5.16.40
proposal of Constitutional Convention by, 3.11.3, 4.13.4
willingness of, to supply federal needs, 5.16.27
Virginia Resolutions (Virginia Plan), 2.4 intro., 2.4.14–16
approval of, by Constitutional Convention, 2.4.18
debate over, 2.4.28–35
Edmund Randolph on, 1.38, 2.5 intro.
Luther Martin and, 2.4n4
opposition to, 2.4.21, 2.4.26
virtue
of Americans, 3.3.20, 5.21.3
effacement of, by war, 4.17.4
encouragement of, by good government, 3.9.9
inadequacy of, as basis for government, 1.46, 1.48, 1.91–92n4, 3.6n10
necessity of, in republics, 4.13.21, 4.13.22, 5.3.10
relation of, to government, 5.8.1–2, 5.13.2
result of good laws, 4.1n1
small republics and, 1.42
threats to, 1.20–21
uncertainty of, in rulers, 1.73, 3.3.13, 3.14.22, 4.6.71, 4.26.5
virtue, republican, 1.72–73, 6.14.14
visionaries, misleading influence of, 2.4 intro. n9
Vitellius, 4.12.4
viva voce examination, 2.9.177
voluntary effort, unreliability of, 2.5.10
voting, oral, 3.16.5
Vox Populi (pseud.), *4.4*
Vrooman, Peter, 6.10.1

Wabash Indians, 4.2.8
Wait, Thomas, 1.47
Wales, 4.6.76
Walpole, Sir Robert, 5.1.75
war, 4.3n21
Africans and, 4.26.15
under Articles of Confederation, 2.5.5–6, 4.6.59
combined power to declare and finance, 3.6.20, 5.16.23
economic effects of, 6.11.6
education of people in art of, 5.18.9, 5.18.12
Federalist and Anti-Federalist positions on, 1.30–31
Greek and Roman attitudes toward, 4.6.6, 4.6.49
lessening destructiveness of, 5.1.109, 5.1.110
likelihood of, 1.27
mobilization of resources for, 5.16.23
preferability of, to despotism, 2.7

war (*continued*)
intro., 2.7.142
rational preparation for, 2.9.90
ruinous effects of, 4.17.4
success in, linked to freedom, 3.9.38
war, articles of, 5.1.43
war, declaration of, 2.9.124, 4.9.22
war, defensive, 2.9.86, 4.17.4
war, foreign, 5.12.13, 6.2.2
war, offensive, 2.9n59
war, religious, 5.1.76
war, secretary at, 2.8.176
warrants, 3.11.13, 4.3.21, 5.3.8. *See also* search warrants
warrants, general, 2.7.1, 3.3.30, 4.28.4
amendment forbidding, 5.4.6
Aristides on, 5.1n8
home invasion by authority of, 5.1.13
in Massachusetts constitution, 4.3.22
in Virginia constitution, 5.16.37
protection against, 2.8.200
Son of Liberty on, 6.2.2
Warren, Charles, 4.17n8, 6.14 intro.
on Columbian Patriot, 4.28 intro.
on Helvidius Priscus, 4.12 intro.
on Poplicola, 4.11 intro. n1
on Washington quote, 4.20n1
Warren, James, 4.12 intro., 4.13 intro., 4.28 intro.
Warren, Joseph, 4.3.14
Warren, Mercy Otis, *6.14;* 4.13 intro.
on European skepticism, 1.22
excerpts from *History of the Rise, Progress, and Termination of the American Revolution, 6.14*
on future of America, 1.76
identification of, as Columbian Patriot, 4.28 intro.
on isolationism, 1.21
John Adams and, 6.14n17
Washington, George, 2.2 intro., 2.4.9
alleged favoritism of, 6.14.73
Candidus on, 4.9.15
Countryman from Dutchess County on, 6.6.51–52
dependence of, on slave labor, 4.19.3
fallibility of, 2.7.32, 6.8.5
Farewell Address of, 6.14.100, 6.14.104
Helvidius Priscus on, 4.12.1
Impartial Examiner on, 5.14.10
importance of, in Federalist strategy, 3.16.17
inconsistency of, 4.26.15
James Monroe and, 5.21 intro.
and Jay Treaty, 6.14.82, 6.14.96
large states and, 2.4.37
letter of, to George Carter, 6.6.51, 6.6.53
Luther Martin's appeal to, 2.7.161
Mercy Warren on significance of, 6.14.52–57, 6.14.102–4
Officer of the Late Continental Army on, 3.8.8
Old Whig on, 3.3.10, 3.3.31
One of the Four Thousand, 2.7n2
postwar retirement of, 6.14.61–64
presidency of, 6.14.72–76, 6.14.96–99, 6.14.102–4
proclamation of neutrality, 6.14.92
prostitution of his name, 2.7.5, 2.7.83, 2.7.130
Republican Federalist on, 4.13.10
restraint of, in not seizing power, 2.9.118
Richard Henry Lee and, 2.8 intro. n18
suitability of, as president, 5.12.2
support of, for Federalist position, 2.7.146, 4.20.2–5
ultima ratio regum, 3.16.19
warning of consequences if Constitution is rejected, 2.6n4, 4.20n1
Watchman (pseud.), *4.22*
weak, protection of, 2.7.107
wealth, 4.16.1
advantages of, 2.4.29
exodus of, from Virginia, 5.16.4
relation of, to power, 2.7.107, 5.1.26, 5.3.20
threat to liberty, 5.14.15
wealth, commercial, 3.6.45
wealthy men
ability of, to buy support, 5.5.1
advantages of, in elections, 2.9.52, 6.12.17
Brutus on, 2.9.11, 2.9.52

wealthy men (*continued*)
imitation of, by lower classes, 4.16.1
necessity of, to strong government, 3.9.22
prosperity of, under tyranny, 5.2.3
punishment of, for crime, 5.1.94
relation of, to government, 2.4.30
support of, for Constitution, 5.2.2
support of, for Revolution, 5.2.4
See also wellborn
Webster, Noah, 2.9.77, 3.6n10
American Museum, 2.8 intro.
on appeals to federal courts, 3.5n6
Citizen of America, 2.9.107, 4.4n1
on freedom of press, 3.11n6
on game laws, 3.11n7
on integrity of Framers, 3.6n4
on novelty of representation, 1.91n31
reply of, to [Pennsylvania] Farmer, 3.11 intro. n1
on scope of representation, 1.45
on Senate, 1.96n31
on trial of vicinage, 1.85n27
Webster, Pelatiah, 2.9n1
Countryman on, 6.6.48
reply of, to Pennsylvania House Minority, 3.2 intro., 3.2n5
on three-branch legislature, 1.96n42
weights and measures, 2.4.70, 2.8.10, 2.8.35, 5.3.10
wellborn
attempts of, against freedom of press, 3.9.3, 3.9.51
authors of federal Constitution, 3.7.2
Centinel on, 2.7.129
inconveniences to, 3.4.1
real interest of, in proposed Constitution, 3.9.88
Wentworth, Thomas (Earl of Strafford), 2.7.112, 5.1.75
West, Benjamin, 3.8.5
western land, sale of, by federal government
Agrippa on, 4.6.27, 4.6.77
Brutus on, 2.9.89
Brutus, Jr., on, 6.3.10
Centinel on, 2.7.53
Cincinnatus on, 6.1.47
Gentleman in a Neighbouring State on, 4.2.6
Pennsylvania Convention Minority on, 3.11.2
western territories
British posts in, 6.11.30
extent and fertility of, 3.10.3
jury system established in, 2.8.193
Mercy Warren on, 6.14.87
subjection of, to eastern states, 2.4.102
trade contacts of, with east, 4.6.32
troops needed to guard, 5.1.46
won by efforts of all states, 2.4.107
West Indies, 2.7.87, 4.6.25, 4.6.46
West Point, 2.8.223
wheat, 3.10.3, 4.5.2
Whig, Old. *See* Old Whig
Whigs, 2.6.31, 4.2.3
Whigs, Real, 1.39
Whigs of 1776, One of the (pseud.), 3.9.52
Whiskey Rebellion, 6.14.96
Whitehill, John, 3.11.56
Whitehill, Robert, 1.15, 2.7.158, vol. 3 intro.
Helvidius Priscus on, 4.12.10
Pennsylvania convention, 3.1 intro., 3.9.32; Minority of, 3.11.56
William III of England (Prince of Orange), 3.12.15, 5.1.6, 5.16.24
and Mary, 3.3.23, 5.12.3
William and Mary College, 5.1 intro.
Williams, David, 6.14.7
Williams, John, 2.6 intro., 5.1.35, 5.1.37, 6.12.35
Williams, William, 4.24n1
Wilson, James, 1.9, 1.16, 1.55, 6.13n9
agreement of, with Republican Federalist, 4.13n6
ambition of, to be chief justice, 2.7.159, 2.7n85
on Amphictyonic council, 4.12.1
aristocratic sentiments of, 3.8.5
Aristocrotis on, 3.16.1
attempt of, to discredit Anti-Federalists, 4.13.21
on bill of rights, 2.9n17, 4.17n9
burning of, in effigy, 4.13.27
"Caledonian," 2.7.136, 2.7.167

Wilson, James (*continued*)
Candidus on, 4.9.20
Centinel on, 2.7 intro., 2.7.35–59, 2.7.127, 2.7.136, 2.7.158
Cincinnatus's reply to, 6.1
on Congress as representative of people, 3.3.16
on congressional power over elections, 2.7.100
on consolidation, 4.13.10
on constitutional protection for states, 2.7.99
convention speech of, 2.4n5
defense of federalism by, 1.11
delegate to Constitutional Convention, 3.2.5
on demagoguery, 1.44
Democratic Federalist's reply to, 3.5
description of proposed government by, 4.28.4
desire of, for federal office, 6.1.51
on distinction between federal and state constitutions, 4.17.2
on distinction between state and continental governments, 4.6.69
on electoral functions of state legislatures, 3.11n13
Federalist propaganda, 2.7 intro.
Federal Republican on, 3.6.7
on Framers' desire to preserve state governments, 1.81n29
and Freeman essays, 3.13 intro. n1
Friend to the Republic's reply to, 4.23.6
Impartial Examiner on, 5.14.5, 5.14n6
on implied powers, 4.3.8, 4.3n8
influence of Patrick Henry on, 5.16 intro.
John DeWitt on, 4.3.16
on jury trial provision, 4.15.7
on large republics, 3.11.17
on liberties in Federal City, 6.1n9
on mixed government, 1.62
on nature of federal republics, 3.14n4
[New Hampshire] Farmer on, 4.17.14
Officer of the Late Continental Army on, 3.8 intro., 3.8.3, 3.8.5
Old Whig's reply to, 3.3.6–16
partiality of, 6.1.36
at Pennsylvania convention, 2.7 intro., 2.7.94, 2.7.162, vol. 3 intro. n2
on priority of Union over states, 1.12
refutation of George Mason by, 2.2 intro.
reply to, by Helvidius Priscus, 4.12.1–4
on responsibility of citizenry, 1.72
on science of government, 4.28n17
signer of new Constitution, 2.8.196, 2.8n117
speech of, on freedom of press, 4.8n4
on standing armies, 2.9n73, 3.5.12, 4.3.29, 4.28.4, 6.1.37, 6.1n10
State house speech of, 1.65, 2.2 intro.
suggestion of name "federal republic," 1.55
support of, by a clacque, 4.6.47, 4.6.57
support of Constitution by, 2.7n14, 6.7.12
on suppression of state governments, 4.13n4
on western expansion of U.S., 4.9.31
Winthrop, James, 4.6 intro.
Winthrop, John, 4.6 intro.
witchcraft, 3.3.26, 4.24n1
witnesses
confrontation of accused by, 2.8.200, 2.9.27, 5.14.10
cross-examination of, 2.8.53, 2.9.177
open examination of, 6.1.19
presence of, in court, 2.9.177
transportation of, across state lines, 4.6.21
Wood, Gordon, 1.4, 1.40, 1.83n7, 1.91n39, 1.91n41, 2.8 intro.
Woodfall, Henry, 6.1.8
Worcester, Massachusetts, 4.13.29, 6.14.30
Worcester County, Maryland, 5.4.3
Worcester Magazine, 4.22

Workman, Benjamin, 2.7 intro., 2.7.177, 3.9 intro.
Worthington, Brice, 5.2n1
writs of assistance, 4.28.4
written instruments, duties on, 2.9.59, 2.9.63
Wythe, George, 5.19 intro.

Ximénes de Cisneros, Francisco. *See* Jiménes de Cisneros, Francisco

Yates, Abraham, 2.6 intro., 2.9 intro., 6.8 intro., 6.9 intro.
Yates, Robert, *2.3;* 2.4.1, 2.4.37, 2.9 intro., vol. 6 intro., 6.9 intro., 6.10.1
  coauthor of *Reasons of Dissent,* 2.3
yeomanry, 4.3.28, 5.1.58, 5.1.72
  Anti-Federalists on, 1.18
  characteristics of, 2.8.98, 5.1.81
  opposition of, to proposed Constitution, 4.13.27
  representation of, 2.8.39, 2.9.42
  virtues of, 6.12.17
  See also middle class
Yeomanry of Massachusetts (pseud.), *4.19*
youth, 4.17n8, 4.18.2, 5.8.4

Zenger, John Peter, 3.5.4, 6.1.7